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The Criminal Legality Principle and the Human Rights Protection

El principio de legalidad penal y la protección de los derechos humanos

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Abstract:

As a Result of the Wars that Humanity has Endured, Leaving Behind the Most Heinous Crimes against Humanity, the Belief Arose in the Global Conscience that Human Rights must be Guaranteed, Defined, and Ensured through International Agreements Binding on All Members of the International Community. We have Begun to Look at Human Rights Issues Globally Because Freedoms are Not Titles or Aesthetic Paintings that are Merely Viewed, but rather the State in which the Individual Lives in Various Areas of his Life, in a Way that Makes Him Feel Free in What He Thinks, Does, and Owns. To Ensure their Continued Validity and Prevent their Violation; It is Essential to Have an Entity Responsible for their Protection and Upholding, Namely the Judiciary. The Judicial System is Tasked with Enshrining and Safeguarding these Rights through a Range of General Deterrent Measures against those who Attempt to Undermine them.

Keywords: Legitimacy Principle - Judiciary - Human Rights - Justice - Protection.

Resumen

Las guerras que ha padecido la humanidad y los graves crímenes de lesa humanidad cometidos en su transcurso afianzaron en la conciencia colectiva la convicción de que los derechos humanos debían definirse y garantizarse mediante acuerdos internacionales vinculantes para todos los miembros de la comunidad internacional. De ahí que su protección haya adquirido una dimensión mundial. Las libertades se hacen efectivas en la vida cotidiana cuando cada persona puede ejercerlas en los distintos ámbitos de su vida, con libertad para pensar, actuar y disponer de sus bienes. El poder judicial cumple una función esencial en la protección de estos derechos, al velar por su vigencia y prevenir su vulneración. Para ello, el sistema de justicia aplica medidas de prevención general destinadas a disuadir a quienes pretendan atentar contra tales derechos.

Palabras clave — principio de legalidad penal, poder judicial, derechos humanos, justicia, protección.

Introduction:

The Human Rights Report and its Implementation are Undergoing Tangible Development at the International and Regional Levels. But this Process will Only Bear Fruit by Guaranteeing the Recognition of Rights, integrating them into National Legislation, and Finding the Appropriate Constitutional Status for them. This is the Surest and Shortest Way to Protect Human Rights. Therefore; All International Treaties and Conventions for the Protection of these Rights Stipulate that the State or Individual who Complains of Human Rights Violations must Resort to National (Local) Legal Means of Defense.

When the Human Rights are Violated; It is Natural for the Victim to Seek Means of Justice that Provide Him with Protection, whether it be a Constitution, Legislation, Regulation, or Decision. Between this and that; The Issue Revolves around the Principle of Criminal Legality Based on a Legal Text, which may Cease to Exist or be Lost, and Both Cases have an Impact on the Protection of Human Rights and Freedoms. Therefore; The Issue Raised in this Regard is: **Where Does the Relationship Lie between the Criminal Legality Principle and the Protection of Human Rights and Freedoms?**

Topic I: The Conceptual Framework of the Criminal Legality Principle and Human Rights

The Principle of Criminal Legality is Considered One of the Most Important Principles Upon Which Criminal Law is Based, which Guarantees to the Person Both Equality and Protection. In this Regard; We will address the Concept of the Criminal Legality Principle from a Procedural and Substantive Perspective (Section I), and from there to the Concept of the Human Rights and Freedoms, which must be Protected through the Texts Contained in the Legislation, as well as the Guarantees Established for them (Section II).

