

The Effects of the Legislative Vacuum in Administrative Law on Individuals

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ABSTRACT

The rationality and methodology of the legal system are linked to the extent of its compatibility with reality and the extent to which it achieves justice. Administrative law is based in its essence on the principle of the administration's subjection to the law, and its rules should guarantee the protection of the rights and freedoms of individuals and the stability of their legal positions. However, practical reality sometimes reveals legislative gaps in those rules, which affect those guarantees. Since administrative activity requires continuity and regularity, this sometimes pushes the administration to act outside the framework of legal texts in light of the legislative gap. This raises several problems related to the extent of the legitimacy of its actions and their impact on destabilizing legal security, undermining individuals' confidence in the state's legal system, and disrupting their legitimate confidence in the decisions issued by the administration. The research concluded with several results, the most important of which is the need to find constitutional and legal mechanisms that preserve the rights of individuals and their legal status in the face of the gap in legislative texts, through the legal organization of the sources of administrative law, so that there is a legislative arrangement of the sources of the legal rule that can be used to address the gap area and in accordance with the principles of the constitution, in addition to codifying the exceptional means to fill the legislative gap temporarily, whether by the administration or the judiciary, so that the scope of their use, their limits and conditions are defined, as well as strengthening the oversight of the administrative judiciary over the actions of the administration in the presence of the gap area, as we believe it is the most effective outlet that will reduce the negative effects of the legislative gap area and its repercussions on individuals, if any.

Keywords: Principle of legality – Legal status of individuals – Legitimate trust – Legislative vacuum – Legal security.

INTRODUCTION

The existence of a clear legal system governing the relationship between the administration and individuals is one of the fundamental pillars of the rule of law. Therefore, the inability to establish a legal framework to regulate this relationship will allow for the emergence of a legislative vacuum, the negative effects and repercussions of which will be felt by individuals. The first thing that administrative law encounters when applying its rules governing administrative activity in the areas of administrative control and the regulation of public utilities is fundamental individual rights and freedoms. Since the rule of law is based on the principle of legality, and since the meaning of the principle of legality within the scope of administrative law rests on the idea of the administration's subjection to the law, and the content of the law itself in terms of defining its sources and its

clarity.¹Therefore, the existence of a legislative vacuum in the rules of this law will justify the administration acting outside the written legal text, which makes these actions not without serious legal consequences affecting the positions and rights of individuals. It affects the principle of legality in the first place, as well as its effect on legal security and the legitimate expectations of individuals towards the actions of the administration, which we will examine in the following two axes successively.

First: The effect of legislative gaps in administrative law on the principle of legality

The principle of legality represents a safety valve for the rights and freedoms of individuals. It is the impregnable fortress that guarantees their preservation and protection from any infringement. While the administration is recognized in all legal systems to take administrative control measures to maintain public order, its exercise of this power is restricted by observing the principle of legality. This principle has multiple guarantees depending on the philosophy of the constitutional system prevailing in each country and the differences in its political, social, and economic conditions. Nevertheless, it is well-established that the existence of a written constitution, the recognition thereof of rights and freedoms, the subjection of state bodies to the law, and the guarantee of the right to litigation are among the foremost of these guarantees.²Undoubtedly, the constitutions of democratic countries establish public rights and freedoms and guarantee the fundamental safeguards for their protection, the enforcement of which is a condition for their enjoyment according to the form envisioned by those constitutions. They are the reference in defining those rights and freedoms, and when legislation provides a guarantee for them, it only ensures their exercise in light of the protection guaranteed by the constitution in a specific manner within the limits of its discretionary power, considering that the constitution is the source of rights and freedoms and legislation regulates their exercise, and in that regard, it can be a source of their guarantees, and in defining these guarantees, a balance is struck between respecting rights and freedoms and protecting public order and the public interest, without which their exercise cannot be guaranteed.³It is worth noting that the constitution guarantees the protection of the latter either directly through its rules or indirectly through its constitutional principles, by leaving it to the ordinary legislator to determine the guarantees of this protection within the framework of general principles established by the constitution. On the other hand, and as a general rule, the ordinary legislator intervenes to regulate rights and freedoms.⁴If the scope of a right or freedom is restricted in a way that affects its essence, it becomes subject to the oversight of the constitutional judiciary.⁵Furthermore, the ordinary legislator's regulation of those rights and freedoms is deficient or incomplete, or he neglects some aspect of the legal provisions, which makes this regulation only valid with them, or he remains silent about the regulation or does not intervene in the legislation on a particular subject.⁶Or any general situation that accompanies a new situation for which there are no legal texts governing it, thus placing both the administration and the judiciary in a vacuum, this would be considered a breach by the ordinary legislator of the guarantees provided by the constitution for those rights and freedoms.⁷Constitutional texts are usually formulated in general terms without including details regarding the exercise of those rights and freedoms. Moreover, there are public freedoms that cannot be implemented under these texts alone without the intervention of the ordinary legislature. Consequently, many national constitutions have granted the legislature the authority to regulate them. Legal scholars agree that the law is a tool for expressing the national will and is capable of guaranteeing rights and

