

Legal Security Under the Judicial Review of Annulment: A Balance between the Stability of Legal Positions and the Rule of Law

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Abstract

This research paper focuses on the problematic relationship between the principle of legality, which mandates the administration's full submission to the law, and the principle of legal security, which aims to achieve stability in legal positions and protect public trust. The core issue lies in the fact that annulling an illegal administrative decision may negatively affect stable legal positions or rights acquired in good faith. In this context, the research poses a main question: What is the role of annulment judiciary in striking a balance between these two principles, and what are the most prominent manifestations of this role in strengthening legal security? The study adopted an analytical and comparative approach, analyzing the role of the annulment judiciary in Palestinian legislation while utilizing judicial rulings and comparing with other legislations when necessary. The study concluded with several findings, the most important of which is that the annulment judiciary plays a pivotal role in achieving a balance between the two principles through specific criteria such as the seriousness of the violation and the public interest. The judiciary contributes to establishing legal security through fundamental principles like the non-retroactivity of administrative decisions, respect for acquired rights, and the protection of the principle of legitimate trust.

Keywords: Legal Security, Principle of Legality, Annulment Judiciary, Administrative Law

Introduction

The relationship between the individual and the state has long occupied a central place in legal scholarship, as legal systems have consistently sought to define and regulate this relationship to ensure a just balance between authority and rights (Al-Shekhanba, 1988). Over time, legal principles have evolved to maintain this balance, with the principle of legality emerging as one of the most significant foundations of the rule of law. This principle obliges state authorities, including administrative bodies, to act strictly within the framework of the

law, ensuring that all decisions and actions are grounded in legality (Raslan, 2003; Sorour, 2002).

With the growing role of public administration in economic and social spheres, the principle of legality alone has proven insufficient to guarantee fairness and stability. This reality necessitated the emergence of a complementary principle: legal security. Legal security ensures the stability of legal positions, the protection of legitimate expectations, and individuals' trust in the continuity of legal frameworks (Radi, 2019b; Belkacem, 2022). The interplay between legality and legal security, therefore, goes beyond abstract theorization, finding concrete expression in judicial practice, particularly in the jurisprudence of annulment (El-Helou, 2000; Sheha, 2003).

This research addresses the inherent tension between legality, which requires strict adherence to law, and legal security, which safeguards stable rights and legitimate expectations. The dilemma arises when annulment of an unlawful administrative act—essential for upholding legality—risks undermining rights acquired in good faith, thereby threatening legal stability (Noweiji, 2021; Sayed, 2013). Against this backdrop, the central research question is: What role does annulment play in balancing legality and legal security, and how has it contributed to embedding legal certainty in administrative practice? To answer this, the study explores three sub-questions: (1) What are the legal concepts underpinning legality and legal security? (2) What criteria guide annulment judges in reconciling these two principles? (3) How has jurisprudence contributed to establishing legal certainty through doctrines such as non-retroactivity of administrative decisions and protection of acquired rights?

Unlike earlier studies that focused primarily on theoretical conceptualizations (Fawzi, 1998; Al-Assar, 1998), this research distinguishes itself by addressing the practical implications of conflicts between legality and legal security. It emphasizes the pivotal role of the judiciary, particularly annulment courts, in navigating these conflicts. Through applied analysis, the study demonstrates how judicial mechanisms safeguard individual rights while ensuring compliance with the law, thereby reinforcing the judiciary's function as both guardian of legality and guarantor of legal security (Ayachi, 2012; Ghmija, 2008).

Methodology

Through this analytical approach, we will analyze and deconstruct the issue of judicial review of annulment between the principle of legality and legal certainty in Palestinian legislation, to identify the phenomena and problems arising from it, by identifying the scope of this legislation and the legal and regulatory texts it contains that are relevant to the research, and assessing their suitability for practical application, with reference to judicial rulings and using a comparative methodology where necessary.

Results and Discussions

Section I: The Nature of the Principle of Legal Security and the Principle of Legality

Since the administrative judge is essentially a judge of legality, the scope of his oversight is limited to the restricted actions of the administration, without extending to its discretionary powers. Accordingly, the administration is bound by a set of restrictions when issuing its

decisions, both out of respect for the principle of legality and because these restrictions are an essential guarantee for the protection of individual rights and freedoms.

(a) The Concept of Legal Security

Legal security is considered a basic human and life necessity that cannot be dispensed with, as it represents the fundamental guarantee for the protection of rights and the stability of relations and transactions between individuals and the state. It is a key element in achieving economic and social development, as it contributes to building a stable legal environment that gives individuals confidence in the legal system and promotes social and political stability. Legal security promotes respect for the law and provides citizens with the assurance that their rights are protected, thereby contributing to sustainable development in all areas (Ayashi, 2012, p. 13).

The term legal security is closely linked to stability in the legal system, as ensuring the stability of the legal framework is one of the fundamental elements of legal security. This stability is achieved when legislation avoids sudden changes that could negatively affect legal security in society. By maintaining consistent and clear rules, individuals can be provided with peace of mind, as they are assured that they will not be subject to sudden changes that could affect their legal rights or obligations (Ghamija, 2008, p. 8).

Legal security here does not stop at mere legislative stability but extends to legal guarantees that ensure the implementation of obligations over a long period of time, free from any surprises that may affect the proper application of the law. In other words, legal certainty refers to a legal system that protects individuals from unexpected changes in the law, thereby promoting stability in legal relationships and contributing to a secure and reliable legal environment.

From this definition, we conclude that the judiciary cannot completely ignore the impact of constant changes and amendments, which may affect the application and enforcement of the law. However, the judiciary can contribute to reducing these impacts and limiting their effect to an acceptable degree by adopting well-thought-out laws that ensure the stability of the legal system.

