

THE EFFECT OF THE TECHNOLOGICAL DEVELOPMENT ON THE PRINCIPLE OF LEGAL SECURITY

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Abstract:

The legal security and social stability require the principles of justice to protect the individual rights in the society, including the acquired rights that give legal positions to specific persons during the application of a given law or regulation, through the non-issuance or change of a law or a regulation abruptly so as not to violate the rights; this is known as the legal security. However, due to the huge technological development worldwide, this principle must be achieved hand in hand with the development to protect the public interests and individual freedoms. Thus, it is necessary to set legislative frameworks to balance the two sides.

Keywords - *tability, Individual, abruptly ,frameworks*

INTRODUCTION:

The legal security is paramount for the protection of the rights, stability of the transactions, and the socioeconomic growth. It drew much attention due to the international big political, economic, and social developments, which bring about instability in life, putting the legislators in front of new unknown challenges. The jurists give different definitions of the legal security; however, they all agree on the existence of the others and the resulting legal relations and bonds. In this regard, some see that the legal security is the people's exact and clear knowledge of their legal positions, rights, and obligations. On the other hand, others see it is the optimal efficiency of an accessible and understandable law, allowing people to predict the consequences of their behaviors and respecting their legal expectations.

The factors that enshrine the transparency of the legal security include the separation of powers, the independence of the judge, the technological development, etc. The technological development paved the way for a huge amount of diverse and exact scientific and technical information and concepts. Thus, the law always resorts to the scientific expertise to solve the issues. Based on what was said, we raise the following question, "what is the effect of the technological development on the principle of legal security?" In answering the question, we divided the study into two chapters, the conceptual framework of the legal security and the effect of the technological development on the achievement of the legal security. The 1st chapter was divided into two sections, namely the concept of the legal security and the results of the legal security. On the other hand, the 2nd chapter includes three sections, namely the effect of technology on changing the task of law and experts, the use of communication technology to inform about laws and achieve the legal security, and the role of the electronic writing in achieving the legal security.

Chapter one: The conceptual framework of the legal security:

The legal security is necessary for the stability of the penal, administrative, civil, commercial and other laws. However, the huge technological development may affect the stability of the legal texts. Thus, to cover the expression "legal security", we must tackle its concept and pillars.

Section one: The concept of the legal security:

Lately, the “legal security” has been one of the expressions most used by jurisprudents and judges. In this regard, we must tackle the expression from the jurisprudent and judicial perspectives, focus on its genesis, and speak about its characteristics.

Part one: Definition of the legal security:

We shall show the jurisprudent and judicial definitions of the legal security.

First: The jurisprudent definition of the legal security:

The jurisprudents define the legal security as any guarantee that aims at ensuring the good execution of the obligations and removing any mistrust in the law¹. This definition is based on the belief that the legal security is one of the human natural rights. On the other hand, some rely on the notion of the legitimate trust and define it as any real situation drawn from the clarity and exactitude of the applicable law so that the individual can know his rights and duties to take informed decisions². Furthermore, it is the right of any individual to feel safe from the law or regulation, feel its stability, and not get exposed to abrupt changes³.

To the best of our knowledge, one of the most inclusive definitions is that the legal security is a relative steadiness of the legal relations to spread security and reassurance amid the parties of the legal relations, be them private or public legal persons, so that they can order their legal positions in accordance with the applicable legal rules during their actions to avoid abrupt unexpected actions by the state authorities that may shake the stability and trust in the state and its laws⁴. The previous definitions agree that the legal security protects the individuals and their acquired interests from the abrupt changes of law.

Second: The judicial definition of the legal security:

The French State Council defines the legal security as a principle that allows the citizens to easily know what is allowed and what is prohibited by the applicable law, and states that the laws must be clear, understood, and not subject to recurrent or unexpected changes⁵. Hence, we can say that the legal security is protecting the individuals' acquired rights through avoiding the abrupt unexpected adjustments on the laws, and ensuring the clarity of the applicable laws, far from vague formulations.

