The Concept of Legal Security in the System of Administrative Decisions

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Abstract:

One of the contemporary issues that has occupied legal professionals in recent years is the principle of legal security, which has become a fundamental basis of the rule of law. It contributes significantly to the preservation of the authority of the state and the law by instilling confidence in individuals in laws and regulations. The most important legal means relied upon by individuals in organising their social, economic and political life are the numerous administrative decisions issued by public administrations as the executive apparatus of the State. It is therefore necessary to maintain a form of security and stability in the legal positions acquired by individuals through these administrative decisions. Legal security, as it is known today, is not a new idea in the administrative decision-making system. Administrative judges have always worked to subject administrative action to the principle of legality and, implicitly, to the principle of legal security, which is considered an element of legitimacy. This is done by taking into account the stability of legal positions and the protection of individual rights and freedoms.

Keywords: Legal security, acquired rights, adaptation, judicial discretion, non-retroactivity.

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Introduction:

Every legal system is based on a set of mechanisms that ensure its quality and effectiveness by enacting stable and legitimate rules to guarantee a minimum level of stability and consistency of legal positions. However, the proliferation of legislation at all levels, regardless of its source, can, over time, lead to conflicts between laws. In particular, the large number of administrative decisions taken by the public administration may jeopardise the legal position of individuals, which evolves as the law evolves. What was legitimate yesterday may be illegitimate today.

In order to achieve a certain degree of stability in legal systems, several fundamental principles have been established, such as the principle of non-retroactivity. This principle prohibits the administration from changing rules and applying them to existing legal situations in order to protect acquired rights. The administration is also required to take measures to publicise its decisions as a condition for challenging them. In addition, the administration is obliged to withdraw or annul its unlawful decisions, irrespective of judicial control. All these considerations ensure, at the very least, the regularity and stability of the legal framework for the future.

Taken together, these principles fall within the logic of legal security and stability, commonly referred to as legal security. Its roots can be traced back to European law, in particular German law. The incorporation of the principle of legal security into French administrative law is nothing more than the

integration of the German principle of the protection of legitimate expectations. We find several implicit applications of this principle in the judicial decisions of the French Council of State, at various stages.

As far as the citizen is concerned, security is first and foremost the knowledge of one's rights, which can be achieved through the establishment of an effective judicial system. His relationship with the administration is linked to the system of publication of administrative decisions as a condition for protesting against them as a form of security. Then comes the consideration of the effects of these decisions over time, governed by the principle of non-retroactivity as a basis for ensuring legal security. In addition, the reversal of an established precedent and the adoption of a new retroactive precedent as a general principle may affect the legal security of individuals.

Therefore, it is important to examine the significance of legal security in the system of administrative decisions, given the significant role these decisions play in regulating the lives of individuals in all aspects, in view of the balance between the public interest and the private interests of individuals. To answer this question, it is necessary first to understand the requirements of legal security in administrative law and then to examine its limits in the system of administrative decisions from an applied perspective. This can be done by adopting the following plan:

First Axis: Establishing the Principle of Legal Security in the System of Administrative Decisions

1. The legal value of legal security in administrative law.
2. Means of establishing legal security in the system of administrative decisions.

Second Axis: Limitations of the Principle of Legal Security in the System of Administrative Decisions

1. The difficulty of reconciling the principle of legal security with the principle of legality.
2. The challenge of reconciling legal security with the freedom of action of the administration.

The first axis focuses on establishing the principle of legal security in the system of administrative decisions.

Legal security is seen as a continuous development in the resistance to the promotion of public freedoms and the protection of human rights.Its implicit legal basis can be found in French law after the French Revolution in articles 2 and 16 of the Declaration of the Rights of Man and of the Citizen of 1789[1]. Security is considered a natural right of the individual, alongside the right to liberty and property. Although the concept of "legal security" as we know it today has only recently been recognised by judicial interpretation, more than two hundred years after the Declaration of the Rights of Man and of the Citizen, the principle of legal security has become one of the foundations of the rule of law[2].

Many legal and judicial systems have recognised the principle of legal security. The Federal Constitutional Court in Germany, for example, upheld the constitutionality of this principle in its 1961 decision, stating that "for the citizen, legal security manifests itself first and foremost in the protection of

[1]- Declaration of the Rights of Man and of the Citizen, 1789: See [link](https://bit.ly/1VDd4tf)

[2]- Public report of the Council of State 2006, General considerations (legal certainty and legal complexity), Paris, Edition la Documentation française, p. 349.

confidence"[3]. Since then, a strong link has been established between public confidence and legal security. It has also been recognised internationally by the Court of Justice of the European Union in the BOSCH decision of 1962, as well as in two other decisions of the Court on legitimate expectations which are very similar to the principle of legal security, in particular the Dürbeck decision of 5 May 1981. The European Court of Human Rights has also emphasised the importance of the precision and predictability of the law as a fundamental requirement of legal security[4].

In the case of Algeria, the principle of legal security was explicitly and for the first time recognised by the constitutional legislator in the recent constitutional amendment of 2020[5]. The preamble states that the constitution guarantees the supervision of the work of the public authorities and ensures legal security. As an idea, however, we can find its influence in certain terminologies even before this constitutional recognition. It is implicit in the fact that most laws are based on maintaining the stability of transactions and social positions. The remarkable development of legal systems is based on the principle of the right to defence and the protection of individual rights and freedoms at the international level. Algeria is among the countries that have ratified several treaties and conventions in this field. The effects of this commitment can be found in the Constitution and in many laws such as civil, electoral, criminal, procedural, administrative and others.

When discussing legal security, it is important to note that the focus is not on whether it is explicitly recognised by name, but rather on its legal value.

It is also important to examine how its components and requirements are incorporated into the system of administrative decisions.

First, the legal value of legal security in administrative law is significant:

When we speak of general principles of law, we are referring to unwritten principles that are applied without an explicit text. These principles were derived by the French Council of State when formulating its judgments with the aim of providing greater guarantees to individuals. The principle of legal security was officially recognised for the first time as a principle of general law in the 2006 annual report of the French Council of State. Its definition was as follows:[6]

"The principle of legal security requires citizens to be able to determine, without significant effort, what is permitted and what is prohibited by the law in force. To achieve this result, the rules laid down must be clear, understandable and not subject to frequent or unexpected changes over time".

From this definition it can be seen that legal security encompasses a number of requirements that provide individuals with a degree of security that they can anticipate the legal consequences of their actions and act accordingly. The rule of law must be clear, reasonable and not subject to frequent changes

[3]- Abdelmajid Ghemija: The principle of legal certainty and the need for judicial certainty, Judicial Supplement Magazine, Issue 42, May 2009, p. 5.

[4]- Court of Justice of the European Union (CJEU) Decision No 00089 of 6 April 1962: BOSCH case and Durbeck case of 5 May 1981.

[5]- Presidential Decree no. 20-442 of 30 December 2020 amending the Algerian Constitution (Official Journal no. 82 of 30 December 2020).

[6]- Public report of the Council of State, 2006: OP.Cit, p. 281.

over time. It should be a normative rule, i.e. it should be binding. Legal security is therefore closely linked to the predictability of the law. The law should be easily accessible, clear and precise. The legal situation should remain relatively stable in order to protect acquired rights[7].