Legal certainty is defined as the quality of the legal system adopted in a given society, which enhances citizens' confidence in the laws currently in force. This system contributes to reducing the likelihood of sudden changes in future laws. Through this, legal certainty reflects the requirements necessary to ensure the quality of laws and enhances individuals' ability to anticipate and rely on a stable legal system (Kapron, 2005).

It is also defined as the optimal effectiveness of the law, meaning that it is accessible at any time, allowing individuals to predict the legal consequences of their actions with a reasonable degree of certainty. It also respects their legitimate expectations, thereby promoting justice in society (Thomas, 2009).

It also defined the concept of "legal security" as requiring a degree of stability in the legal rules governing relations between individuals, and between individuals and society on the other hand. Stability here means the relative constancy that gives citizens a sense of

security, which is achieved by ensuring that laws remain stable and that individuals are not surprised by unexpected changes. However, this does not mean that necessary legislative amendments should not be made; rather, what is required is to strike a balance between two things: first, the ability of the legal system to evolve in response to changes in various fields, and second, ensuring the clarity of legal rules so that individuals are aware of them and can anticipate the consequences of their actions in accordance with them (Al-Jarf, 1973).

Legal certainty is a set of principles relating to the non-retroactivity of laws, the principle of respect for acquired rights, the stability of legal positions, and the principle of the hierarchy of legal rules. Constitutional rules come at the forefront of these rules due to the supremacy of the constitution, followed by international agreements, which also enjoy supremacy due to international treaties ratified by the state. Then come the legislative rules issued by the competent legislative authority, which must be compatible and consistent with constitutional rules. Next come the rules and regulations issued by the executive authority, which must be consistent with the higher legal rules that ensure the stability of the legal system in general. Achieving stability, clarity, and compliance with legal rules requires the establishment of a body responsible for monitoring the constitutionality of laws to ensure that they comply with the constitution. These bodies vary from one country to another; they may be judicial bodies specializing in the study of laws, as is the case in Egypt, or they may be independent political bodies such as the Constitutional Council in France and Algeria.

The concept of legal certainty means that legal rules are clear and specific and contribute to regulating the legal status of individuals. These rules also guarantee predictable outcomes for individuals, allowing them to anticipate the consequences of their actions, both now and in the future. Legal certainty therefore enhances individuals' ability to predict the effects of their legal actions (Ghamija, 2008, p. 7). Another author has argued that legal certainty is one of the fundamental elements of the rule of law, as it is closely linked to legal stability. Some have pointed out that "the rule of law that characterizes a legal state requires stability in the application of legal rules, especially with regard to respect for rights and freedoms. It is impossible to speak of the rule of law without those addressed feeling this stability, as the regulation of legal relations is one of the fundamental functions of law. Consequently, any instability in legal relations necessarily reflects on the image of the law in the eyes of the individuals addressed" (Sarour, 2002, p. 83).

Others have defined it as "achieving a degree of relative stability in legal relationships and providing a minimum level of stability for different legal positions, with the aim of spreading security and reassurance among the parties to legal relationships, whether they are public or private legal entities. This allows the persons concerned to act with confidence in accordance with the applicable legal rules and regulations while carrying out their work and arranging their affairs in light of these rules, without being subjected to surprises or unexpected actions by public authorities that could undermine this reassurance" (Al-Assar, 1998, p. 245).

Others define it as "a degree of stability in the legal rules governing relations between individuals on the one hand, and between individuals and their society on the other. Stability does not mean the absence of change, but rather a degree of relative constancy that provides a sense of security. This is achieved by public authorities guaranteeing the individual and not

surprising him with the unexpected. However, this does not mean exposing him to surprises from the authorities when necessary legislative reforms are made, whenever they deem it necessary. Therefore, what is required is to strike the right balance between two things: the first is the ability of legal life to evolve and change in all areas; the second is the individual's right to rely on a sufficient degree of clarity in the legal rules to which the public authorities are bound" (Zaidi, 2016, p. 47).

Some jurists have pointed out that the meaning of legal security can be summarized as the ultimate goal and normative value of law, and that its function is to protect the legal system from disputes. Therefore, legal security is considered a process rather than a mere idea, aimed at providing stability in legal relations and positions through the enactment of legislation that is consistent with the constitution. Its purpose is to promote trust and reassurance among parties to legal relationships, both public and private. Legislation must be clear and stable, without confusion or inflation in the texts or retroactivity in laws or decisions, as such practices may undermine confidence in the state and its laws due to the lack of effective protection of rights and freedoms (Bahir, 2018, p. 8).

Some use the term "legal security" to refer to "legal certainty" (la certitude juridique), on the basis that both terms have the same meaning (Radi, 2019, p. 7). The German jurist Radbruch took this approach in his definition of legal security based on legal certainty, arguing that "legal certainty" occupies an important place in the hierarchy of legal values, coming after justice and social peace. Radbruch emphasizes that achieving legal certainty is essential to ensuring the stability of legal relations and the protection of rights and freedoms. With legal certainty, individuals can predict the legal consequences of their actions without fear of surprises or sudden changes in the law, which contributes to strengthening confidence in the legal system and providing an environment of reassurance and security for society as a whole (Avilla, 2016, p. 55).

It is clear from the above that jurisprudence has defined legal security as a fundamental means of achieving legal justice. Studies on the philosophy of law have emphasized that a legal system that does not include high-quality legal rules, specific rules for the protection of individual rights, and stability in legal positions cannot be considered a true legal system. When legal certainty is absent, the guarantees of justice and rights that are considered the basis of any effective legal system are also absent. Legal certainty is therefore a requirement of the rule of law, which seeks to achieve justice and equality among all individuals.