¹The intended meaning in this context is (submission)AdministrationThe law (in its broadest sense) encompasses every general, abstract rule, regardless of its source. The sources of legitimacy are, in general, all sources of legal rules, taking into account their required hierarchy.heRespecting the lower rule for the higher rule See Dr. Muhammad Fuad Abdul Basit, Administrative Judiciary, previous source, p. 70 and beyond.

See: Dr. Muhammad Taha Hussein, 'The nature of the principles of legitimacy and legality and their sources, Journal of Legal Sciences University of Baghdad - College of Law, 34(1), 2019, pp. 128-129. <https://doi.org/10.35246/jols.v34i1.123>.

²He considers Guarantees of the State of Law: Dr. Tharwat Badawi, The State of Law, a research paper published in the Journal of Government Cases Administration, Year 3, Issue 3, Cairo, 1959, p. 85. Dr. Wissam Sabbar Al-Ani, The Legislative Jurisdiction of Administration in Normal Circumstances 1st Edition, Issue 1, Al-Minaa Press, Baghdad, 2003p. 196.

³Dr. Ahmed Fathi Sorour, Constitutional Protection of Rights and Freedoms, previous source, pp. 58-59.

⁴The same source as above, p. 85.

⁵For example, Article (19//1-2) of the Basic Law of the Federal Republic of Germany of 1949, as amended, under the title (Restriction of Fundamental Rights - Right to Litigation), states that If, in accordance with this Basic Law, a fundamental right is restricted by law, or pursuant to a law, that law shall apply generally, and not It is limited to a single case, and furthermore, this law must specify the fundamental right concerned, and its article in the basic law. 2. Under no circumstances may the essence of the content of the fundamental right be prejudiced. Article (46) of the Iraqi Constitution of (2005) stipulates that (the exercise of any of the rights and freedoms contained in this Constitution shall not be restricted or limited except by law or based on it, provided that such restriction and limitation does not affect the essence of the right or freedom).

⁶Dr. Abdul Aziz Muhammad Salman, Judicial Oversight of Deficiencies in Legislative Regulation, previous source, p. 8.

⁷Dr. Mahmoud Wahid Abu Younis, The Limits of Constitutional Oversight of Legislative Omissions in the Jurisprudence of the Supreme Constitutional Court, a research paper published in the Journal of Law for Legal and Economic Research, Faculty of Law - Mansoura University, Article 6, Volume 1, Issue 2, January 2020, p. 367. See also in this regard: Dr. Maha Bahjat Younis, Foundations of Constitutional Oversight of the Legislative Authority, a research paper published in Al-Mustansiriya Journal for Arab and International Studies, 17(69), 2020.

regulating the legal status of individuals. The importance of regulatory administrative decisions for the administration is not denied, as they serve as a means to regulate the exercise of its activities and are necessary alongside the law to detail its rules and put them into effect, or to regulate matters that ordinary legal rules do not address because they are unable to encompass the details and confront all new developments. Thus, the responsibility for regulating these matters is entrusted to the administration, making it more capable of knowing what detailed rules should be established, or due to practical necessities that may justify administrative intervention to address exceptional circumstances that the state may face, and other matters that require the intervention of the administrative regulatory authority.⁸⁾