The Algerian Constitution[8] reflects this by stating in Article 78: "Ignorance of the law is not an excuse". This principle implies that everyone must be aware of what the law allows and forbids. The Algerian Constitution links this principle to the protection of rights under Article 16 of the Universal Declaration of Human Rights and Citizenship.

On the basis of these principles, the principle of legal security covers two dimensions:[9]

The first is the objective dimension, which requires that the rules laid down are clear, reasonable and stable.

The second dimension is the subjective dimension, which entails respect for the right of each individual to rely on the legal position he or she has acquired. This dimension is linked to the principle of legitimate expectations, which is defined as the confidence that individuals have in the rules and decisions adopted by the State, allowing them to rely on the positions they have acquired on the basis of these rules or decisions.

In the context of administrative decisions, the focus is on the trust[10] that individuals place in public administrations, which must ensure that they respect the rules and decisions they establish to regulate social, economic and political life. This is achieved through administrative decisions which are taken at the discretion of the administration, without seeking the opinion of the addressees, and which are implemented directly, potentially affecting their legal security. It is therefore necessary to further examine the consolidation of legal security in the system of administrative decisions.

Secondly, the means to consolidate the principle of legal security in the system of administrative decisions.

The administrative decision plays a fundamental role in terms of its impact on legal positions. It is the means by which the administration establishes new legal rules, creates, abolishes or modifies rights and obligations. It is characterised by a presumption of legitimacy, which obliges individuals to comply with its provisions, and it remains in force and produces its effects even after an action for annulment has been brought before the administrative court.

As for the protection of the individual's legal position against the arbitrariness of the administrative authorities, despite the explicit recognition of the principle of legal security in administrative law only a few years ago, we find that many of its effects have long been entrenched, forming a hidden principle, the "Principe clandestin[11], in administrative law. First of all, the principle of legitimate expectations was

[7]- Article 34 of Presidential Decree No. 20-442 amending the Constitution of Algeria: previous reference.
[8]- Presidential decree no. 20-442: previous reference.
[9]- Fabien BOTTINI: The new implications of the principle of legal certainty in administrative law, (note under CE, Ass, 16 July 2007, Société Tropic Travaux Signalisation), p. 163: [link](https://www.unicaen.fr/puc/images/crdf0615bottini.pdf).
[10]- Council of State, Annual Public Report 2006, op. cit., p. 163.
[11]- IBID, p 229.

recognised, which is closely related to the principle of legal security. Subsequently, the latter was recognised as a general principle of law. The consolidation of the principle of legal security in the system of administrative decisions has been achieved through several requirements, including the conditions for the entry into force of administrative decisions (A), the conditions for their termination (B), as well as efforts to limit the effects of judicial interpretations by the administrative judiciary on legal positions (C).

A- The impact of the entry into force of administrative decisions on the principle of legal security:

In order for the administrative decision to have the intended effects, it follows a specific process in its formation, in particular with regard to its entry into force. These effects must reconcile the principle of legal security and the stability of the legal system, on the one hand, and the principle of legitimacy, on the other. The date of entry into force refers to the moment when the administrative decision is incorporated into the legal system. This date raises numerous and complex issues. While the general principle is that it should not have retroactive effect 3, a distinction must be made between the challenge of the administrative decision and its enforceability 2.

1- The difference between challenging an administrative decision and its enforceability:

In order to challenge an administrative decision, it must first be subject to sufficient publication measures, which is the minimum requirement for legal security, since access to the legal basis depends on the quality of the publication[12]. However, the general rule is that as long as there has been no publication, it is not possible to challenge the new rules against others (BARROT et autres case[13]). The judiciary has distinguished two types of decision according to their nature:

As regards regulatory decisions, publication is the prescribed procedure for them and they take effect from the date of their signature, with certain immediate effects on rights. They form a legal basis for other regulatory measures, and individual decisions cannot be taken on the basis of an unpublished regulatory decision[14]. They are subject to the same publication measures as laws[15]. A distinction is made between central administrative acts, such as presidential and ministerial decrees and ministerial circulars. They are published in the Official Gazette and, like laws, are binding on everyone. This procedure is effective in ensuring that they are known, and they enter into force on the day of their publication in the Official Journal (unless they contain a provision specifying a later date for their entry into force). They become enforceable against individuals on the day following their publication, as provided for in article 04 of the Algerian Civil Code[16].

As for other decisions of local administrations (decisions of the Governor, deliberations of elected councils, etc.), they come into force on the day of their publication.

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[12]- Fabien GRECH: The principle of legal certainty in the French constitutional order, French Review of Constitutional Law, 2015/2 (No. 102), pp. 405-428.

[13]- CE, Ass, 13 December 1957 (BARROT et Autres).

[14]- Pierre LAURENT FRIER and Jacques PETIT: Administrative Law, 10th edition, Paris, LGDJ Lextenso Editions, 2015, p. 369.

[15]- Robert ETIEN: General Administrative Law, Paris, Editions Foucher, 2007, p. 31.

[16]- Decree 75-58 of 26 September 1975 amending and supplementing the Algerian Civil Code (Official Journal No. 78 of 30 September 1975).

There are various ways of doing this, such as inclusion in the Provincial and Municipal Bulletin of Administrative Decisions, publication in designated places, on the Internet, or any other measure sufficient to ensure that the information reaches the citizens[17].

As regards individual decisions, the general rule is that they do not apply to individuals until they have been notified of them.Therefore, the time limit for challenging an individual decision starts from the date on which the person concerned receives the notification. However, if the decision concerns a significant number of individuals, collective publication is the applicable procedure, which guarantees them at least a minimum of legal security.As far as the administration is concerned, the decision is implemented as soon as it is issued, unless it is subject to a condition or an additional deadline (such as the requirement of a financial guarantee or the approval of a higher authority). From that moment, the decision applies to the administration itself and it must comply with it, based on the administration's knowledge or presumed knowledge of its decisions since they were issued.

In reality, however, the mere publication of a decision is not sufficient to exempt the State or the administration from liability. The French Council of State recognised the State's responsibility for damage resulting from the entry into force of a regulatory or governmental decision in the cases of La Fleurette[18] (1938) and Compagnie Générale d'Energie Radio Électrique (1966)[19].

In March 2006, the French Council of State introduced a new guarantee for the entry into force of administrative decisions, based on the most recent case law. This explicitly recognises the principle of legal security. This guarantee was introduced in the KPMG[20] case. It requires the temporary implementation of transitional measures for reasons of legal security. As stated by the Governor of the State, Mr AGUILA[21], "the administrative authority with regulatory power must, within the limits of its competence, adopt transitional measures [...] when the immediate application of a new rule is impossible or would seriously harm the public or private interests at stake".

These transitional measures have been adopted to give those affected by administrative decisions time to fulfil their obligations when new rules come into force. Mr AGUILA compared these transitional measures to traffic lights:[22] "Transitional measures for legal security are like orange lights for road safety... They come from good management of public affairs". After having rejected the principle of legal security for a long time, the French Conseil d'État now obliges public authorities with regulatory powers to

[17]- Robert ETIEN: OP.CIT, p. 31.

[18]- M. Long et al.: The major decisions of administrative case law, 21st ed. Paris, Dalloz, 2017, CE, Ass, 14 January 1938, Judgment Société des produits laitiers "La fleurette" (Liability for acts of law), p. 289.