In our view, legal security is a state of stability and clarity in the legal system that allows individuals to predict the legal consequences of their actions and behavior in society. It ensures that legal rules are stable, enforceable in a fair and consistent manner, and that rights and freedoms are effectively protected. It also reflects compliance with the law within a framework that ensures no sudden or arbitrary changes in the law, thereby enhancing confidence in the legal system and promoting social and economic stability. In other words, legal security includes ensuring that individuals can rely on the legal system to regulate their relationships and protect their rights without fear of surprises or changes that could harm their interests.

(b) Concept of the Principle of Legality

Jurisprudence has not agreed on the precise meaning of the term “submission to the law.” Some jurists use the terms ‘legitimacy’ and “legality” as synonyms, arguing that both terms refer to the same meaning, namely the necessity of respecting legal rules so that all actions of the public authorities in the state are in accordance with the provisions of the law in its general sense (Khader, 2000, p. 18). However, the majority of jurists assert that the use of the two terms as synonyms is not accurate, even though both principles are derived from the same source, namely Sharia or Islamic law. These jurists distinguish between the term “legitimacy”—above the principle of legality (meaning the administration's submission to positive law), i.e., the principles of natural law, and the term legitimacy, which is the ideal concept that is hoped to achieve justice, as it includes other rules that can be discovered by sound reasoning (Raslan, 2003, p. 20). Some have pointed out that the principle of legality has two meanings, one broad meaning that refers to the subordination of the state and all its powers to the law, and the other referring to the subordination of the administration to the law alone (Al-Helou, 2000, p. 18).

Others argue that the principle of legality is the principle of the legal state or the principle of the rule of law, which means that the state and all its powers are subject to the law, i.e., that all actions taken by state authorities must comply with the provisions of the law (Al-Tamawi, 1995, p. 21). The principle of legality is one of the principles derived from the principle of the rule of law, which means that all individuals are subject to the provisions of the law in their legal relations with each other or in their relations with the administration, while the principle of legality means that all actions of the administration must be within the limits of the law (Al-Saroukh, 1992, p. 327). No administrative action, decision, or material act may be taken except in accordance with the law. The principle of legality and the principle of the rule of law are two sides of the same coin. The rule of law means that the legal norm takes precedence over the will of all individuals, both rulers and ruled, and obliges them all to respect its provisions. If any of them violates it, their actions become illegal and unlawful, as defined by the principle of legality and the rule of law, which requires everyone, rulers and ruled alike, to submit to the rule of law (Al-Helou, 1985, p. 16).

This principle is defined as being linked to the idea of the “rule of law,” which means that the state is subject to the law in all its activities and actions. Accordingly, the three public authorities—legislative, executive, and judicial—must abide by the law and its provisions. The actions of these authorities are only considered valid and legally effective if they comply with the law; otherwise, they become unlawful (Sheha, 2003, p. 17). Some believe that the principle of legitimacy is the same as the principle of the rule of law or the principle of the legal state, meaning that the state and all its authorities are subject to the law, such that all actions taken by state authorities must comply with the provisions of the law (Al-Tamawi, 1995, p. 16). The principle of legality refers to the subordination of all state institutions and public authorities to the law, and the restriction of all their actions to its provisions. The law here is understood in its broadest sense, encompassing all applicable legal rules, whether written or unwritten. This principle requires respect for the hierarchy of legal rules, whereby lower rules respect higher rules. No decision may contravene a regulation, nor may a regulation contravene the law. The law must also be consistent with the constitution. Accordingly, the administration must respect the law in all its actions, whether legal or material (Al-Thaniabat, 2005, p. 47).

Respect for the principle of legality is achieved by requiring that the administration's actions be based on existing and valid legal rules. This principle represents a middle ground that balances administrative activity with the need to protect the rights and freedoms of individuals. In this context, the Supreme Court of Justice in Ramallah ruled that “an administrative decision issued without a legal basis is considered null and void, contrary to the provisions of the law, and subject to annulment” (Supreme Court of Justice in Ramallah, Decision No. 7/96, dated 14/4/1998).

The principle of legality has two fundamental aspects: one relates to those subject to the law, and the other to the content of the law itself. All individuals and public authorities in the state, whether judicial, legislative, or executive, are fully subject to the law. The judiciary's subjection to the law is manifested in its commitment to the provisions of the law when adjudicating disputes, while the executive's subjection to the law means that it is bound by the law in all its actions, whether legal or material. The subordination of the legislative authority means that it is subject to higher and more exalted legal rules, such as the constitution, so that if it issues laws that do not take it into account, it will have violated the rights and freedoms of individuals (Al-Shakhanba, 1988, p. 79). Administrative authorities are obliged to respect the legal rules issued by higher authorities. A minister, for example, must abide by the rules laid down by the legislature or the president in his decisions. Similarly, a body that has issued internal regulations must respect and abide by them when issuing administrative decisions, unless they have been amended or repealed.

The researcher therefore defines the principle of legality as follows: The principle of legality is a legal principle that requires all state authorities and institutions to be subject to the law, which obliges them to ensure that all their actions and decisions comply with the legal rules issued by higher authorities, as well as to comply with the regulations and decisions they issue themselves, unless they are amended or repealed.

Second requirement: Basis for balancing the principle of legality and the principle of legal certainty

In reviewing administrative decisions, the role of the judge is not limited to merely verifying the legality of the decision but goes beyond that to strike a careful and decisive balance between the principle of legality and the principle of legal certainty. This balance is the essence of his judicial work, as it ensures that administrative decisions do not violate the provisions of the law on the one hand, while preserving the legal positions acquired by individuals on the other. This balance is achieved on the basis of fixed principles and criteria that ensure that no principle prevails over another, in order to guarantee the stability of administrative and legal transactions. These criteria are as follows :

(a) The criterion of the seriousness of the violation of the principle of legality

The principle of legal security requires that the state respect the law first and foremost; the state cannot demand that individuals comply with legal standards if it does not respect them itself. As the most powerful party in legal relations, the state must strive to achieve equality among people and preserve their legal status as a fundamental goal of its existence (Bouziane, 2014, p. 9).