In accordance with the principle of legality and to avoid violating it, legislation regulating a right or freedom must be issued within the hierarchy of legal rules and issued by the competent authority under the constitution. The text usually contains the phrase "(and is regulated by law)" or "(in accordance with the provisions of the law)," and so on, which indicates the ordinary legislator's jurisdiction to regulate.⁹⁾ This is a specialization intended by the constitutional legislator and has its justifications related to guaranteeing the protection of the right or freedom through ordinary law.¹⁰⁾ In this case, the ordinary legislator cannot delegate his authority unless the constitutional text includes something that permits this, stating (based on the law) or (within the limits of the provisions of the law).¹¹⁾ In all cases, the law regulating freedom must guarantee its safeguards by adhering to the principle of legality. Therefore, the existence of legislative gaps in the rules governing the exercise of a right or freedom will inevitably lead to a violation of this principle. This is because the administration, as the body responsible for maintaining public order and managing public utilities, will intervene by issuing decisions to fill the legislative gap in regulating those rights and freedoms, which should have been regulated by law. This is because such a law is only enacted for reasons related to the ordinary legislator himself (a legislative choice). Since constitutions often allow for the restriction of the exercise of a right or freedom by law or based on law, in both cases the will of the ordinary legislator will be present in its regulation. Therefore, arguing for administrative intervention in this manner would contradict the hierarchy of legal rules and, consequently, the concept of legality. Even in cases where the administration exercises a degree of legislative authority, the legal rules it establishes are considered subsidiary legislation that must be subject to the provisions of the parent legislation enacted by the legislative authority. This is because the restrictions imposed by legislative texts regulating freedom on the activities of the administration must be interpreted narrowly, and must... Its activity is always subject to the idea of the public interest, because the authority of the administration with respect to the objective is always a restricted authority, but if the purpose is specified in the legislative text, then the administration must adhere to that purpose in its application of the law, otherwise its decision is flawed due to its illegality, which necessitates annulment.¹²⁾ If there are laws issued in this regard, the administration is bound by what is stated therein, and saying otherwise is considered a departure from the principle of legality. The written legal text limits the authority of the administration, considering that the existence of a law regulating the exercise of a freedom stops the authority of the administration at its limits without exceeding its provisions. Therefore, it can be said that the existence of a legislative vacuum opens the way for the administration to make decisions that lack an explicit legal basis, which weakens the legitimacy of those actions and affects the rights, freedoms, and legal positions of individuals and exposes them to violation.

Secondly, the impact of legislative gaps on legal security and the legitimate expectations of individuals.

Written legal rules are a means of establishing the rights, freedoms, and legal status of individuals in the state. Behind every legal rule are considerations that govern its establishment, and legal security is one of these

⁸⁾Dr. Suleiman Al-Tamawi, *The General Theory of Administrative Decisions*, previous source, p. 427 and beyond. See also Dr. Wissam Sabbar Al-Ani, *The Legislative Jurisdiction of the Administration in Normal Circumstances*, previous source, p. 14. See also in this regard: Dr. Musaddaq Adel Taleb–Dr. Rana Mohammed Radhi, *The Cabinet's Jurisdiction in Issuing Regulations in Iraqi Legislation*, *Al-Nahrain Journal of Legal Sciences*, 17(1), 2015.

⁹⁾For example, consider Article (34/D) of the Iraqi Constitution of (2005), which states that: (Private and private education is guaranteed and regulated by law).

¹⁰⁾It is worth noting that granting the ordinary legislature the authority to regulate rights and freedoms stems from several reasons, the most important of which is that it is the expression of the will of the people, and the principle is that it should guarantee its citizens the ease and convenience with which to exercise their freedoms. As well as The enactment of laws necessitates numerous procedures, including discussion and public debate, which by their very nature constitute effective guarantees for public freedoms. Furthermore, the generality of legislation establishes an objective rule applicable to all individuals. In France, we find that the established principle, since the promulgation of the Declaration of the Constitution, NTheQFrom 1789 until the present, the regulation of rights and freedoms has been a domain reserved for the legislative authority, as parliament is meant to express the will of the nation and should not be inclined towards tyranny or the restriction of rights and freedoms, in accordance with the constitution. See Dr. Suad Al-Sharqawi, "The Relativity of Public Freedoms and its Implications for Legal Regulation." *Dar Al Nahda Al Arabiya*, Cairo, 1979p. 147 And also Dr. Rais Mohamed - A. Randani Fatima Zahra, *The Legislator's Jurisdiction in Regulating the Subject of Individual Rights and Freedoms*, Research published in a special issue of the International Conference on (The Role of Constitutional Institutions in Protecting Rights and Freedoms), University of Adrar - Faculty of Law and Political Science, Algeria, 2015, pp. 87-88.