Part two: The genesis of the legal security:

The legal security was enshrined in Germany in 1961. The German Federal Court insisted on it and considered it a constitutional principle. Despite that the German Constitution did not explicitly provide for the legal security, the constitutional justice confirmed its importance. Besides, the Spanish Constitution enshrined the legal security in 1978, and provided that the legality principle is guaranteed by the Constitution, which in addition, ensures the non-retroactive application of the laws to protect the individuals and confirms that the legal security is the responsibility of the state authorities⁶. In 1962, the Court of Justice of the European Community recognized it in Article 19 of Lisbon Treaty, and the French Constitutional Council recognized it in 1996. Besides, some believe that Article 02 of the Human rights Declaration alluded to the principle of legal security⁷.

Part three: the characteristics of the legal security:

¹ Abd al Jalil Badaoui, the concept of the legal security and its requirements, journal of studies in the public function, No°. 04, p. 08, 2021.

² Ibid, p. 04.

³ Fahima Belhamzi, the legal security of the constitutional freedoms and rights, PhD thesis in the general law, faculty of Laws and Political Sciences, University of Mostaghanem, 2018, p. 37.

⁴ Abd al Hak Lakhdari, the principle of legal security and its role in protecting the human rights, journal of reality, No°. 37, p. 223.

⁵ Houria Ourak, the principles and procedures of the legal security in the Algerian law, PhD thesis in the general law, Faculty of Laws, University of Algiers 01, 2018, p. 49.

⁶ Kamel Boubaaya Wali Abd al Latif, the legal security in the Algerian penal law, journal of the legal and political researches, Vol. 03, No°. 02, 2021, pp. 329-330.

⁷ Houria Ourak, op. cit., pp. 50-52.

It is one of the main principles that enshrine the human rights protection, and is characterized with different points, namely:

First: The publicness: The principle addresses all people and covers all the relations, without exception. In this regard, it does not provide security to a specific category and exclude another⁸.

Second: The universality: The human rights are international regardless the nationalities, gender, religion, color, language, or ethnicity. They are implemented by law and are provided for in treaties, conventions, norms, and other different sources. The states protect these rights through different mechanisms and procedures. They include the legal security that powers people to enjoy their acquired rights without segregation⁹.

Third: The imperativeness: The principle obliges the state and its authorities to respect and enforce it, and to abandon any law that violates the principle because it is necessary for the justice and social stability¹⁰.

Fourth: The development: The principle is continuously developing to keep up with the social changes and developments. It is tightly linked to the society to create a secure and stable atmosphere where the individual rights are respected and the justice is achieved¹¹.

Part four: The differences from other expressions:

The principle is distinct and differs than similar concepts, such as the material security, the personal security, and the judicial security.

First: The legal security VS the material security:

The material security is a set of socioeconomic rights¹² for the individual, provided for by different constitutions. These rights include the right to healthcare, work, and insurance; they must be protected by the state¹³.

Second: The legal security VS the personal security:

The personal security protects the individuals from any coercive practices without legal grounds, such as suspension, arrest, detention, inspection, torture, and slavery. This principle also encompasses the legality of crimes and sanctions, which provides for not sanctioning people for a crime not mentioned in the law, and for not issuing a sanction not mentioned by the law¹⁴.

Third: The legal security VS the judicial security:

The judicial security is a natural right that overlaps with the legal security. However, the judicial is related to the judicial organs that settle the disputes and ensure fair trials and litigations without violation or abuse¹⁵.

Section two: The legal security pillars:

The achievement of the legal security needs some points, as follows:

Part one: The non-retroactivity of laws:

This means that the laws shall not be applied on events that happened before the law had come to force. However, exceptionally, the laws, except the penal and fiscal, may be retroactively applied to achieve the public interest, as recognized by the French and Egyptian justice¹⁶.

Part two: The principle of legitimate trust:

This principle means that the state must not make sudden adjustments or enact new laws or regulations against the legitimate expectation of the individuals, as confirmed by the European Court of the Human Rights and the EU, which denounced the fact that the French Court issued

⁸ Said Ben Ali Hassan al Maameri & Ahmed Radouane al Haf, the legal security principle and the requirements of the legislative quality, journal of legal and economic researches, No°. 78, 2022, p. 22.

⁹ Abd al Hak Lakhdhari, op. cit., pp. 226-227.

¹⁰ Said Ben Ali Hassan al Maameri & Ahmed Radouane al Haf, op. cit., pp. 22-23.

¹¹ Ibid, p. 24.

¹² Articles 34 to 77 of the Algerian constitution show the individual rights and freedoms. For further, see: the Presidential Decree 20-442 of 30 December 2020 on the constitutional amendment.