Administrative decisions that are unlawful are subject to either judicial annulment or administrative withdrawal. Both annulment and withdrawal are considered penalties for loss

of legitimacy and result in the retroactive termination of the decision, so that it becomes as if it had never been issued, as confirmed by the Egyptian Administrative Court in its ruling (Ruling of the Egyptian Supreme Administrative Court, Appeal No. 1520 of 7 Q. Session of 2/1/1966).

When the judge of annulment balances the principles of legality and legal certainty and finds that the violation of legality has reached a level that does not justify the application of the principle of legal certainty, he gives absolute priority to the principle of legality. In this case, the judge decides to annul the administrative decision for violating the rule of law, considering it as if it had never existed since the date of its issuance. Examples of this include decisions issued on the basis of fraud or deception, or void decisions that lack a fundamental pillar, as fraud corrupts everything and a void decision has no legal existence (Al-Santrisi, 2017, p. 27).

(b) Public Interest Standard

One of the most significant problems with the law is that the competent authority, driven by the public interest, may apply legal rules retroactively with the aim of changing or erasing legal consequences that arose in the past. This action exceeds the temporal scope of the law and undermines its role in ensuring stability and protecting individuals' trust in their legal system. It is unfair to invalidate individuals' actions that were properly carried out under old legal rules, or to undermine stable legal positions by a new rule that modifies their consequences. This is the essence of the principle of legal certainty, which aims to prevent such disruptions in legal relationships (Sayed, 2013, p. 24).

The comparison between the principles of legality and legal certainty requires the administrative judge to strike a careful balance, basing his decision on considerations of public interest in each individual case. The judge may consider that this interest requires giving precedence to one principle over the other. In cases of minor violations of legality, the judge may prefer not to annul the decision after a certain period of time has elapsed, in order to protect the principle of legal certainty.

On the other hand, the judge may find that the public interest requires the application of both principles, and so he issues a ruling that the decision is unlawful and decides to revoke it, but at the same time limits its effects in order to avoid burdening the state treasury with financial costs. In this context, the judge applies the principle of legality by revoking the decision, while taking into account the principles of legal certainty and public interest by limiting the effects of the revocation (Al-Santrisi, 2017, p. 33).

(c) The criterion of stability of positions and rights after a period of time has elapsed

The rule regarding unlawful administrative decisions is that they may be revoked by the administration at any time, as they do not generate acquired rights, and the penalty for withdrawal is only the penalty for illegality. However, it should be noted that if lawful regulatory decisions are applied individually and the period of litigation has expired, they are subject to the same rules as valid regulations, and may not be withdrawn, but only repealed for the future (Al-Senari, 1981, p. 244). An unlawful decision is protected by the expiration of the 60-day period in Palestine (text of Article 5(1) of the Administrative Disputes Adjudication Law No. 3 of 2016), after which such decisions are treated as valid decisions, and therefore,

cannot be withdrawn or revoked in order to uphold the principle of stability and preserve the rights of individuals.

The administrative judge carefully balances the requirements of the principle of legality with considerations of legal certainty. In cases where an administrative decision is unlawful, but the violation of legality is minor and does not reach the level of seriousness, the judge finds himself faced with a real dilemma. Although the principle requires the annulment of any unlawful decision, the achievement of justice in this case may require the judge to refrain from doing so.

This restraint stems from the judge's awareness that fully recognizing the illegality of the decision and overturning it could negatively affect the individual positions and rights that have been established over time. Therefore, the judge may prefer not to interfere with these decisions after they have been established and a certain period of time has passed, especially when it becomes difficult for the judiciary to control the consequences of the reversal. This position does not mean abandoning the principle of legality, but rather its conscious application, taking into account the importance of stability in transactions and maintaining confidence in the legal system (Noweiji, 2021, p. 386). The administration is also prohibited from revoking individual administrative decisions that are unlawful but not based on fraud or null and void. The judiciary has ruled that these decisions are not subject to administrative withdrawal or judicial review after a certain period of time has elapsed (Al- Santrisi, 2017, p. 28).

Section II: Manifestations of the principle of legal certainty and the role of judiciary in establishing it

The need for legal certainty is no longer a luxury, but rather an urgent necessity and a right for citizens, and a hallmark of the rule of law and institutions. Citizens have become concerned about the increasing complexity and poor quality of legislation, which makes them feel the need not only for stable and clear legal rules, but also for the ability to anticipate legislative developments, enabling them to protect their rights from any sudden changes. The increasing complexity of legislation is a source of concern for all individuals and investors, whether local or foreign.

First requirement: The role of annulment in legislative drafting and the principle of legitimate expectations

The annulment jurisdiction plays a pivotal role in protecting individuals' rights from administrative abuse. This role is not limited to reviewing administrative decisions but extends to contributing to the regulation of legislative drafting through its rulings, which lay clear foundations for sound administrative action. In this context, the principle of legitimate expectations, which is one of the fundamental principles enshrined in administrative justice, is important to ensure that no harm is done to individuals who have built their legal positions and actions based on the actions of the administration.

(a) Legislative Drafting

Drafting is not merely a tool for creating law; it is the spirit that gives it life and brings it into practical existence. The success and effectiveness of a law depend on the accuracy of

its drafting and its flexibility, which enables it to adapt to political, economic, and social realities (Al-Hassan, 1972, pp. 11-12).