¹²⁾Dr. Wissam Sabbar Al-Ani, *The Legislative Jurisdiction of Administration in Normal Circumstances* Previous source, p. 121. Dr. Marouf Omar – Hawraman Muhammad Saeed, *The Extent of Administrative Authority in Regulating Public Rights and Freedoms*, a research paper published in the *Jordanian Journal of Law and Political Science*, Mu'tah University, Volume 10, Issue 2, 2018, p. 165.

considerations. According to this, individuals and their legal statuses must be guaranteed a minimum level of stability and security. The idea of legal security is incompatible with the notion that legal statuses are infinitely vulnerable to threat. If security is not achieved, then there is no law, given that "the social value sought is legal security."¹³ Undoubtedly, the stability of the law inevitably helps to respect legitimate expectations. Some believe that "there is nothing that is considered contrary to respect for the law and its idea except the instability of legislation and the law. The latter is like the solid structure of all human societies, which requires wisdom when introducing amendments to it, provided that this is after in-depth studies and long thought, as well as the need to exercise the necessary prudence when legislative developments occur, because if it is easy to enumerate the advantages of new systems presented by new theories, it is impossible to enumerate all their disadvantages, which usually do not appear except later through practical application. The value of the law lies in its stability..."¹⁴ Anticipating the consequences of legal actions undertaken by individuals is a fundamental pillar of legal certainty. This does not refer to personal expectations that individuals seek to achieve through specific behavior, but rather to legally binding expectations. It is established that these expectations require stable legal rules of legislative quality, characterized by precision and clarity, leaving no room for ambiguity. The stability and permanence of individuals' acquired rights are contingent upon the stability of the legal system itself—that is, legal certainty—which guarantees respect for these legitimate expectations. It is worth noting that these expectations are not established solely by the rules of ordinary law, but are also shaped by the actions of the administrative body tasked with implementing those rules. This body is obligated not to disappoint the expectations of individuals who acted in accordance with them. It should be noted that the principle of legal certainty corresponds to the principle of legality.¹⁵ "Rechtferigung"¹⁵ If the rule of law is a guarantee for the protection of rights and freedoms, then legal security appears to be one of the essential elements of this protection.¹⁶ It is self-evident that the issue of the relationship between the principle of legal certainty and the principle of legitimacy arises here. When it becomes clear that a legal rule is illegitimate, the balance relates, on the one hand, to the principle of legal certainty – represented by the fact that an individual has relied on this rule and depended on it in carrying out his actions and was unaware of its illegitimacy – and on the other hand, to the principle of legitimacy – which requires the administration to address the illegitimate situation. In most cases, priority is given to the principle of legitimacy, but not in all cases, as long as the application of that rule has resulted in acquired rights for individuals.¹⁷

Some German legal scholars believe that citizens should feel that their rights are protected by the state in their lives, freedom, and property as a mark of respect, and that the stability of the law and legal continuity are elements of legal security that have become internationally recognized as a key requirement for the rule of law.¹⁸ On the other hand, it can be said that protecting the trust or legitimate expectation of individuals is one of the goals of legal security, because the realization of this idea is only possible with the availability of legal security in its various forms.¹⁹ There is a strong link between the principle of legal certainty and the principle of respecting legitimate expectations, in that the latter is inherent to the former and is, in fact, one of its forms. According to this principle, the legislator is obligated not to surprise or take individuals by surprise in a way that undermines their legitimate

¹³ Paul Roubier, *Theorie générale du droit*, sirey, 1946, p.296.

Dr. Muhammad Muhammad Abdul Latif mentioned it in his "The Principle of Legal Security," a research paper published in the Journal of Legal and Economic Research, Mansoura University - Faculty of Law, Issue 36, 2004, p. 88. The Court of Justice European (CJCE) may Recommended The European Union countries, in their decision (72/81) in (1973), enshrined the principle Security Legal expert in the field of domestic legislation on basis It is a requirement of the European Community system. Many European jurists have hastened to call for the establishment of this principle as a universal principle to which legislators and judges alike are bound. See Dr. Hussein Ahmed Muqaddam, "The Principle of Legal Certainty as a Basis for the Work of the Constitutional Judge: A Comparative Foundational Study," a research paper published in the Helwan Journal of Law for Legal and Economic Studies, Helwan University - Faculty of Law, Issue 29, 2013, p. 638.

¹⁴ Dr. Ali Filali, Opening Report: Respecting Expectations, Research published in the Annals of Kasdi Merbah University of Ouargla - Faculty of Law and Political Science, Algeria, Special Issue for the National Conference "Respecting Legal Expectations", Ouargla, February 24-25, 2016, pp. 23-24.

¹⁵ HUMBERTO ÁVILA, *Theorie der Rechtssicherheit*, Schriften zur Rechtstheorie Band 299, Duncker & Humblot · Berlin, 2022.
https://www.duncker-humblot.de/_files_media/leseproben/9783428584697.pdf (12-12-2023)

¹⁶ Dr. Shorsh Hassan Omar - Dr. Khamoush Omar Abdullah, The Role of Legislative Justice in Achieving Legal Security (An Analytical Study), Research published in the Academic Journal of Legal and Political Research, Volume 3, Issue 2, 2019, p. 339.