[19]- CE, Ass, 30 March 1966, Compagnie Générale d'Energie Radio-Electrique.

[20]- CE, Ass, 24 March 2006, Judgment société KMPG et société Ernst & Young et al. (Principle of legal certainty - transitional measures).

[21]- "The administrative authority vested with regulatory power is required, within the limits of its competence, to adopt transitional measures [...] when the immediate application of a new rule is impossible or when, having regard to the purpose and effects of its provisions, it would be excessively prejudicial to the public or private interests at stake". CE, Ass, 24 March 2006, Judgment KMPG and Ernst & Young et al. (Principle of legal certainty - transitional measures). IBID, p. 819.

[22]- Transitional measures are to legal certainty what amber lights are to road safety..., they are part of the good conduct of public action". See M. Long et al: OP.CIT, p. 818.

establish procedures and transitional measures in cases where the immediate application of their rules would seriously harm public or private interests[23].

2- The principle of non-retroactivity of administrative decisions as a basis for legal security

is considered fundamental[24]. While the non-retroactivity of laws, except in criminal matters or with regard to any punishment of a penal nature, is constitutionally protected in most countries, the non-retroactivity of administrative decisions is a principle of general law. The entry into force of administrative decisions is subject to this principle, which was recognised in 1948 in the specific case of the newspaper company L'Aurore, where a decision of the French Minister of Industry and Commerce concerning retroactive increases in electricity bills was annulled[25]. The non-retroactivity of an administrative decision means that its effects should not occur before the date on which it is implemented. This principle is considered a mandatory rule that cannot be violated, and the judge has the power to annul a decision with retroactive effect without express authorisation from the law.

The principle of non-retroactivity of administrative decisions is considered an implicit application of the principle of legal security. The KPMG decision is considered an extension of this application, as stated in the report of the State Inspector General, Mr Aguila:[26] "A new legislative or regulatory provision cannot be applied retroactively to existing contractual situations without, by its nature, having a retroactive effect... Only the legislator has the power to apply the law retroactively for serious reasons of public order". This principle has been imposed on the administration by virtue of its power to take executive decisions that protect existing legal positions, which guarantees the security of those who deal with it. Acquired rights cannot be jeopardised or wasted, and it is not in the public interest for people to lose confidence in the positions they have acquired under a previous law or regulation. Most disputes about the retroactivity of laws concern tax laws, which often have retroactive effect[27].

In Algeria, the issue of the immediate application of the Civil and Administrative Procedures Code of 1 April 2009 was mentioned in a decision of the Dispute Court of 9 January 2012. In a case brought simultaneously before both the ordinary and the administrative courts and decided by both bodies[28], it was concluded that this rule, which exempts time limits that started under the old law, has several other exceptions that are not included in Article 02 of the law. These exceptions come into play in the principle

[23]- IBID: p. 814.

[24]- Article 43 of the Algerian Constitution states: "No conviction shall be pronounced except in accordance with a law enacted prior to the commission of the offence". Presidential Decree No. 20-442: previous reference.

[25]- CE, Ass, 25 June 1948, Société du journal l'Aurore judgment (administrative acts - retroactivity).

[26]- CE, Ass, 24 March 2006, no. 288460, Société KPMG et Société Ernest): M. Long et al.: OP.CIT, p. 817.

[27]- Decision of the Supreme Council (Administrative Chamber) No 54717 of 21.11.1987: Case of (W.M.) against (S.T., T.S.): Journal de justice for the year 1990, No. 4, p. 182: "One of the established principles applied in the collection of taxes of any kind for a given year is in accordance with the laws, regulations and implementing texts in force on the date of publication of the Finance Act in the Official Gazette, and therefore the tax administration which applied the provisions of Article 49 of the Finance Act for 1983 to a commercial activity carried out in 1982 constitutes a violation of the law.

[28]- Journal of the Supreme Court: Issue No. 2 for the year 2012, File No. 000114 Decision dated 09/01/2012, Case Team (K) v. Governor of Skikda Province.

of non-retroactivity of laws when retroactivity threatens stability, legal security or violates the rights and acquired legal positions of the litigant, leading to a loss of confidence in the legal and judicial system.

However, there are exceptions to every rule and the principle of non-retroactivity is not absolute. There are certain circumstances in which the legislator considers it fair and just to violate this principle. Therefore, the administration is explicitly or implicitly allowed to adopt individual or regulatory decisions with retroactive effect, or to implement a judicial decision that cancels an unlawful decision and has certain consequences that require the administration to adopt a retroactive decision to address or restore the situation as it was, out of respect for the validity of judicial decisions. In addition, some decisions are retroactive in nature, such as decisions interpreting and correcting administrative decisions.

B- The impact of the termination of administrative decisions on the principle of legal security

Is a complex issue in administrative law. It has undergone significant developments through the judicial interpretations of the French Council of State in favour of individuals and their legal security. The most common methods of overturning administrative decisions are annulment and withdrawal by the authority that issued the decision or by the highest authority in the administrative hierarchy, or by an action for abuse of authority brought before the administrative judge in response to a dispute over an administrative decision.

Cancellation does not raise any fundamental problems with regard to the principle of legal security, since it only applies to the future.

Administrative revocation and judicial annulment, on the other hand, are more serious and risky procedures, since they go beyond mere revocation by annulling the administrative decision from the moment it was signed, which constitutes a significant infringement of acquired rights.The basic principles governing the system of revocation have been established by judicial interpretation and vary according to their nature:

1- The theory of decisions establishing acquired rights:

The theory of decisions establishing acquired rights (i.e. those rights that are fully formed and cannot be affected) often raises a number of questions, since it does not distinguish between the establishment of rights for the past or the future, and between the right to the effects and the right to adherence to the decision. The system of withdrawing decisions establishing acquired rights has recently undergone developments that have been generally summarised by legal scholars under the perspective of strengthening the principle of legal security for individuals[29].

The search for a balance between the principle of legal security, which could be undermined by the retroactivity of the withdrawal, on the one hand, and the principle of legitimacy, on the other, can lead to a complex and exceptional system, depending on the type of decision to be withdrawn, in particular individual decisions, which give rise to many disputes, unlike regulatory decisions, which are rarely the subject of disputes. For more than ten years, the French Council of State has been working to restore the balance between the principle of legal security and the principle of legitimacy.

[29]- Thomas PIAZZON: Legal security, Defrénois Lextenso edition, Paris, 2010, p. 377.

With regard to decisions establishing acquired rights, the principle of legal security is the main consideration adopted in the system of withdrawal, as set out in the TERNON decision of 2001[30]. It is based on two conditions: the illegality of the decision and the respect of the prescribed time limits for withdrawal.

The condition of illegality relates to the rights established by this type of decision. Judicial interpretations have given the administration the power to revoke its decisions for the same reasons that allow the administrative judge to revoke them (reasons of illegality). Withdrawal cannot therefore be justified on frivolous grounds (for example, on the grounds that the new head of the administration would have preferred a different solution).

The condition of time limits is based on the principle of legal security, which prohibits the withdrawal of an administrative decision, even if it is unlawful, outside the prescribed time limits for judicial review. Once these time limits have expired, withdrawal becomes impossible (the decision is protected against withdrawal).