Legislative drafting is defined as an integrated set of technical means and rules used to translate abstract legal ideas and concepts into clear and specific legislative texts. The aim is to achieve effectiveness in the practical application of the law by comprehending all the complexities of social and economic life and placing them within well-defined legislative frameworks, thereby ensuring the achievement of the goals and objectives pursued by the state's legal policy (Mansour, 2009, p. 276).

The quality of a legal rule lies in its ability to clearly express its provisions, making it understandable and precise, and preventing multiple interpretations that may prevent the achievement of the objective for which it was issued. Therefore, the wording must avoid ambiguity and avoid the use of phrases that may create confusion among those concerned with its application. The clarity of a legal rule requires that it be readable and understandable by those to whom it is addressed, which is achieved through careful coordination, precise form, and smooth editing, ensuring that it has a single, clear interpretation, especially for those responsible for its implementation (Belkacem, 2022, p. 15).

The importance of legislative drafting goes beyond formal and procedural aspects, as it is the tool that ensures the enactment of advanced legislation that is clear, consistent with other legislation, and understandable and applicable. The ultimate goal of the law is to regulate the behavior of individuals in society, which requires that its provisions embody the principles of justice and equality and take into account the principle of legal certainty, one of the most important aspects of which is legal certainty. Legal certainty means enabling individuals to understand the legal rules that apply to them, such as their prior knowledge of criminal law, prohibitions, and the penalties for violating them.

The idea of legal certainty, as an essential element of legal security, is based on two fundamental pillars: the first is the existence of a clear and established legal basis for all actions taken by state authorities. The second is the quality of legislative drafting, which requires a set of characteristics, most notably that the law be made available to the public through publication and codification, and that it be completely clear and understandable.

When legislation is free of ambiguity and obscurity and accurately reflects the needs of society, it is fair legislation. This is where the role of the judge of annulment comes into play in exercising oversight over decisions and regulations issued, to ensure that they are clear and understandable to the public. This judicial oversight is not limited to examining legality, but is also an effective embodiment of the principle of legal certainty, which guarantees individuals' confidence in the legal system and its stability.

(b) The Principle of Legitimate Trust

The principle of legitimate expectation (legitimate expectation) is achieved when individuals acquire legitimate expectations based on applicable legal rules. Therefore, this trust should not be undermined by new legal rules that are suddenly issued without transitional measures to ensure that acquired rights are not infringed upon. This idea is the

latest development in administrative court rulings, and some consider it a form of the principle of legal certainty or its intrinsic aspect.

The advantage of a good legal rule lies in its ability to express its provisions clearly and precisely, making it understandable to all those to whom it applies. This clarity is a vital element, as it avoids disputes that may arise from ambiguity and ensures that the rule achieves its intended purpose. Therefore, the wording must be unambiguous and have a single interpretation, especially for those responsible for its implementation, by refraining from using phrases that may create confusion, such as “subject to the provisions of” or “contrary to the provisions of,” which are sometimes used inappropriately.

Furthermore, clarity of the legal rule requires that it be readable and understandable by individuals, in accordance with their qualifications. This is achieved through logical arrangement, careful coordination, and the selection of an appropriate form and style for its drafting. It is these aspects combined that ensure that the law is an effective tool for achieving justice and stability in society. Despite the fundamental similarity between the principle of legal certainty and the principle of legitimate expectation, there is a subtle difference between them. The principle of legal certainty represents an abstract objective rule, which aims to ensure the stability of legal rules and positions in general, without regard to the individual circumstances of those to whom they apply. The principle of legitimate expectation, on the other hand, complements this idea from a subjective perspective, as it aims to protect the trust gained by the individual and their right to stability, especially if they are acting in good faith. For this reason, the principle of legitimate expectation cannot be applied in isolation from the specific situation of the individuals benefiting from the decision, making it the subjective counterpart of the principle of legal certainty (Radi, 2019, p. 14).

The essence of sound legislation lies in achieving a degree of consistency and stability and avoiding constant amendments to legal texts, given the negative impact this has on the stability of legal positions and acquired rights. This necessity is particularly important in the field of economic activity, which by its nature extends over time and looks to the future, requiring the legal framework to be forward-looking and far-sighted.

This does not mean that the law should be issued in rigid forms, but rather that its development and amendment should not be a source of surprises or uncertainty. The law reflects the evolving needs of society, which are, by their nature, clearly defined. Therefore, legal security or stability is not limited to protecting existing legal positions and respecting the rights of individuals in the present and future, but extends to respecting legitimate expectations and hopes (Rabie, 2018, p. 200).

Despite the fundamental similarity between the principle of legal certainty and the principle of legitimate expectations, there is a subtle difference between them. The principle of legal certainty is an objective and abstract rule that aims to ensure the stability of legal rules and positions in general, regardless of the individual situation of those to whom they apply. It enshrines the stability of the legal system as a whole.

The principle of legitimate expectations complements this idea from a subjective and personal perspective, as it aims to protect the confidence that individuals have in the

stability of their legal status, especially if they are acting in good faith. Therefore, its application cannot be separated from the specific situation of the beneficiary of the decision, making it the subjective image of the principle of legal security, which transfers the concept of stability from the abstract realm to the concrete protection of individual rights (Shoresh & Khamoush, 2019, pp. 354-355).

Second requirement: The role of annulment proceedings in consolidating acquired rights, stabilizing legal situations, and ensuring that administrative decisions are not retroactive

(a) The role of annulment proceedings in respecting acquired rights

This principle is one of the constitutional principles whereby no state authority may deprive individuals of or violate the rights they have acquired through lawful means and in accordance with the laws and decisions in force. This protection is particularly important when the acquired rights relate to the exercise of public freedoms and fundamental rights guaranteed by the Constitution. This principle serves as a fundamental guarantee that individual rights and freedoms will not be infringed upon, thereby reinforcing its value as a pillar of the rule of law (Shorsh & Khamoush, 2019, p. 342).