¹⁷ Dr. Walid Mohamed El Shenawy, Legal Security and Principles of Good Law Enactment, research published in the Journal of Legal and Economic Research, Faculty of Law - Mansoura University, Issue 56, October 2014, p. 314.

¹⁸ As Professor Michael Wilhelm Joseph Beer (1775-1851), a German professor of state law and a university professor at the University of Würzburg, stated... (See Dr. Mazen Lilo Radi, *Protecting Legal Security in Contemporary Legal Systems*, 1st ed., Arab Center for Scientific Studies and Research, Egypt, 2020, pp. 17-18).

¹⁹ Among these images are: the non-retroactivity of laws, respect for acquired rights, the idea of legitimate expectation, as well as restricting the retroactive effect of a ruling of unconstitutionality. For more, see: Dr. Hamid Zaidi, *Respect for Legitimate Expectation: A Principle Binding the Judge and the Legislator*, a research paper published in the Annals of Kasdi Merbah University of Ouargla - Faculty of Law and Political Science, Algeria, a special issue for the National Conference "Respect for Legal Expectations", Ouargla, February 24-25, 2016, p. 48.

expectations. The principle of legitimate expectation is derived from the principle of legal certainty, which in turn represents an expression of the rule of law.²⁰⁾

In reality, our focus is not on delving into the jurisprudential definitions of both the principles of legal certainty and legitimate expectation, but rather on clarifying their underlying concepts and demonstrating the correlation between them and their susceptibility to legislative gaps in administrative law. While there is no precise jurisprudential definition of the concept of legal certainty, its essence can be identified. A common thread running through most of the definitions that address it lies in the idea of certainty. "de certitude" "so that individuals can direct and plan their activities through the predictability of the law" "de prévisibilité du droit", and some see it as a very vague concept, and it also has a psychological connotation that makes it difficult to define precisely, and even if a conventional definition could be agreed upon for it, that does not mean that it would have a single meaning, because the idea of security (or safety) is not likely to be understood in the same way by the judge who creates judicial precedent, or the legal professional who uses it as a working tool, or the litigant who is subject to it or benefits from it" ²¹Legal security is one of the most important goals that the law aims to achieve; it affirms the right of every individual to develop, but within a stable legal framework.²²It is also, as some have put it, "a safe haven, stability, and continuity of legal positions," or "a guarantee or protection aimed at excluding disruption in the field of law, or sudden changes in the application of the law."²³Perhaps as a general guarantee granted to individuals, some countries are keen to explicitly enshrine the principle of legal security in their constitutions.²⁴While other constitutions do not explicitly stipulate it, they implicitly recognize it within their texts and grant it constitutional value by adopting some of its elements, represented by the principles related to the principle of legal certainty, such as the non-retroactivity of laws, respect for acquired rights, and others.²⁵As in the constitutions of France and West Germany, and also in those of Egypt and Iraq, although this principle "La sécurité juridique" (legal security) is primarily rooted in German law and jurisprudence.²⁶It has been gradually introduced into the national legal systems of European countries through European Union law and the Convention on Human Rights, of which it is one of the general principles, including France. Therefore, some believe that this principle is not foreign to the French legal system because it is a fundamental requirement with the idea of law. The rule of law (d'État de droit) in the state, or more precisely, legal security is inherent in the rule of law because it contributes to guaranteeing the rights and freedoms resulting from its material concept. In fact, adopting the principle of separation of powers (la séparation des pouvoirs), the hierarchy of legal rules (la hiérarchisation des normes juridiques), and the right of appeal before the courts (recours juridictionnel) are in themselves factors of legal security.²⁷In fact, legal security leads to legal rules being certain and specific, so that individuals can predict the consequences of their actions in advance.

²⁰ "And in the process of studying the relationship betweenThe two principlesOne aspect of jurisprudence sees thatifWe considered the principleSecurityLegally, the principle of trust is a material principle.orLegitimate expectation is a personal principle The principle of legitimate trust is a principleSecurityLegal matters viewed from the perspective of the individual, we mention, by way of analogy, the right to defense derived from the right to litigation. See Dr. Hamid Zaidi, Respect for legitimate trust is a principle that binds the judge and the legislator, previous source, p. 50.