¹³ Houria Ourak, op. cit., p. 69.

¹⁴ Said Ben Ali Hassan al Maameri & Ahmed Radouane al Haf, op. cit., pp.

¹⁵ Sonia Ben Tayba, the judicial security as a mechanism to boost the development in the field of investment, journal of researches in contracts and business law, Vol. 06, No°. 02, 2021, pp. 44-45.

¹⁶ Fahima Belhamzi, op. cit., p. 33.

regulations calling for controlling the phone calls without the citizens' knowledge. Thus, the legitimate trust is one of the main pillars of the legal security, which obliges the authorities to avoid sudden unexpected laws¹⁷.

Part three: The respect of the acquired rights:

The authorities must not violate the acquired rights, such as the nationality, property, etc¹⁸, and those acquired by a ruling or decision because the acquired rights are constitutional¹⁹.

Part four: Limiting the retroactive effect of the exception of constitutionality:

The ruling about the unconstitutionality of a law or regulation abolishes it and its retroactive effects. Therefore, if the unconstitutional law or regulation had affected an acquired right, actions must be taken to redress the situation because the individuals are in a legal position to achieve the legal security²⁰.

Chapter two: The effect of the technological development on the legal security principle:

The development of the modern communication tools and the penetration of technology into all the fields brought about giant potentials of the states' development. However, this development has many negative effects that harm the rights and legal positions. Consequently, it is necessary to provide legal security using a set of regulations regarding the content of the legal texts, because the rule of "ignorantia juris no excusat" is basic in the legal system. Besides, the second rule is about the adoption of the electronic writing and signature as proofs in the legal actions.

Section one: The effect of technology on changing the task of law and experts

The modern technological development brought about new economic, cultural, social, and political fields governed by the laws, under the concept of technology regulation, which implies the intervention of laws and regulations in technology. The aspects of this intervention include the development of the evidence rules to cope with the society needs. In addition, new legal branches emerged and are characterized with the technical nature, such as the traffic law and the environment laws, in addition to the electronic commercial transactions.

Part one: The shift towards the modern techniques:

The modern technological development considerably changed the function and role of laws, as they were no more mere imperative and complementary texts; rather, we witnessed the emergence of technical laws, such as the electronic trade laws and the elections laws (the electronic voting²¹). Many jurists see that the technological development has no effect on the laws, and that it is neutral and independent from the law. Nevertheless, the modern theories proved the opposite and showed the complementary relation between the law and the technological development.

This development brought about new fields that can be affected by the laws and regulations, such as the right to protect the personal information and the criminalization of the abuse of the modern communication tools. In this context, the laws' and regulations' need for technological development led to the appearance of new technical legal branches, such as the property rights laws, the electronic trade laws, etc²².

Part two: The science of organization

The function of the law remarkably developed thanks to the technological development in all the life fields. In this regard, the laws and regulations are no more limited to the disputes and litigations; rather, they can cover the individual's legal positions²³. The individual's reaction to the

¹⁷ Kamel Boubaaya Wali Abd al Latif, *op. cit.*, p. 332.

¹⁸ Meryem Yahi, *the legal security and the foreign investments in Algeria*, journal of foreign studies and researches, No°. 09, 2018, p. 56.

¹⁹ Fahima Belhamzi, *op. cit.*, p. 34.

²⁰ Meryem Yahi, *op. cit.*, p. 57.

²¹ Fatima Zahra Boujemaa, *the effect of the technological development and the information techniques on the achievement of the legal security*, journal of the Mediterranean thought, Vol. 11, No. 1, 2022, p. 469.

²² Al Jilali Ajjja, *an introduction to the legal sciences*, Vol. 01, the law theory, Barti Algiers, 2009, p. 181.

²³ PAILLUSSEAU " Le droit est aussi one science d'organisation », *Rev ssoc* 1996 pp 7-9-10 n° 15-20

surrounding factors, such as the social media, is one of the motives that affect the enactment of laws. In this context, the technological development may cause negative results that affect the work of the judge during the case consideration, pushing him to consider all the technological developments. Therefore, we can say that the law has hugely developed that it turned into a method for organization and a branch of the organization science. The law turned into an organizational tool for the sciences of the technological development, as it sets the bases and data of each field of those of the modern technology.