The established rule for laws is that acquired rights must be respected and not infringed upon unnecessarily or without compensation. Constitutions have therefore sought to reinforce this rule, making it a principle that laws do not apply retroactively so as not to infringe on acquired rights. Respect for acquired rights is a rule deeply rooted in natural law and the fundamental principles of justice and must therefore be applied even if it is not explicitly stated in constitutions (Al-Ainin, 2013, p. 1027).

Accordingly, administrative decisions do not have retroactive effect. If a decision with retroactive effect is issued, it shall be null and void. However, for retroactivity to apply, two conditions must be met (Al-Tamawi, 1995, p. 527).

1. There must be a personal legal status whose elements are integrated under a specific legal situation, which cannot be affected if the legal situation changes thereafter, and this is a matter that is examined by the judiciary on a case-by-case basis.
2. The decision must be intended to have an impact on personal status, and the relevant date in this regard is the date of entry into force of the decision, which is the date of its issuance.

The Palestinian Basic Law stipulates this principle in Article 6, which states: "The principle of the rule of law is the basis of governance in Palestine, and all authorities, agencies, bodies, institutions, and persons are subject to the law." (Article 6 of the Palestinian Basic Law of 2003 and its amendments).

Based on the above, the administrative judge works and takes into account the respect for rights and legal status, which is clear in the rule of non-retroactivity. This rule is considered a result of acquired rights, and thus the principle of legal security works to respect acquired rights.

(b) The role of the administrative judge in achieving the principle of legal certainty and non-retroactivity of decisions

While administrative judges are primarily bound to respect the principle of legality and adhere to its sources, there are exceptional cases in which a careful balance must be struck between this principle and the principle of legal certainty. In this context, it becomes imperative for the annulment judge to give special importance to the principle of legal certainty, one of the most prominent manifestations of which is the non-retroactivity of administrative decisions, with the aim of protecting the acquired rights of individuals. In this section, we will discuss in detail how to achieve this balance and the vital role of the judiciary in establishing this protection. In this section, we will talk about this balance.

What is meant by non-retroactivity of decisions

Administrative decisions only have an effect on the future and cannot be applied retroactively to the past, out of respect for acquired rights and legal positions that arose under a previous legal system. This principle is an application of the rule of non-retroactivity of laws, which stipulates that new legislation applies only to future events, as of the date of its entry into force.

The principle of non-retroactivity of laws is defined as the rule that a law applies only to legal facts and acts that occur after its date of entry into force. Facts and acts that occurred before its entry into force remain subject to the law under which they arose, and its provisions do not extend to them. This principle is a fundamental pillar of legal certainty, as it guarantees the stability of legal positions and protects acquired rights from sudden changes, thereby strengthening confidence in the state's legal system.

The essence of the principle of non-retroactivity lies in the fact that it is a fundamental pillar of any legal system that seeks to achieve stability and justice. This principle means that the provisions of new laws only apply to events and actions that occur after the date of their entry into force. This means that the law has only future effects and cannot extend its effect to the past to change or supersede legal positions that arose and were established under a previous law.

This principle is essential to ensure legal certainty, as it gives individuals confidence that their actions, which were carried out in accordance with the laws in force at the time, will not be affected or invalidated by legislation enacted subsequently. Any retroactive application of the law would undermine confidence in the legal system, create chaos, and be considered unfair to individuals who have settled into sound legal situations. Therefore, respect for the non-retroactivity of the law is, in essence, a protection of acquired rights and a fundamental guarantee of the continuity of legal relationships (Sayed, 2013, p. 17).

Judicial determination of the principle of non-retroactivity of decisions

Although the legislative texts governing the retroactivity of laws in France, Egypt, and Palestine do not explicitly refer to the principle of non-retroactivity of administrative decisions, this principle is considered an established and accepted principle in both jurisprudence and administrative justice in these countries. This established judicial principle applies to administrative decisions, whether they are general or individual in nature.

This legislative gap has been filled by the administrative judiciary, which drew this principle directly from the requirements of legal certainty and the protection of individuals' acquired rights. The judiciary considered that allowing the administration to retroactively revisit its decisions would destabilize the legal situation and cause chaos in transactions, thereby causing serious harm to individuals who had based their actions and legal positions on the legal situation in force at the time. Consequently, the administrative judiciary has enshrined this principle as a fundamental safeguard against administrative arbitrariness, considering it an integral part of the legality that it is responsible for overseeing (Abdel-Moataa, 2004, p. 14).

Since laws adhere to the principle of non-retroactivity, administrative decisions, which are subordinate to legislation, must also adhere to this principle as a matter of logical necessity. The general rule is that administrative decisions do not have retroactive effect, in order to preserve legal certainty, protect acquired rights, and ensure that individuals are not surprised by changes in their legal status that have become established and stable (Fawzi, 1998, p. 182).

Judiciary in many countries has established the need to respect acquired rights as one of the most prominent manifestations of the principle of legal certainty. According to established jurisprudence and case law, the wisdom behind the principle of non-retroactivity of administrative decisions is the same as that which justifies the non-retroactivity of laws. The considerations put forward by jurists to justify this principle in legislation are the same as those relied upon in the field of administrative decisions, with the aim of protecting the legal status of individuals and ensuring their stability and confidence in the legal system (Suleiman & Jaafar, 1989, p. 392).