²¹ . «This is a vague idea. She discovered a psychological connotation that returned malaisée later. And if it is adjusted by the convention on a definition, it remains at the beginning that this idea can be unvoque. The security device does not allow it to appear on the mother's skin due to the fact that it fails to cause harm, due to the fact that it is a safe device, due to the justiciable one who has the subit or who makes a profit from the tire..

by Charlotte LEMIEUX, JURISDICTION AND SÉCURITÉ JURIDIQUE: UNE PERSPECTIVE CIVILISTE, (1998-99) 29 RDUS, p.277.

https://www.usherbrooke.ca/droit/fileadmin/sites/droit/documents/RDUS/volume_29/29-12-lemieux.pdf(11-11-2023)

²²Dr. Rifaat Eid Sayed, PrincipleSecurityLegal – An Analytical Study in Light of rulingsjudiciaryAdministrativeConstitutional Studies – a research paper published in the Journal of the Association of Arab Universities for StudiesResearchLegal Journal, Scientific Society of Arab Law Faculties, Cairo, Issue 34, October 2013, pp. 4-13.

See also:Bahir Jaafar Abdul-Sada. 2019. "The Role of the State Council in Protecting the Principle of Legal Security"".Science MagazineLegal: 33(5), p. 8<https://doi.org/10.35246/jols.v0i5>.

²³Dr. Muhammad Muhammad Abdul Latif, The Principle of Legal Security, previous source, p. 88

²⁴For example, we mention the amended Portuguese Constitution of 1976, Article 283/4 of which, under the title "Effects of a Ruling of Unconstitutionality or Legality", includedEffects of declarations of unconstitutionality or illegality"-The principle of legal certainty is explicitly stated, whereby (the Constitutional Court may limit the effects of a ruling of unconstitutionality or illegality to a level lower than that stated in paragraphs 1 and 2 of this article, if necessary).For purposesLegal certainty orFor purposesThe administration of justice or, in particular, the public interest (the reasons for which must be stated in the decision) – see Article 283 of the amended 1976 Portuguese Constitution:

https://www.constituteproject.org/constitution/Portugal_2005?lang=ar(12-12-2023)

²⁵Dr. Mazen Lilo Radi, Protecting Legal Security in Contemporary Legal Systems, previous source, pp. 23-29

²⁶And fromThe worthyIt is worth mentioning that the legislator considers thewhenNi fromFirst ofbodySecurityLegal certainty, as a constitutional principle, was established in 1949 and is intrinsically linked to the rule of law. The German Federal Constitutional Court, in its decision of December 19, 1961, stated: "Legal certainty, as a necessary element of the rule of law, presupposes that the citizen can anticipate possible interventions by the state in its legally protected domain and that appropriate judgments will be made. The citizen must be able to be assured that their conduct in accordance with the applicable law will be recognized with all the consequences for which it was previously established." (Posted by Dr. Badawi Abdel-Jalil) Hanan AlistudentThe concept of the principle of legal security and its requirements, a research paper published in the Journal of Studies in Public Service, a peer-reviewed journal issued by the University Center of Nour El Bachir in El Bayadh – Laboratory for the Protection of Public Service Legislation, Issue 8, June 2021, p. 6.

²⁷ . Anne-Laure CASSARD-VALEMBOIS. "The Security Code and the French Code: "I'm here, I don't have anything else..."", Title VII [en ligne], no. 5, The Security Code, October 2020.

As for the principle of legitimate expectation *Vertrauensschutz*" Some have summarized his idea on the basis that "the general abstract rules issued by the executive authority in the form of administrative regulations should not be issued in a sudden and unexpected manner that clashes with the legitimate expectations of individuals, which are based on objective foundations derived from existing systems guided by the official policies announced by public authorities and the promises and assurances issued by them"²⁸

Having identified the concepts of legal security and legitimate expectation, the question we raise here is: How can the legislative vacuum in administrative law affect legal security and the legitimate expectations of individuals?