The system established by this challenge is that as long as a decision can be annulled by the judiciary, the administration must take parallel action before the expiry of these deadlines. The prescribed period was two months, as stated in the Cachet decision of 1922[31]. Although this interpretation was considered for more than forty years as a good balance between the protection of the rights of the individual and the principle of legitimacy, it became clear after this period that this balance was not in favour of the individual. The French Council of State therefore introduced new guarantees in the TERNON case in order to restore the balance between the principles of legal security and legitimacy. It extended the withdrawal period from two to four months, starting from the date of signature and not from the date of notification. In addition, the withdrawal should not affect the rights of others and efforts should be made to compensate the party concerned with a more appropriate decision[32].

The TERNON decision is therefore seen as a major turning point in the system of withdrawal of administrative decisions established by the French Council of State in the CACHET decision. In both cases, it is a question of putting an end to an earlier decision, and the withdrawal is always retroactive to the date of the decision. In both cases, there are contradictory requirements: if the original decision is unlawful, the challenge to it is justified by its unlawfulness, while on the other hand, the acquired rights established by it, even if unlawfully, cannot be infringed or disregarded, otherwise it would be considered a violation of the principle of legal security for individuals. This change in the judicial interpretation of the French Council of State shows that it has been protecting the legal position of individuals since 1922 with the CACHET decision.

[30]- CE, Ass, 26 October 2001, judgment TERNON (withdrawal of administrative acts - annulment), see M. Long et al: The main decisions of administrative jurisprudence, 21st edition, Paris, Dalloz, 2017, p. 743.

[31]- Decision of the French Council of State of 3 November 1922 (Ms. CACHET), cited in Marsou Long et al.: Principles of French Administrative Justice (translated by Ahmed Yousri), 10th edition, Egypt, Dar El Fikr El Gamia, 1995, p. 295.

[32]- Pierre-Laurent FRIER and Jacques PETIT: Previous reference, p. 380.

As far as the Algerian Council of State is concerned, its implicit recognition of the principle of legal security was first mentioned in a case in 2012, as stated by the President of the Chamber of the Council of State[33].

It applies to individual decisions establishing rights, where it recognises the citizen's assurance that his legal position will not be disturbed by maintaining an acquired and stable situation, even if the decision establishing it is illegitimate[34].

2- The system of withdrawal of decisions that do not create rights:

It does not pose a problem in terms of the stability of the legal position after withdrawal. It is similar to revocation and can be done at any time and for any reason, provided it is lawful[35]. Since the administrative decision has no past, present or future legal effect, the administration can decide to revoke its decision without conditions or time limits, even if it has retroactive effect. The judge who lays down the rules on revocation naturally defines progressively the list of decisions that do not create rights and can be revoked at any time[36].

Regulatory decisions: belong to the category of decisions that do not create rights and are subject to the principle of mutability, which recognises the power of the administration to modify or revoke them at any time. This applies to rules that the administration itself establishes, even if they have been in force for a certain period of time, which seems to contradict the commitment that the administration considers itself bound by with regard to the rules it establishes[37]. This rule can easily be interpreted on the basis of the principle that public institutions are adaptable and subject to change. The authorities managing public facilities must always take the measures they deem appropriate to improve the services they provide. The Algerian legislator has explicitly stated this in article 06 of the decree governing relations between the administration and individuals, which reads as follows[38]:"The administration shall always ensure that its tasks are adapted to the needs of citizens. It must provide good service to citizens".

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[33]- Kamel FENNICHE: The jurisprudence of the Council of State and the concept of legal certainty, conventions of Mediterranean jurists, proceedings of the Algiers colloquium, 9-10 December 2012, pp. 28-31.

[34]- Decision of the Algerian Council of State no. 063457 of 30.07.2012, Journal of the Algerian Council of State, issue 10, year 2012, pp. 80-84: "Concerning the appeal against the annulment of authentic contracts relating to real estate transactions concerning unoccupied plots of land, where the Minister of Finance appealed in cassation against the decision of the Algerian Administrative Chamber, which ruled on his appeal to annul the authentic contract dated 10 June 1964, registered on 15 June 1964 and notarised on 23 June 1964, relating to the sale of real estate by a French citizen to Mr. (T.A.), in which he criticised the contested decision for its repeated violation of Article 169 of the Code of Civil Procedure and the provisions of Decree 62-03 of 23 October 1962, and therefore considered this sale to be null and void. The Algerian Council of State has confirmed that the sale sought to be annulled was registered and notarised by the Ministry of Finance on 15 and 13 June 1964, which makes it valid and contestable by all in accordance with the rules of real estate registration provided for in the Civil Code, in particular Article 793 thereof. And that this transaction has created a stable situation and granted rights to the purchaser for more than forty years".

[35]- Pierre-Laurent FRIER and Jacques PETIT: previous reference, p. 377.

[36]- Manuel GROS: Administrative Law (The Jurisprudential Angle), 5th edition, Paris, Harmattan Editions, 2014, p. 156.

[37]- Benjamin DEFOORT: Administrative Decision, Paris LGDJ, Lextenso Editions, 2015, p. 433.

[38]- Decree no. 88-131 of 4 July 1988 regulating relations between the administration and the citizen (Official Journal no. 27 of 6 July 1988).

Another important principle for regulatory decisions is that "no one has the right to cling to a regulatory decision, as a regulatory decision can be revoked or modified at any time"[39]. Therefore, while regulatory decisions do not create a right to cling to them in the future, they do create a right to respect the effects they produce when implemented, as a protection of individual safety. The effects of a regulatory decision consist in the establishment of a general and abstract rule, more precisely, a binding and non-supplementary rule. This non-supplementary nature means that it is impossible for the administrative authority to violate regulatory rules by means of individual decisions. The administrative authority is obliged to respect the regulatory decisions it takes by its own will, unless they are modified or cancelled[40]. In general, the administrative authority is not bound by a regulatory decision which it has taken at its own discretion, unless it is a project. Therefore, under the principle of legitimacy, it is obliged not to apply an unlawful regulatory decision, which can therefore be revoked at any time.

Non-regulatory decisions: With regard to legitimate non-regulatory decisions, which do not create a right to adhere to them, the principle of stability of acquired legal positions does not prevent the withdrawal of the decision. However, the principle of non-retroactivity makes it impossible for previous effects to be revoked. If they are not in the interest of individuals, they can be withdrawn at any time, as long as they do not create rights for others, and thus their revocation remains possible for any reasonable reason[41]. A prominent area in this respect are the control procedures and decisions related to the exploitation of public property. These are temporary procedures, justified by the public interest or public order, and may be withdrawn or cancelled at any time and for any reason[42].

However, if they are unlawful, the principle of legitimacy applies and they can therefore be revoked at any time without respecting the time limits for judicial recourse.

Individual decisions that do not create rightsIn contrast to the above, there is a type of individual decision that cannot even establish a right in the past.These are null and void decisions that are reduced to mere material acts or that have been obtained through fraud and deception on the part of the party concerned. These decisions must be revoked at any time. There is also a type of decisions that do not create rights, at least temporarily, because they are conditional and do not produce effects unless the condition is fulfilled[43].

With regard to acquired rights based on fraud and deception, the principle of legal security does not protect these rights, as stated by the head of a chamber of the Algerian Council of State[44].