The Egyptian Council of State has settled on the principle of non-retroactivity of administrative decisions, emphasizing that a valid administrative decision that fulfills all its requirements cannot be revoked by the administrative authority. The right of withdrawal is granted to the administration only if the decision violates the law. Thus, the Supreme Administrative Court enshrines the principle of non-retroactivity of decisions to ensure the stability of legal positions and affirms that the provisions of laws and decisions implementing them take effect immediately from the date of their entry into force, in order to preserve acquired legal positions (Ruling of the Egyptian Supreme Administrative Court, Appeal No. 1687 of 7 Q, Session, 5/30/1965).

The stability and immutability of legal positions is contingent upon the parties concerned having genuine, not speculative or hypothetical, knowledge of the decisions that affect them and established these positions. This requires the administrative authority to notify those concerned of these decisions (Ruling of the Egyptian Supreme Administrative Court, Appeal No. 11225 of 46 Q, session of 8 May 2003).

Legal jurisprudence considers that the principle of non-retroactivity of administrative decisions is based on practical considerations centered on ensuring the stability of legal relations. Giving the administration the right to issue decisions with retroactive effect would undermine the security and stability of those concerned and make them unable to trust the legal positions they have acquired. Therefore, leaving the past as it is and preserving the

integrity of the legal effects that took place in it is necessary, because tampering with them leads to disruption of people's circumstances and makes it impossible for them to stabilize their legal situations (Ali, 2008, p. 334).

The Palestinian Supreme Court of Justice affirmed the same principle in its decision in Case No. 108/2017, held on March 28, 2018, ruling that the salary supplement is an acquired right of the appellants based on a prior agreement. The court ruled to overturn the administration's decision to deduct this allowance, considering that this constitutes a clear violation of an established right under the agreement, which is contrary to the principle of non-interference with the rights acquired by individuals (Decision of the Palestinian Supreme Court in Case No. 108/2017, held on 28 March 2018).

Our analysis of this text shows that the ruling issued by the Supreme Court of Justice in Palestine is a prime example of the role of the judiciary in protecting acquired rights and enshrining the principle of legal certainty. Although the legal text does not explicitly mention the term “acquired rights” in its final reasoning, the essence and content of the ruling represent a direct application of this principle. The importance of this ruling is evident in how the court dealt with the dispute, basing its decision on three main points:

- I. Legal basis for the acquired right: The court confirmed that employees had an acquired right to a “salary supplement” bonus, based on the written agreement signed at the beginning of their employment. The court considered that this agreement, which explicitly stated that their previous salaries would not be affected, created a stable legal position for the employees, which the administration could not subsequently undermine by a unilateral decision.
- II. Protection of legitimate expectations: The ruling protected the legitimate expectations of the employees, who accepted the transfer and work in the government cadre based on a clear promise that their salaries would not be affected. The court considered that the administration's subsequent decision to deduct the allowance violated the trust they had built on the basis of the agreement, rendering the administration's decision flawed.
- III. Non-retroactivity of administrative decisions: The court ruled that the administrative decision to deduct the allowance was invalid and must be revoked because it sought to amend a legal situation that had arisen in the past, which was contrary to the principle of non-retroactivity of administrative decisions. The court thus prevents the administration from going back in time to retroactively revoke an established right, thereby affirming its role in ensuring legal stability.

Based on this, it can be said that, through this ruling, the court not only protected the financial rights of employees, but also established the principle of respecting acquired rights as a fundamental rule governing the actions of management, preventing it from issuing any sudden or retroactive decisions that affect legal positions that have been established and confirmed by law or agreement.

In a recent decision by the Palestinian Court of Cassation in case No. 1101/2023, issued on January 13, 2024, it affirmed the two principles as follows:

She (the court) emphasized respect for acquired rights by stipulating that: the present case involves a claim for a sum of money amounting to 55,000 shekels in unpaid salary to the respondent as a result of the decision to dismiss him from public service issued by the Minister of Education on 1/11/2009. We find that this decision was overturned by the ruling issued by the Supreme Court of Justice in its general session in case no. 209/ 2009 on 4/9/2012. Consequently, in light of its cause and the facts presented therein, the current case is not considered a claim for compensation for damages, but rather a financial claim based on the grounds for appointment to public office (Decision of the Palestinian Court of Cassation in Case No. 1101/2023 issued on 13/1/2024).

She emphasized respect for the non-retroactivity of administrative decisions in several places:

- "This is because the ruling to revoke the administrative decision means removing all traces of this revoked decision in the face of all."
- "The annulment of an administrative decision restores the legal status of the respondent to what it was before the annulment and is nothing more than an executive decision in accordance with the ruling of the Supreme Court of Justice."
- "The reason for the administration's obligation to pay the respondent's (plaintiff's) salary for the period from the date of cancellation of his appointment until the date of his reappointment in compliance with the administrative court's decision is that, in the event of the total cancellation of the administrative decision, the administration must remove all legal and material effects left by the cancelled administrative decision through positive intervention by the administration by issuing a new administrative decision that eliminates the legal effect of the cancelled decision. In this case, with the issuance of a new positive decision to reinstate the plaintiff issued by the same authority that issued the canceled decision, the legal effect of the canceled decision is eliminated. However, the material effect is not canceled by the reappointment, as this effect can only be eliminated by restoring the situation to what it was before the issuance of the canceled decision, by removing all the legal and material effects that resulted from it. This obligation requires the administration to remove all the material effects left behind by the canceled decision and to completely liquidate its effects, as the liquidation of the material effects must be complete and retroactive, restoring the situation to what it was before the issuance of the revoked decision"

In this regard, the researcher believes that the ruling issued by the Supreme Court/Court of Cassation in the attached case, which dismissed the appeal and upheld the appealed judgment, strongly affirms two fundamental principles of administrative law: respect for acquired rights and the non-retroactivity of administrative decisions. These ruling highlights the essential role of the judiciary in protecting the legal status of individuals and ensuring the stability of administrative transactions.