Section I: The Concept of the Legitimacy Principle:

The Legality Principle means that; An Act may not be Criminalized and Punished Except by the Existence of a Legal Text, whether in terms of the Criminal Description or in terms of Imposing the Punishment. Any Criminalization or Punishment for Acts not Covered by Penal Texts is Considered Invalid, regardless of the Degree of Seriousness of the Act. Therefore; It is Divided into Two Parts: "The Principle of Procedural Legality" and "The Principle of Substantive Legality".[1]

First: Definition of the Legitimacy Principle:

The Principle of Procedural Criminal Legality means Limiting the Procedures for Applying Punishment to the Perpetrator.[2] These Texts are Called Criminal Procedures. According to the Algerian Legislator, in accordance with the Text of (Article: 01) of the Algerian Code of Criminal Procedure, they are Based on "the Principles of Legality, Fair Trial and Respect for Human Dignity and Rights".[3]

Thus; The Procedures Followed by the Authorities and Agencies are Determined by Legal Texts, and they Guarantee Respect for the Personal Freedom of the Accused, and the Presumption of His Innocence in Every Procedure Taken against Him. Thus; The Procedural Legality is a Natural Extension of the Legality of Crimes and Punishments. It is the Framework within which the Substantive Principle Can Only be applied. It Rests Fundamentally on the Presumption of the Accused's Innocence, and that No Action may be taken against Him Except by Virtue of a Provision in the Code of Criminal Procedure, all Under Judicial Oversight. The Presumption of Innocence is Only Established or Overturned by a Conviction. Therefore; Infringing Upon Liberty becomes Legally Permissible, and from this Emerges the Legitimacy of Punitive Enforcement.[4]

Second: The Meaning of the Substantive Legitimacy Principle:

The Principle of Substantive Legality in Criminal Law means that Crimes and Punishments are Confined to Legal Texts. In other words; Criminal Acts are Defined and their Corresponding Penalties are Determined. Only the Judge has the Authority to Apply this Text, as He is Responsible for Ascertaining whether the Facts of the Offense Conform to the Legal Definition of the Crime Stipulated in the Penal Code (Article: 01): "There is No Crime, Punishment, or Security Measure without a Law".[5]

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[1] - **The Criminal Procedure Law**, Issued Pursuant to Law (No. 25/14) Dated (August 03, 2025 CE), Official Gazette (No. 54) Dated (August 13, 2025 CE).

[2] - Brahmi Nesrine, **Guarantees of a Fair Trial in Algerian Legislation**, Master's Thesis, Faculty of Law and Political Science, Department of Law, Kasdi Merbah University, Ouargla, 2016-2017 CE, p. 52.

[3] - Law (No.: 25/14) **Containing the Algerian Code of Criminal Procedure**.

[4] - Ben Taher Hakima, **The Principle of Criminal Legality**, Master's Thesis, Faculty of Law and Political Science, Department of Public Law, University of Akli Mohamed El-Hadj, Bouira, 2015-2016 CE, p. 18.

[5] - **The Penal Code**, Amended and Supplemented by Law (No. 24/06) Dated (April 28, 2024 CE).

Therefore; The Absence of Crime, the Absence of Punishment, and the Absence of Security Measures Occur when there is No Legal Text. In other words; The Algerian Legislator, through this Article, Intended to Clarify that the Absence of a Legal Text Renders all Procedures Taken against a Person Invalid, whether they be Conviction, Punishment, or Security Measures.[1]

With this Text; The Algerian Legislator Sought to Bestow Protection Upon the Individual, preserving their Dignity and Freedom, and Affirming that Personal Liberty Cannot be Infringed Upon outside the Framework of the Law. This is the Very Foundation of this Principle; The Preservation of Individual Freedoms within a Framework that does not Harm the Public Interest. This is what makes it the Cornerstone of Criminal Legislation. The More a State Adheres to and applies the Principle of Legality across its Administrative and Judicial Spheres, the More it is a State Governed by the Rule of Law. Thus; The Principle of Legality means that Both the Ruler and the Ruled are Subject to the Law.[2]

The Algerian Legislator Also Stipulated this in the Constitutional Amendment (November 2020 CE), in the Text of (Article: 43): "No Conviction Except by Virtue of a Law Issued before the Commission of the Criminal Act".[3]