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[39]- "No one has a right to the maintenance of a regulation, a regulation may be modified or repealed at any time" See M. Long et al: The major decisions of administrative jurisprudence, 21st edition, Paris, Dalloz, 2017, p. 816.

[40]- "The administration is obliged to respect the procedural rules of a regulatory nature which it has itself adopted, as long as it has not decided to repeal them" See BENJAMIN DEFOORT, cited above, p. 434.

[41]- Pierre-Laurent FRIER and Jacques PETIT, cited above, p. 380.

[42]- Benjamin DEFOORT: see above, p. 427.

[43]- Manuel GROS: previous reference, p. 157.

[44]- In a case decided by the Algerian Council of State, a woman applied to the governor of the province of Constantine to use a commercial space on the grounds that she held a craftsman's card. The governor granted her the right to use the space in September 1997. However, he later revoked it after four months. The woman appealed against the revocation decision to the Administrative Chamber of the Council of Constantine, which annulled the revocation decision on the grounds of acquired rights and changes made by the woman to the premises. After examining the case

Third, the transformative effects of judicial interpretation on the principle of legal security.

Judicial interpretation[45] is defined as "the solution adopted by a judicial body in a case before it in the absence of an applicable legal provision, or in the event of its ambiguity or inadequacy". In another commonly agreed definition, it is "the abandonment by a court of a previously accepted solution, resulting either in the adoption of a solution contrary to that previously adopted, or in a change in the court's approach to the method of judgment"[46]. These two definitions suggest that judges engage in interpretation in two main situations: when the legal text is unclear or ambiguous, or when there is a gap or silence in the text on certain issues. It should be noted that judges do not have to interpret in every judgment they deliver. In many cases, their work is limited to the application of explicit and unambiguous legal texts.

One of the characteristics of judicial interpretation is its non-static nature. It can evolve and change, even when it is established and old, especially when its disadvantages outweigh its advantages and the old interpretation is no longer in line with economic and social developments[47]. Scholars argue that development requires flexibility, fairness and the correction of mistakes. In addition, the discretionary power of judges or their independence in delivering judgments sometimes requires the avoidance of a fixed judicial interpretation and its subsequent change[48].

If the legislator legislates only for the future, the judge (a simple reader of the law) pronounces the law that is suitable for both the past and the future. The judge applies the law and cannot be a source or creator of the law. Therefore, the transformation of judicial interpretation is nothing but the application of the law and not the creation of a new legal rule. As for the administrative judge, the recognition of his power to create legal rules[49] may give him a relatively unexpected character, which may affect the principle of legal security.

Judicial interpretation is also characterised by its retrospective nature, as the new interpretation is applied to all disputes, regardless of the timeline of events and whether they preceded the transformation

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documents, the judges of the Council of State found that the woman was a worker and had a worker's card affiliated to the Social Security Fund, but did not have a craftsman's card. Therefore, the conditions that preceded the decision to grant the benefit were not met, as the premises were intended only for craftsmen. In addition, the woman concealed the facts, and therefore rights cannot be acquired on the basis of fraud and deception by submitting forged documents and false information. The judges of the first instance erred in their assessment, and therefore the Council of State decided to annul the contested decision and dismiss the case for lack of foundation. Source: Kamel Fenniche: OP.CIT, pp. 28-31.

[45]- Boubchir Mohamed Amqran: The Transformation of Judicial Jurisprudence Between Text and Application, Lawyers' Magazine, published by the Tizi Ouzou Bar Association, Algeria, Issue No. 2, 2004, p. 53.

[46]- Guillaume Drouot: The retroactivity of case law (research to combat legal uncertainty in civil law), Doctoral thesis in private law, defended on 4 December 2014, Panthéon-Assas University (Paris II).

[47]- Sari Nawal: The role of legal security in distinguishing between the retroactive effect of the law and the retroactivity of judicial jurisprudence, Journal of Legal and Administrative Sciences, published by the Faculty of Law and Political Science, University of Sidi Bel Abbes, Algeria, Issue No. 11, 2015, pp. 106-129.

[48]- Martin Nadeau: On the Traces of a Principle of Legal Security in Canadian Law, the Paths of European Law, Master's thesis in General Law, University of Sherbrooke - Canada -, defended in July 2009, pp. 78-79.

[49]- "Saying the law is, especially for the administrative judge, largely creating it" Benjamin DEFOORT: previous reference 588.

of this interpretation. It does not change the law itself, but modifies its explanation and interpretation when the previous interpretation is found to be incorrect, as Dean Carbonnier[50] explains: "Judicial interpretation is retrospective by nature, as long as it is applied with force to all actions or abstentions that individuals could have taken in reliance on the old judicial interpretation". Therefore, it is applied even if the judicial decision subject to the new interpretation concerns a specific dispute and affects only the parties involved, in accordance with the principle of the relative authority of judicial decisions. However, judicial interpretation, by its very nature, is retroactive and affects everyone - parties to the dispute or not - and no one can cling to a right acquired through a fixed judicial interpretation[51].

The changes in judicial interpretation, whatever their causes and legitimacy, can create an atmosphere of turbulence, instability and lack of transparency in the application of the law. They can also undermine the legitimate confidence of citizens in their perception of the administration, which has been formed in a context of legal stability in which its actions have been taken on the basis of legal stability. More dangerously, individuals may unknowingly and unexpectedly violate their rights acquired under previous interpretations of the law[52]. The effect of the new legal interpretation affects them indirectly, contrary to their expectations and initiatives, and they may be punished without warning or notice for an act or omission that was not illegal at the time it was committed. Most jurists agree that "the change in judicial interpretation leads to legal unsecurity, as the new solution resulting from the change is applied by force to cases that were based on trust in the old solution". For example, the Algerian legislator mentioned the non-retroactivity of laws, but did not mention the non-retroactivity of judicial interpretation, as stated in Article 2 of the Algerian Civil Code[53]: "The law shall apply only to future events and shall not have retroactive effect..."

However, since changes in the interpretation of a specific law are more likely to jeopardise the stability of rights than the withdrawal or cancellation of an individual administrative decision, the French Court of Cassation has, since 2004, recognised the compensation of traditional solutions by establishing the principle of legal security. Thus, the absolute retroactivity of judicial interpretations is no longer upheld, as stated in a report by a group of experts who concluded that the solution to this problem lies in the establishment of transitional legislation for the transformation of judicial interpretations[54].

The French Council of State, in addition to the "TERNON" case mentioned above, has followed the same approach as the French Court of Cassation in limiting the retroactive effects of timely withdrawal.

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[50]- "The reversal of case law is retroactive in nature, since it automatically applies to everything that individuals may have done on the basis of the old case law". See Thomas PIAZZON: Previous reference, p. 335.

[51]- "No one can claim a vested right to a settled jurisprudence". Nicolas MOLFESSIS: Discontinuity of Law and Legal Security, Louisiana Law Review, No. 04 Vol. 63, 2003, pp. 1309-1326.

[52]- "The rule laid down by the judge - and in particular by the Council of State - in a dispute is applied to subsequent identical cases by both the administrative judge and the administrative authorities themselves". See Benjamin DEFOORT: previous reference, 2015, p. 595.