Section two: The use of the communication technologies to inform about the law and achieve the legal security:

No objection or appeal based on ignorance of the law, regulations, or custom shall be accepted because knowledge about the laws is presupposed after their publication in the official gazette, in addition to their application on the addressed.

Part one: The publication as the main condition to apply the principle of "ignorantia juris no excusat"

The principle is applied when the legal text is issued by the President of the Republic, who issues it within 30 days from receiving the law and publishing it in the official gazette²⁴. In this regard, the citizens may ground their objection on the rule "ignorantia juris no excusat" before the legal text reaches the department of the concerned. In addition to the official gazette, the state can use other methods of publication, such as the TV, newspapers, internet, etc. The legislator provided for the entrance of the laws into vigor after one day in Algiers, and one day after the official gazette arrives at the Daira headquarters in the other regions. The Daira stamp on the official gazette is an acknowledgement of receipt. Hence, we can say that the authorities must publish the legal texts and that the citizens must look for and read them.

It is unfair to apply laws and regulations on the citizens without informing them about them. In this regard, knowledge about the laws is an obligation on all the citizens²⁵. The legal texts are issued by presidential decrees that prove the existence of the law. After the process of issuance, the publication in the official gazette takes place²⁶. Thanks to the development of the communication tools, the publication in the official gazettes may be electronic or in paper²⁷.

Part two: The electronic publication in the official gazette and the achievement of the knowledge about the law:

The jurisprudence shows two stances regarding the publication of laws and achievement of the knowledge about the laws. The 1st stance says that the knowledge about law in Algeria should be limited to the publication in the official gazette; i.e., the printed format²⁸. The 2nd stance is built on the principle of "ignorantia juris no excusat", as the knowledge about the laws can be achieved by publishing the laws in the official gazette website. Thus, any objection based on ignorance of the law after the publication of the legal texts on the state website is refused. The 1st stance is justified by its supporters saying that the communication tools are not accessible by all the people, and that the state must first provide the modern communication tools to the people to be able to know about the legal texts and overcome the pretext of ignorance of the law²⁹.

The government must take all the measures that go with the modern communication tools to improve the quality of services and overcome the complex procedures and bureaucracy. In

²⁴ Article 143 of the Constitution of 1996 issued by the Presidential Decree 96-348 of 07/12/1996, official gazette 76 of 08 December 1996 supplemented and complemented by law 06-01 of 06 March 2006 on the constitutional amendment, official gazette 14 of 07 March 2016.

²⁵ Article 04 of Order 75-58 of 26 September 1975 on the civil law, official gazette 78, 1975, supplemented and complemented.

²⁶ Hamza Khachab, an introduction to the legal sciences and the theory of contempt, Darba al Qais, Algiers, 2014, p. 108.

²⁷ Karim Karima, the effect of using the modern techniques in the achievement of the legal security, the 1st national meeting on the legal security, University of Kasdi Merbah, Ouergla, Algeria, 2012, p. 101.

²⁸ Karim Karima, op. cit., p. 101.

²⁹ Ibid., p. 103.

addition, it has to provide access to the modern developed electronic tools and techniques to facilitate the access to the updates and changes in the laws³⁰. In this regard, it is necessary, currently, to publish the laws electronically and on paper. Therefore, the Algerian state uses the government secretary website “www.joradp.dz” to allow the citizens to access the official gazettes in Arabic and French.

Section three: The role of the electronic writing in achieving the legal security:

The Algerian legislator considers the electronic writing as one of the methods to achieve the stability of the individuals’ legal positions. The aim of the electronic writing is warning against the risk of some behaviors. The writing takes the form of direct formality when the absence of one of the legal behavior conditions leads to the abolition, and the indirect formality is found in the procedures conditioned by the legal rules and texts in disposal to reach specific results. The formality is the aim of the legal rules and texts, and targets the protection of the people funds and trust when making legal contracts and transactions.

Part one: The use of the electronic formality to support the legal security:

The electronic writing has been recognized as a new type by the jurisprudents and judges through the international conventions. The states ratified these conventions through providing for the electronic writing in all their laws. Besides, paragraph 04 of Article 04 of the UN Convention provides that the electronic writing is all the data sent, received, or stored using electronic, magnetic, visual, or similar devices, and includes the various formats of the electronic exchanges such as the fax. This alludes that the definition widened the concept of the electronic formality³¹. In addition, the Algerian legislator provided for the electronic writing in Articles 323 Bis. and 323 Bis. 01 of the civil law. In this regard, the first states that the proof with the writing results from the sequence of letters, descriptions, digits, or any sign or symbol that has a meaning, regardless the containing tool or method of sending.