The administrative activity that touches upon individual rights and freedoms is governed by the principle of legality, as we mentioned. This principle has sources from which the legal rules that determine the legality of the administration's actions towards individuals are derived. Foremost among these are the ordinary laws established by the legislator, from which the administration derives its authority to exercise its absolute or restricted jurisdiction, as the case may be. Whenever the legal rule does not contain a gap that hinders its application on the ground, whatever the reasons, then the administration has no justification for intervening to fill the gap under the pretext of performing its duties and functions in a way that could affect the stability of legal positions and acquired rights, which are among the most important requirements of legal security. Therefore, there is no room for exercising its regulatory authority in this regard. The same applies to all aspects of administrative activity that touch upon rights and freedoms, especially administrative decisions, administrative contracts, administrative control activities, and the public service. Conversely, the existence of a legislative gap in the rules of administrative law would open the door to interpretation and explanation by the administration.²⁹Or it uses its regulatory authority to issue rules of a general legal nature, or amend existing rules, or withdraw or cancel its decisions repeatedly and in a changing manner to meet the new realities presented to it, which undermines the confidence of individuals in it due to the large number of administrative decisions that disrupt their legitimate expectations of its actions. This is because, in the case of building trust directly on an administrative action, then a new action comes after it that destroys the legitimate expectations that were built on previous actions, coupled with the inability of the concerned individual to predict in advance the possibility of a change in the administration's policy, without any prior knowledge of its possible action. Moreover, in administrative law, the administration is also required to consider the confidence of the third party benefiting from the administrative decision or procedure, and not just the one addressed by it. That is, it does not only look at the theoretical aspects of its work, but also at the harms that may befall those who were benefiting from the previous administrative policy or previous decisions.³⁰The principle is that the law grants individuals the ability to form expectations that it is responsible for protecting. Therefore, the need to resolve the presented facts in the presence of a legislative vacuum and in the presence of the administration's obligation to carry out its activities for the continuity of public facilities will lead to an inflation of legal texts in their broad sense and an abundance of their amendments. Often, these texts are characterized by confusion, surprise, and imprecise drafting, i.e., a lack of legislative quality, which creates ambiguity in transactions and legal positions, in addition to excessive amendment. Individuals are placed before a huge number of texts that may contradict each other and affect legal awareness within society and the repercussions of this on judicial decisions and interpretations in new cases. Legitimate confidence or legitimate expectation is not limited to legal rules, but we believe it extends to the judicial institution to reflect confidence in it and its decisions as a form of judicial security, which reflects confidence in the judicial institution and reassurance in what results from it, i.e.

Full URL:<https://www.conseil-constitutionnel.fr/publications/titre-vii/l-exigence-de-securite-juridique-et-l-ordre-juridique-francais-je-t-aime-moi-non-plus> (12-12-2023)

²⁸Dr. Ahmed Abdel-Hasib Abdel-Fattah Al-Santrisi, *Legislative Justice in Light of the Idea of Legitimate Expectation (A Comparative Study)*, 1st Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2017, p. 27.

²⁹Some argue that "if we grant the executive authority (the administration) the task of interpretation, this might lead to a distortion of the intended meaning or purpose of the legal rule under the guise of interpretation." See Dr. Ali Faisal Al-Siddiqi, "The Dialectic of Administrative Interpretation of Legal Rules," a research paper published in *Al-Huquqiyah Journal*, a peer-reviewed periodical issued by the Al-Marsad Association for Human Rights, Issue 4, December 2022, p. 22. One aspect of French jurisprudence (Yves Godmet, professor at Panthéon-Assas University, Paris) goes so far as to say, "The law, and many laws today, appear administrative because their function is no longer legislation and the establishment of rights, but rather partial participation in the administrative practice of communication between the political and the administrative, which today represents the condition for the effectiveness of public action.", and "The legal rule takes on new forms, rejecting the traditional vehicle of law expressing the general will through a representative body of national sovereignty."

See: Yves Godmet, *The Law Administrative*, Journal of Public Law and Political Science, Special Issue (The Chaos of Legal Rules), 2006, p. 78. Quoted from Dr. Ali Faisal Al-Siddiqi, *The Dialectic of Administrative Interpretation of the Legal Rule*, same previous source, p. 24.

³⁰Some cite as an example the decision to cancel a restaurant's license due to reducing local pollution. Despite the environmental benefits of this decision, it neglected the investments of the restaurant owners, as well as ignoring the need of the neighborhood's customers for food. This is one of the manifestations of the lack of legal security. Also, canceling a license before its original expiry date undermines the legitimate confidence of the license holder, considering that the rules for terminating a normal license in the legal system are only to protect the legitimate expectations of the beneficiary. See Dr. Mohamed Mounir Hassani, "Respect for Legitimate Trust as a General Principle of Law," a research paper published in the *Annals of Kasdi Merbah University of Ouargla – Faculty of Law and Political Science, Algeria*, Special Issue for the National Conference "Respect for Legal Expectations," Ouargla, February 24-25, 2016, pp. 34-36..

confidence in justice based on an independent judicial authority. Achieving judicial security is a means of protecting the principles of legal security by ensuring the application of the law and guaranteeing rights and freedoms.³¹ In the absence of a written legal rule and reliance on the judge's interpretation to address existing situations that are not legally anticipated, this will contribute to an increase in the requirements of legal certainty in his relationship with the judiciary. However, what raises the problem is the occasional departure from established judicial interpretation and the impact this has on the principle of legal certainty, the legitimate expectations of litigants, and even their acquired rights.³² This undermines confidence in the state's legal system in general due to the lack of a real and effective guarantee for fundamental rights and freedoms.