[53]- Decree No. 75-58 of 26 September 1975 amending and supplementing the Algerian Civil Code (Official Journal No. 78 of 30 September 1975).

[54]- Report on "Reversals of case law" submitted to the President of the Court of Cassation, Mr Guy Canivet, on 30 November 2004. Working group chaired by Nicolas Molfessis. Paris, Litec LexisNexis, 2005.

Another case brought by the Association for the Fight against Unemployment ("AC!")[55] raised the issue of limiting the retroactive effects of judicial annulment. This case concerns the annulment of decisions of the French Minister for Labour, Solidarity and Social Affairs - decisions of a regulatory nature. The Minister had signed a number of agreements relating to reintegration assistance and unemployment benefits. The "AC!" association challenged these decisions on the grounds of procedural illegality, not on the grounds of their content. The retroactive annulment of these decisions would inevitably lead to considerable financial damage for the social security institutions responsible for unemployment benefits. Therefore, the judge decided to limit the retroactive effect of the judicial annulment, after summoning the parties to appear before him, in accordance with the principle of confrontation to discuss the issue.

This change is considered a precedent in the history of French administrative justice, as it extends the powers of the judge. The question of the transformation of judicial discretion does not require a declaration by the legislator, but falls within the discretionary power of the judge to restore the balance between public and private interests[56].

With regard to the changes in judicial interpretation in the Algerian Council of State, an example can be cited in the field of the supervision of disciplinary decisions taken by the High Council of the Judiciary.

This was adopted in a decision in 2005[57]. The first decision stated the non-acceptance of appeals for annulment, while the second decision affirmed the possibility of appealing through cassation against disciplinary decisions issued by the Higher Council of the Judiciary.This change put an end to the acceptance of "appeals for annulment for exceeding authority ... against decisions of the High Council of the Judiciary in its disciplinary formation" and replaced them with "appeals through cassation" as the only way to appeal against these disciplinary decisions.Previously, the Council of State had considered these decisions to be mere administrative decisions subject to annulment, but then it reversed itself and considered them to be final judgments issued by the High Council of the Judiciary, since it is a specialised administrative judicial body that issues final judgments of a judicial nature that can only be appealed through cassation.

This change has been criticised for two reasons:[58]

The first reason is that the decision to transform the judicial interpretation has not yet been published. Therefore, the lack of knowledge of its true content may have significant repercussions on the position of the judges concerned, which is considered a violation of the principle of legal security.

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[55]- CE, Ass, 11 May 2004, Judgment Association "AC! et autres" (Action for excess of power, effects of contentious annulments, modulation over time) See M. Long et al.: previous reference, p. 794.

[56]- "The question of the temporal effects of contentious annulments does not go beyond the prerogatives of the judiciary and concerns only the control by the judge of the effects of these decisions; as such, it does not seem to be subject to prior intervention by the legislator". See the report on "Reversals of case law" presented to the President of the Court of Cassation, Mr Guy Canivet, on 30 November 2004. Working group chaired by N. Molfessis. Paris, Litec LexisNexis, 2005.

[57]- Decision of the Algerian Council of State No. 016886 issued by the Joint Chambers on 07/06/2005, cited in: Journal of the Algerian Council of State, Issue No. 10, Year 2012, pp. 59-61.

[58]- Ghnai Ramadan: The retreat of the jurisprudence of the Council of State in the field of supervision of disciplinary decisions issued by the High Judicial Council, Algerian Council of State Magazine, Issue No. 10, Year 2012, pp. 62-79.

The second reason relates to the broad interpretation of the new legal interpretation by one of the chambers of the Council of State, which applied it in a dispute concerning the promotion of judges. This led to an unjustified assimilation between the decisions of the High Council of the Judiciary concerning the professional career of judges and the decisions taken by it in its disciplinary capacity.

In conclusion, the principle of legal security, which aims to ensure the stability of legal positions and confidence in the law, does not mean the rigidity of legal rules. Therefore, the immobility of judicial interpretation cannot be accepted and its transformation is considered necessary in order to adapt it to the evolution of social and economic circumstances. The problem lies in the extent to which judges take into account the impact of their interpretation on the past and the future, as recognised by the French Court of Cassation, which, as mentioned above, recognised the need for transitional legislation for judicial transformations.

Second axis: the limitations of the principle of legal security in the administrative decision-making system

The methods of overturning administrative decisions have a direct impact on the principle of legal security(firstly). On the one hand, it is difficult to reconcile it with the principle of legality and, on the other hand, it is difficult to reconcile it with the freedom of administrative action.(secondly)

First: The difficulty of reconciling the principle of legal security with the principle of legality

In the face of the proliferation and extension of legal rules, and of the growing legal framework for the private activities of public authorities, the principle of legal security, which today is imposed as a guarantee of the stability of the legal position of individuals over time, may appear fragile. Although this principle is enshrined in administrative law, its value remains relative in view of the limitations to which it is subject. These limitations arise from the duty of the judge to ensure, on the one hand, that the principle of legality is respected and, on the other, to allow the administration to adapt its activities to social and economic needs. As a result, the balance between the public interest and the private interest remains unstable, oscillating between the principle of legality and the principle of legal security, depending on the powers granted to the administrative judge. In this context, the judge has two means at his disposal:

- Either to annul the decision with regard to the future, while preserving its effects in the past.
- Or to annul the decision in its entirety, affecting both the past and the future.

With regard to the first point, the annulment applies only to the future and can be total or partial, which does not pose a problem of legal security. However, total annulment, such as administrative withdrawal, has a retroactive effect and therefore the infringement of the principle of legal security becomes serious and significant with regard to individual decisions that have created rights. The principle of legality obliges the judge to revoke an unlawful decision, even if it was initially lawful but circumstances and facts have changed, rendering it unlawful.

Given the traditional difficulty of administrative law, characterised by the imbalance between the two parties in administrative proceedings, there is indeed a conflict between the requirements of legality and the principle of legal security.

The application of the principle of legality makes it necessary for the administration to withdraw an unlawful individual administrative decision, even if it has created rights for individuals. In view of the confidence of the person concerned in the validity and integrity of administrative decisions, maintaining an unlawful decision may have the opposite effect.Nevertheless, in order to avoid this conflict between the principle of legal security and the principle of legality, the administration is obliged to ensure greater effectiveness of administrative decisions without violating the rights and freedoms of individuals.

One of the best examples of this difficulty is an earlier judicial interpretation by the French Council of State in 1930 in the Despugol case[59], which is considered as a starting point, as well as the more recent regulatory decision in 1989 in the Alitalia case[60], both of which were overturned by the French Council of State. Since then, the competent authority has the power to revoke any regulatory decision that was initially lawful but subsequently became unlawful due to changed circumstances and facts, whether or not it was initially lawful.

However, the decision of the "AC! Association decision, as explained above, established the possibility of limiting the temporal effects of judicial annulment. It is therefore an implicit recognition by the French Council of State of the principle of legal security, since this decision was taken as a basis for the decision of KPMG.