The legislator tackled the electronic signature in Article 327 and recognized its authority in proving the facts and behaviors. In this context, he distinguished the simple and the described electronic signatures. The simple is a set of data in an electronic format that are logically attached or linked to other electronic data for documentation³². The described includes a set of requirements³³, such as signing for an electronic ratification only, and writing the name of the signer. In addition, the signature must be made on a secured mechanism and controllable tools to detect the potential changes in the data. Based on this, the legislator did not identify the type of electronic signature; rather, he recognized all the formats and granted them authority in proving the facts and legal practices.

Part two: the legal security is linked to the technical security as an effect of the technology:

The security and stability must not necessarily have the legal nature in shaping the legal behavior with the electronic tools; rather, they must have the technical nature as well, because the electronic development and its role in providing the legal security can be achieved through covering the electronic conditions that spread trust in the electronic behavior through linking the electronic behaviors with their doers. The electronic development tools lead to the development of the legal terms³⁴. However, this development needs recognizing that there is a stable detail in the topics, namely the content of the legal text. The motive behind its existence is the human element that exists in the electronic side, what makes the legal texts technical texts that talk about the

³⁰ Fatima Zahra Boujemaa Mourad Bassaid, the effect of the technological development and the information techniques on the achievement of the legal security, op. cit., p. 474.

³¹ Ata Allah Abd al Ati al Sanbati, qtd. in Ghania Batli, the Algerian journal for business law, No°. 02, December 2020, p. 26.

³² Paragraph 01 of Article 02 of law 15-04 of 01 February 2015 on the general rules of the electronic signature and ratification, the official gazette No°. 06 of 10 February 2015.

³³ Article 07 of law 15-04 on the rules of the electronic signature and ratification.

³⁴ Wassila Kloufi, the dialectic of the law and technology between the complementarity and fraud, the Algerian journal for legal and political sciences, Vol. 57, No°. 05, Algeria, 2020, p. 86.

legal positions of the individuals, and makes the legal topics a set of activities and data related to the electronic development aspects.

The aim of linking the legal texts to the technological development is securing and protecting the content of the electronic tools, which can be attained by challenging the risks that dominate the situation in the virtual sites.

Part three: The electronic litigation as a tool to preserve proving the legal positions and providing the legal security:

The electronic litigation is the process of the electronic transfer of the documents to the court via email. The electronic documents are verified by specialized employees, who issue decisions of approval or refusal and notify the defendant or plaintiff. The electronic litigation has a key role in justice, as it facilitates service delivery. However, it must meet some requirements and conditions. In this regard, this litigation excludes the paper documents³⁵ and uses the nets where the electronic documents are the evidences that can be provided. It saves time and effort and simplifies the procedures thanks to the technological development. Besides, it helps inform the litigants about the case and its news in their homes³⁶, and allows the judge to resort to the laws to settle the cases. Thus, the suitable environment for justice and legal security is provided³⁷.

CONCLUSION:

Upon our study, we can say that the legal security is one of the basic principles for the justice and national security because it protects the constitutional rights and bans the issuance of abrupt and unexpected laws and regulations, which may violate the legal positions and rights. With the huge technological development, the legislative authorities must cope with them to protect and balance between the public and individual interests. Based on what was said, we recommend that:

- It is necessary to set new legal mechanisms to balance between the achievement of the legal security to protect the public and the public interests, and to cope with the huge technological development.
- It is necessary to prepare for any law or regulation by leaving a period between the date of issuance and the date of entry into force, and to set legislative mechanisms to protect the acquired rights.

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³⁵ Al Qadi Hazem Mohamed al Sharaa, the electronic litigation and electronic courts, the house of culture, Jordan, 2012, p. 98.

³⁶ Yousfi Mbarka Hanan Akkouche, the electronic litigation in Algeria, journal of laws and human sciences, Vol. 15, No°. 01, Algiers, 2022, p. 548.

³⁷ Karim Karima, op. cit, p. 110.

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