In other words; All Citizens are Equal Before the Law. This Article means that Once the Algerian Legislature Stipulates a Penalty, that Penalty becomes Applicable to All Individuals who Committed the Act for which the Penalty was Prescribed. Therefore; The Penalty Cannot Vary Based on the Individual's Status or Social Class. Thus; No One Can be Convicted Except by Virtue of a Law Enacted before the Act was Committed. Furthermore; No One Can be Convicted for an Act Committed before that Act was Criminalized. This Constitutional Provision Reinforces (Article: 03) of the Algerian Penal Code, which Establishes the Principle of Non-Retroactivity of Laws. The Foundations of the Judiciary are the Principles of Legality and Equality; All Are Equal Before the Law.

Section II: The Human Rights Concept and the Guarantees Established for them:

The Human Rights are of Paramount Importance to Civilized Nations and are always a Subject of Great Concern both Internationally and Nationally. This is due to their Close Connection with a Far-Reaching Issue in the Life of the Individual within the Society in which they Live; Freedom, and the Associated Preservation of Human Dignity and Respect for Human Worth.[4]

Finding a Comprehensive and Precise Definition of the Human Rights is a Relative Matter, as the Concept is Subject to Rapid Developments and Varies according to the Living Standards of Individuals and Nations, each with its Own Priorities and Standards. Nevertheless; There have been Numerous attempts to Define the Human Rights; We will Mention Some of them:

[1] - Ramadan Ghassmoun, **The Right to a Fair Trial through Algerian National Legislation and International Legislation**, Al-Alma'iya Publishing and Distribution House, Edition: 01, 2010 CE, p. 44, Without Country of Publication.
[2] - **Op. Cit.**, p. 45.
[3] - Presidential Decree (No. 20-442) dated (15 Jumada al-Ula 1442 AH) corresponding to (December 30, 2020 AD), relating **to the Issuance of the Constitutional Amendment**, which was Approved in the Referendum (November 01, 2020 CE) in the Official Gazette (No. 82).
[4] - Walid Samir Al-Nimr, **Human Rights and Fundamental Freedoms**, PhD in Public Law, Faculty of Law, Alexandria University, 2013-2014 CE, p. 02.

- The Human Rights are those Rights Inherent to Humanity, without which We Cannot Live as Human Beings. They are also that Fundamental Human Freedoms Guaranteed to All without Discrimination, regardless of their Gender, Nationality, Race, Color, Religion, Language, or Social Status.[1]
- The Human Rights Can also be Defined as Inherent Rights Belonging to All Human Beings, regardless of Gender, Nationality, Religion, Origin, Language, etc. The Human Rights refer to the Equality of Individuals in Human Rights without Discrimination. All these Rights are Interrelated and Indivisible, and Human Rights are Protected through Internationally Recognized Laws, Treaties, and General Principles.[2]
- Recognizing Human Rights does not mean that the Individual has Prior and Superior Rights that Supersede those of Society; rather, the Public Interest Necessitates Establishing a Balance between Individual Freedom and the Order and Security of Society. The Absence of Freedom Stifles the Individualistic Principles Upon Which Societal Progress is Based. Therefore; Society has the Right to Impose a Set of Obligations and Oversight on Individuals.[3]

Topic II: The Relationship of the Legitimacy Principle to the Human Rights and Freedoms

The General Law of the State is the Constitution, which Guarantees the Sovereignty of the People and Protects them from the Tyranny of the Ruling Authorities, or Establishes Public Rights and Freedoms. However; Its Provisions do not have Direct Penalties, which are the Result of the Provisions of the Private Law, such as Civil Law, for Example, those Details which the State Undertakes to Implement, with the Means of Authority it Possesses. In this Regard; Guarantees are Needed to Protect Constitutional Rules, by Increasing the Vigilance of Society and Public Opinion in Protecting them, and by Enacting the Necessary Legislation for this Purpose.[4]

[1] - Ben Nasser Ali, **The Concept of Human Rights, Definition of Human Rights**, Published on the Website of Mohamed Lamine Debaghine University, Setif, at the Following Link: **https://cte.univ.setif2.dz**.
[2] - Khadija, **Human Rights**, A Definition Published on the Largest Arabic Website in the World, Mawdoo3, at the Following Link: **https://mawdoo3.com**.
[3] - Walid Samir Al-Nimr, **Human Rights and Fundamental Freedoms, Ibid.**, p. 02.
[4] - **Ibid.**, p. 96.