Another important and recent judicial interpretation by the French Council of State (2016 CE, Ass, 13/07/2016, Czabaj case) raised the question of balancing the principle of legality and the right to effective judicial review on the one hand, and the principle of legal security on the other. The choice was made to the detriment of the individual and in favour of the administration[61]. In practice, the inability of individuals to lodge an appeal within the prescribed time limits has always been considered a penalty for the failure of the administration to fulfil its obligation to notify the parties concerned of the administrative decision and to inform them of the prescribed time limits and methods of appeal, in accordance with another decision of the French Council of State in 1998 (CE, Sect, 13 March 1998, Maulin case)[62]. The Algerian legislator has transposed this in Article 831 of the Code of Civil and Administrative Procedure, which states that[63] "an appeal within the time limit provided for in Article 829 shall not be admissible unless it is referred to in the notification of the contested decision".

In this case, the French Council of State, at the risk of depriving individuals of their right to appeal, granted them an indefinite period by applying the quadruple prescription rule (4 years).

However, it departed from this interpretation and now, contrary to the previous trend, the addressee of the administrative decision cannot exercise his right to judicial review outside reasonable time limits. With the adoption of this new solution, some of the consequences of the failure of the administration to comply with this obligation

[59]- See Marsou Long et al: Principles of French Administrative Justice (General Law Series, translated by Dr Ahmed Yousri), 10th edition, Alexandria, Egypt, Dar El Fikr El Gamia, 1995. pp. 332-341.
[60]- Same reference: pp. 920-934.
[61]- Olivier Gohin and Florian Poulet: Administrative Litigation, 9th edition, LexisNexis, Paris, 2017, p. 301.
[62]- IBID, p. 302.
[63]- Law No. 08/09 of 25 February 2008 on civil and administrative procedure (Official Gazette No. 21 of 23 April 2008).

- for which it is solely responsible
- have been transferred to individuals.

The determination of these time limits is left to the discretion of the judge, taking into account the circumstances, but may not exceed one year from the date of notification, without informing the addressee of the time limits and methods of appeal[64].

As for the Algerian Council of State, in a similar case in 2003[65], the judges of first instance rejected an appeal by the person concerned after more than three years from the date of the decision and more than one year from the date of its notification. The person concerned was informed by the police of the content of the first article of the decision, without being provided with a copy of it, and was not informed of the legal time limits and methods of appeal.As a result, the Council of State considered the notification as if it did not exist and the time limits for lodging an appeal remained open.

However, it reversed its position in another case in 2014[66], after the appellant had appealed against the annulment of the decision of 21 October 1992, which the Administrative Chamber of the Council of State had upheld on 8 November 2009. The judges of the Council of State upheld the findings of the judges of the first instance that it is a well-established general principle of law and jurisprudence that the rule that the time limit for appealing against the annulment of an individual decision runs from the date of its personal notification, which guarantees the rights of citizens vis-à-vis the administration, does not apply after the expiry of reasonable time limits. This is because the balance of interests also requires that the legal security of administrative decisions be preserved and that disputes as to their legality be avoided at a very late stage. It is clear that a complaint lodged more than seventeen years after the date of the contested decision is very late and must therefore be regarded as untimely.

Despite the lack of evidence of official notification of the party concerned and the fact that the jurisprudence of the Council of State has excluded the theory of absolute knowledge when calculating the time limits for appealing against the annulment of individual decisions, a new approach has been adopted, namely that of filing the appeal within reasonable time limits. This new approach shifts part of the administrative responsibility for non-notification to the individual, which may affect his or her legal security.

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[64]- Olivier Gohin and Florian Poulet, cited above, pp. 301-302.

[65]- Decision of the Algerian Council of State No. 10355 of 16/09/2003, Case (M.B.) against the Governor of the Province of M'sila, cited in: Jamal Sayes: Algerian Jurisprudence in Administrative Justice, 1st edition, vol. 3, Algeria, Click Publications, 2013. pp. 1497-1499.

[66]- Decision of the Algerian Council of State No. 072133, dated 09/01/2014, Case of (M.Y.) against the Governor of the Province of Tiaret, Algerian Council of State Magazine, Issue No. 12, Year 2014, pp. 83-86: "Whereas the judges of first instance, in ruling on the appeal filed by Mr. (M. Y) seeking the annulment of the provincial decree issued by the Governor of Tiaret on 21.10.1992 annulling a decree issued by the same authority on 2.3.1996 granting him housing, dismissed the action for having been filed outside the prescribed four-month period, on the grounds that the plaintiff was undoubtedly aware of the contested decision, since he had relied on it in the action he had brought before the ordinary courts in order to settle his housing status in the disputed apartment, and a judgment was delivered on 11.7.2006".

Therefore, the balance between the principle of legitimacy and the principle of legal security remains unstable, and in order to avoid this dilemma, it is necessary to enact a law that clarifies the time limits and methods of judicial appeal, so that litigants do not find themselves in a difficult situation.

Secondly, the difficulty of reconciling legal security and the freedom of public administration.

Most jurists agree on the basic principles governing the operation of public bodies, which have been established by the judiciary because of their connection with the requirements of public service and which are primarily aimed at maintaining the stability of the general system. These principles are known as the ROLLAND principles, named after the jurist "Louis ROLLAND" who organised and codified them. They consist of three principles: the principle of continuity of public institutions, the principle of equality of public institutions and the principle of constant adaptation of public institutions. Some add to these principles the principle of gratuitousness of public institutions and the principle of neutrality of public institutions[67]. The principle of the adaptation of the activities of the public administration, as expressed in the decision of the Chamber of Commerce of La Rochelle in 1977, gives the authorities the right to decide freely on the abolition of unnecessary public services or their reorganisation[68]. This is justified by the fact that the administrative authorities have the power to revoke decisions taken at their own discretion. In addition, they can revoke them, which leads to the modification of established regulations based on the compulsory nature according to the requirements of the public interest.

In reality, the freedom of action of the administration is linked to the practical implementation of administrative decisions, which raises concerns about legal security[69]. However, the final implementation of the decision depends on how it is formulated in relation to those to whom it is addressed. It can be compulsory or voluntary, regardless of whether the decision is in favour of individuals or not[70]. For example, the implementation of a decision on a building permit concerns the person affected by the decision, without the intervention of the administration that granted the permit, and there are decisions that impose obligations on individuals (such as the payment of a sum of money, the eviction of premises, etc.)[71]

Implementing an administrative decision means translating it from the legal sphere into reality. As is well known, the administration and the individual are not on an equal footing.In practice, as well as in law, the administration has various means of considerable weight that enable it to enforce its decisions in reality. In this regard, the administration has several types of sanctions, whether criminal or administrative, to force individuals to implement the rules contained in the administrative decision if they

[67]- Nadia Derrifi: Management of Public Institutions and New Transformations, Algiers, Dar El Baqis, n.d., pp. 30-31.

[68]- "The users of a non-mandatory public service have no right to the maintenance of this service, the operation of which the administration may terminate when it deems it necessary". CE, 18 March 1977, Chamber of Commerce of La Rochelle, see Benoit Delauney: Administrative fault, LGDJ edition, Paris, 2009, p. 192.

[69]- "The enforceability of an administrative decision is the fundamental rule of public law". CE, Ass, 2 July 1982, Huglo judgment, see Benjamin Defoort: previous reference, p. 513.

[70]- Article 833 of Law No. 08/09 of 25 February 2008 on civil and administrative procedure (Official Journal No. 21 of 23 April 2008).