CONCLUSION

The emergence of legislative gaps in administrative law represents one of the most prominent challenges threatening the regulation of the relationship between the administration and individuals. The nature of administrative actions and procedures necessitates regularity, consistency, and continuity. The absence or inability to reach a legal ruling regulating administrative actions opens the door for the administration to make decisions outside the framework of the law. This leads to a violation of the principle of legality, which is the cornerstone of these actions, as well as destabilizing the rules governing the legal status of individuals' rights and freedoms, thus compromising their legal security. Simultaneously, it weakens confidence in administrative institutions by undermining individuals' trust in their legitimate expectations regarding administrative decisions. Therefore, it can be said that legislative gaps in administrative law can lead to a disruption in the legal structure that is supposed to frame the administration's work and weaken the possibility of judicial oversight of its actions. The problem is not merely the absence of a legal ruling on the matter presented to the administration. This necessitates the creation of constitutional and legal mechanisms to protect individuals' rights and legal statuses in the face of legislative gaps. In short, we can conclude that the legislative gap Legislation in administrative law affects individuals in the following ways:

1. Regulating the exercise of rights and freedoms through ordinary law issued by the legislative authority is nothing but an activation of the constitutional guarantees that the constitution has provided for it. The existence of a vacuum within this regulation can sometimes be a serious threat to it, because it will affect the ability of individuals to exercise their rights and freedoms or affect their legal positions. The existence of a vacuum and its disclosure will lead to many amendments to laws and the accumulation of those amendments or their cancellation and the issuance of new laws, and then many texts governing a matter, so there will be instability or inconsistency of legal rules for individuals, and this will disrupt their legal security and their legitimate expectations that have been formed in their perception of the behavior of the administration.

2. It is impossible for ordinary laws to remain static and unchanging given the evolution of society and its circumstances, and the existence of a legislative gap does not necessarily mean that the legislator will inevitably intervene to fill that gap.³³ Since the administration is responsible for maintaining public order and running public facilities regularly and continuously, it will intervene with its regulatory authority to fill gaps that prevent it from carrying out its duties. It may also be inclined to use its discretionary power in an arbitrary manner, especially since the law authorizes it to do so, and issue administrative decisions, amend them, or cancel them without justification. Texts accumulate without regard to reconciling the administration's need for change with the legitimate interests of individuals or their expectations regarding a particular administrative policy.

It is worth noting, from all that has been stated and discussed, that the legislative vacuum in administrative law, despite its negative effects on the administration, the judiciary, and individuals, will not be apparent, or at least can be reduced, if the legislator adopts a theory of the sources of administrative law through an explicit provision. Thus, the administration and the judge will have a legislative arrangement of legal sources that can be used to fill the vacuum, in accordance with the principles of the constitution. In addition, it is necessary to codify the exceptional means to temporarily fill the legislative vacuum, specifying the scope of their use, limits, and conditions by means of a legal text. Furthermore, strengthening the oversight of the administrative judiciary over the actions of the administration in the presence of the vacuum is, in our opinion, the most effective mechanism that will reduce the negative effects of the legislative vacuum and its repercussions on individuals, if any.

³¹Dr. Hanem Ahmed Mahmoud Salem, Constitutional Foundations for Achieving Judicial Security, research published in the Journal of Jurisprudential and Legal Research, Faculty of Sharia and Law, Damanhour / Al-Azhar University, Issue 39, October 2022, pp. 2865-2870.

³²Dr. Abdul Majeed Ghamija, The Principle of Legal Security and the Necessity of Judicial Security, a research paper published in the Judicial Supplement Journal of the Ministry of Justice and Freedoms - Higher Institute of the Judiciary, Issue 42, 2009, p. 68.

³³This embodies the state of the legislator's negative lack of jurisdiction, which is a form of legislative negligence. The legislator refrains from exercising his legislative jurisdiction entirely, resulting in a complete legislative vacuum or a partial one leading to a partial legislative vacuum in regulating some matters. For more information, see Dr. Ahmed Fathi Sorour, Constitutional Protection of Rights and Freedoms, previous source, p. 202.

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