Affirmation of the principle of respect for acquired rights

The ruling demonstrates the court's firm commitment to protecting the rights that individuals have acquired through lawful means. This is evident in several aspects:

- *Characterization of the claim:* The court rejected the characterization of the respondent's claim for salaries as "compensation for damages," considering it instead to be "a financial claim based on the grounds for appointment to public office." This legal characterization is extremely important; it means that the court did not view the salaries as compensation

for subsequent damage, but rather as an inherent and established right of the employee upon appointment, and that the annulled dismissal decision did not terminate this right, but rather temporarily suspended its exercise. This confirms that the employee's status and the financial rights that come with it were established and acquired from the date of the original appointment.

- *Restoration of the status quo:* By obliging the Ministry of Finance to pay the salaries for the period during which the respondent was dismissed, the court confirms that it aims to restore the legal and financial situation to what it was before the unlawful administrative decision was issued. This measure is the essence of protecting acquired rights, as it does not create new rights, but rather restores a right that existed and was unlawfully infringed upon.

Confirmation of the principle of non-retroactivity of administrative decisions (through the retroactive effect of judicial annulment)

This ruling provides a model application of the principle of non-retroactivity of administrative decisions by highlighting the absolute retroactive effect of judicial annulment:

- *Absolute authority of the annulment ruling:* The court clearly affirmed that “the rulings issued by the administrative court annulling the administrative decision are considered binding on all parties.” This principle, which is an exception to the relative authority of ordinary judicial rulings, means that the effect of the annulment ruling is not limited to the parties to the case, but extends to all those to whom the same factual and legal circumstances apply. This emphasis on absolute authority reinforces the value of the annulment ruling as a tool for retroactively removing an unlawful administrative decision from legal existence.
- *Removal of all legal and material effects:* The court emphasized that “the ruling to annul the administrative decision means removing all effects of this annulled decision in relation to all parties” and that “the liquidation of the material effects must be complete and retroactive, restoring the situation to what it was before the annulled decision was issued.” This text is decisive in affirming the principle of non-retroactivity of administrative decisions, as it imposes a positive obligation on the administration to remove all consequences of its annulled decision, whether legal or material, as if the decision had never been issued.
- *Refusal to set a payment date:* The court refused to set a date for the payment of salaries from the date of the Supreme Court's ruling, confirming that this would not constitute a proper application of the annulment decision. This refusal is the essence of the non-retroactivity of administrative decisions, as it prevents the administration from determining the effect of its revoked decision with future effect and forces it to recognize that the revocation restores the situation to what it was in the past.

Conclusion and Recommendations

General Conclusion

The findings of this study confirm that the principle of legal security stands as one of the most fundamental guarantees of the rule of law, complementing rather than opposing the principle of legality. The annulment judiciary in Palestine has demonstrated that legality alone is insufficient to ensure justice when individuals' acquired rights and legitimate expectations are at stake. By affirming the non-retroactivity of administrative decisions, the judiciary has safeguarded citizens from arbitrary interference, reinforcing their trust in the stability of the

legal system. This principle ensures that individuals can organize their lives and conduct their affairs with confidence, knowing that lawful actions taken under existing regulations will not be undermined by subsequent changes.

The study further highlights that the judiciary's role extends beyond the narrow framework of reviewing legality to actively balancing the imperatives of legitimacy and security. In doing so, the judiciary elevates legal security into an independent standard, ensuring that administrative decisions are not only formally correct but also materially just. This development is consistent with comparative judicial practices in other legal systems, where courts have stepped in to fill legislative gaps in order to protect citizens from sudden disruptions in their legal status. In Palestine, this judicial approach strengthens the position of the administrative judiciary as a central actor in preserving public trust, stability, and fairness within the legal order.

Ultimately, the evolution of jurisprudence in this field reflects a deeper understanding of the law as a living instrument that must be adapted to protect both legality and stability. By emphasizing the principle of legal security, judiciary contributes to the predictability of legal relations, the protection of acquired rights, and the consolidation of legitimate trust. These outcomes not only enhance the resilience of the legal system but also promote confidence in governance, social cohesion, and the overall rule of law.

Recommendations

From a legislative perspective, it is essential to enshrine the principle of legal security explicitly within Palestinian administrative and procedural laws. This would provide a clear statutory basis for the judiciary to balance legality and security while preventing inconsistent interpretations. Explicit provisions on non-retroactivity and the protection of legitimate trust would enhance judicial authority and guide administrative bodies in their decision-making processes.

Judicial practice should continue to evolve in a way that broadens the application of legal security, particularly in annulment cases. Courts should adopt flexible remedies that account for the rights of third parties and the potential disruptive effects of retroactive annulments. For example, postponing the annulment of administrative decisions or awarding fair compensation can strike a balance between rectifying illegality and preserving stability. Such approaches reflect the judiciary's dual responsibility: protecting individual rights while maintaining social and institutional equilibrium.

At the administrative level, government bodies should integrate impact assessment mechanisms before issuing decisions that could alter existing rights or legal positions. By evaluating the legal, social, and economic consequences of proposed actions, administrators can prevent conflicts and ensure compliance with the principle of legal security. This proactive approach would reduce future litigation and foster greater trust between citizens and state institutions.

Another important recommendation is the establishment of clear deadlines for withdrawing unlawful administrative decisions. Leaving the administration's right to revoke its decisions open-ended risks undermining legal certainty and destabilizing established

positions. By setting reasonable statutory time limits, the legislature can ensure a fair balance between correcting illegality and protecting individuals' reliance on existing decisions.

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