[71]- Pierre-Laurent Frier and Jacques Petit, cited above, p. 382.

refuse to comply. However, the question arises as to whether or not the executive nature of administrative decisions jeopardises the legal security of individuals.

Although the administration is free to implement its decisions without recourse to the judiciary, this freedom remains relative, as it is bound by respect for general principles[72]. One of these principles is the principle of giving reasons for decisions, first introduced by the Algerian legislator in 2006 in Article 11 of the Anti-Corruption Act under the chapter on transparency in relations with the public[73]. It states: "In order to ensure transparency in the management of public affairs, institutions, administrations and public bodies must, as a matter of priority, [...] give reasons for their decisions when they are not in favour of the citizen and clarify the methods of challenging them". In addition, there is the principle of proportionality in confrontation, which is in line with the principle of the right to defence[74]. This principle is constitutional and is enshrined in Article 169 of the Algerian Constitution[75], which guarantees "the right to defence". All these principles guarantee at least a certain level of legal security for individuals.

With regard to the consequences of the refusal of individuals to implement decisions, there are two assumptions:[76]

1. Penalties: The natural assumption for refusal to implement an administrative decision is a criminal or administrative sanction. Violations of legitimate rules and regulations issued by administrative authorities are considered specific offences defined by law. The Algerian legislator has mentioned this in article 459 of the Penal Code. As far as administrative penalties are concerned[77], the administration has the power to use its general powers in such cases (e.g. withdrawal of driving licence for a traffic offence, temporary suspension of industrial, commercial or professional activities, etc.). However, these sanctions are subject to the control of the administrative judge and the administration can only apply them if they are prescribed by law.

2. Enforcement: is an exception. The principle is that the administration does not have the right to directly enforce its decisions by virtue of its executive power, unless it applies to the judiciary for authorisation to do so, as Romeo ROMIEU points out in his report on the real estate company (Société Immobilière de Saint-Just 1902). The judicial authority is the one that verifies the non-compliance of individuals with decisions and regulations, punishes crimes and allows the use of coercion[78]. This

[72]- Robert Etien, cited above, p. 32.

[73]- Law No. 06-01 of 20 February 2006 on the prevention of and fight against corruption, as amended (Journal Officiel No. 14 of 8 March 2006).

[74]- Decision of the French Council of State of 5 May 1944, case of Mrs Veuve Trompier-Gravier, report by CHENOT: With this decision, the Council of State explicitly reaffirmed a fundamental principle among the general principles governing administrative decisions, namely the principle of the right to defence. See Marsou Long et al: Principles of French Administrative Justice (General Law Series, translated by Dr. Ahmed Yousri), 10th edition, Alexandria, Egypt, Dar El Fikr El Gamia, 1995, pp. 454-459.

[75]- Law No. 16-01 of 6 March 2016 amending the Algerian Constitution: see above.

[76]- Jean-Claude Ricci: Administrative law, 4th edition, Paris, Hachette supérieur (Fundamentals), p. 68.

[77]- Decree No. 66-156 of 8 June 1966 on the Algerian Penal Code, as amended and supplemented by Law No. 82-04 of 13 February 1982.

[78]- It is a fundamental principle of public law that the administration may not, on its own initiative, use public force to ensure the execution of acts of public authority, and that it must first apply to the judicial authority, which notes the

approach is implicitly seen as a commitment to the concept of legal security, as the unlawful use of coercive measures to enforce an administrative decision, even if the decision is justified, is described as an act of aggression or physical assault (voie de fait) that violates a fundamental right or freedom[79] (decision of the French Council of State of 25 November 1963, Municipality of Saint-Just Chaleyssin, and another decision of 12 January 1987, Mrs Veuve Caille)[80].

Nevertheless, in exceptional cases, public authorities have been granted the right of direct enforcement without giving the addressees of the administrative decision time to adapt.

According to the ROMIEU report, this applies in three cases:

*In urgent cases, for example in the case of a house fire, it is not possible to request a judicial authorisation to send the fire brigade, as stated by ROMIEU. In this case, the use of force is justified by the urgency, since the administration can only intervene immediately, with a certain disregard for the principle of legal security of the individual.

* In the absence of other legal means to enforce decisions.

* In cases where the law does not explicitly authorise coercive enforcement.

As regards the legitimacy of physical enforcement itself, three conditions must be met simultaneously:[81]

* Compulsory enforcement must have its source in precise legislation.

* The administration must face strong opposition from individuals.

* Enforcement should not go beyond the completion of the specific operation defined by the law.

This recognises the principle of legal security, since the rule in administrative law is often subject to exceptions and considerations that weaken its effectiveness and predictability for those to whom it is addressed. There is therefore a complex balance between the principle of legal security, which requires clear and predictable rules, and the exceptional powers of the administration to modify these rules at any time in order to carry out its activities. The most effective way for individuals to challenge unlawful administrative decisions is through the courts.

However, the administration is obliged to ensure the quality and effectiveness of the decisions it takes, without violating the rights and freedoms of individuals in the event of non-compliance with administrative orders.

It can be said that the administrative judge has always endeavoured to restore the balance between the principle of the adaptability of the administration and the principle of legal security, which requires the protection of acquired positions, even if they are based on unjustified decisions.

Conclusion:

By exploring the issue of the principle of legal security and its place in the administrative decision-making system, and by analysing its known applications through comparative administrative jurisprudence, it becomes clear that its scope of application is wide. The administrative judge always

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disobedience, punishes the offence and authorises the use of material means of coercion". See Pierre-Laurent Frier and Jacques Petit: previous reference, p. 38.

[79]- Pierre-Laurent Frier and Jacques Petit: previous reference, pp. 476-477.

[80]- Jean-Claude Ricci: Administrative law, 4th edition, Paris, Hachette Supérieur - The basics, p. 68.

[81]- Jean-Claude Ricci: previous reference, p. 68.

ensures that the administration complies with the principle of legal security, based on considerations of the stability of the applied legal rules or the guarantee of individual rights. One of the implicit manifestations of the principle of legal security is the adoption of the principle of non-retroactivity of administrative decisions and the development of the system of publication, methods and time limits for challenging them, as well as the limitation of the temporal effects of the withdrawal of individual administrative decisions establishing rights.

Administrative decisions, despite their validity in relation to those to whom they are addressed, can provide a kind of "security" for individuals who feel that their interests are protected by granting them the necessary transitional period until the legal situation changes. The most important guarantee provided by the administrative judge is the possibility of limiting the effects of a judicial annulment of an administrative decision without the need for legislative authorisation, thereby extending the powers of the administrative judge. The principle of legal security increases the powers of the judge in order to provide litigants with greater protection against the instability of laws and regulations. It does not necessarily apply to cases that preceded it, as the changed precedent is not necessarily applied to previous cases.

As far as Algeria is concerned, although the principle of legal security was not explicitly codified until the recent constitutional amendment of 2020, this does not mean that the constitutional founder and the Algerian legislator deny this principle. The administrative judge has followed in the footsteps of the French administrative judiciary, which is his historical reference, through numerous cases involving respect for the principle of legal security by recognising the various rights of citizens.The principle of legal security is not in contradiction with the principle of legitimacy; on the contrary, it is an element of it, as long as it has a fundamental value, not only through legal sources, but also through the content of the legal rule itself, which is directly aimed at protecting the legal security of citizens from frequent and sudden changes in the law.

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