There are Legislative Guarantees that Protect Human Rights, Consisting of Criminal and Civil Procedural Texts, which Ensure Compliance with the Provisions of the Constitution. Without them; The Constitution would Lack the Sanctity and Immunity Necessary to Protect Freedoms. These Guarantees are Interdependent. If One is Flawed; This Flaw Extends to All the Others. It is Established in Law and Practice that a Judicial Ruling or Decision must Include Reasons Supporting its Operative Part and Conforming to the Law, which must be Drafted and Published as a Practical Guarantee for the Protection of Human Rights.

Section I: Protecting the Legality Principle of Human Rights from the Procedural Standpoint:

By this Protection; We Mean the Existence of Texts that Enshrine this Principle in a Clear Way, whether at the Constitutional Level as the Supreme Law or at the Level of Ordinary Law (the Code of Criminal Procedure and the Penal Code).[1]

The Code of Criminal Procedure Includes within its Provisions Many Procedurals Guarantees for Human Rights and Freedoms, but the Text of (Article: 01) thereof is Comprehensive in General Terms; Which Are:[2]

- **Every Person is Presumed Innocent Until Proven Guilty by a Final and Binding Judicial Ruling.**

The Country's Constitution Has Confirmed this Article with a Constitutional Text (No. 41): "Every Person is Presumed Innocent Until Proven Guilty by a Judicial Authority in a Fair Trial".

- **Furthermore; These Two Articles Stipulate that Every Person is Born Innocent, a Certainty that Can Only be Overturned by Certainty, Not Mere Doubt, and a Presumption that Can Only be Refuted by a Ruling Issued by a Competent Judicial Authority.**

Professor Al-Marsafawi Defined this as: "An Individual Cannot be Punished for an Act attributed to Him Unless a Sentence of Punishment has been Issued against Him, based on the Principle of Priority".[3]

From this Perspective, the Presumption of Innocence Guarantees Individual Freedom and Ensures that Prosecution and Trial Proceed within the Framework of the Law. Among the Most Important of these Guarantees are; The Protection of the Accused's Personal Liberty and the Principle that the Accused should not be Burdened with Any Proof, Hence the Rule that Any Doubt is Interpreted in Favor of the Accused.[4]

- **No One May Be Prosecuted, Tried, or Punished Twice for the Same Offenses, Even If They are Given a Different Characterization.**

(Article: 24) of the International Covenant on Civil and Political Rights states that No One may be Liable to be tried again for an Offense for which He has already been Convicted or Acquitted by a Judicial Decision, in accordance with the Law and Criminal Procedure of Each Country.[5]

This Principle is Fundamental to Personal Liberty and Guarantees a Fair and Impartial Trial. It is neither Just nor Fair for a Person to be tried Twice for the Same Offense, regardless of the Grounds. For the Plea of Res Judicata to be Valid, there must be a Prior, Final Judgment or Decision Issued by a Criminal Court. If the Judgment is Still Subject to Modification; The Defense Cannot argue against a Retrial based on a Previous Judgment Issued in Absentia by the Criminal Court, as this Judgment does not Acquire the Force of Res Judicata. It is Merely a Preliminary Ruling that Lapses by Law Upon the Defendant's Appearance in Court.[6]

- **The Follow-Up and Subsequent Procedures Should be Carried Out within a Reasonable Timeframe, without Undue Delay, and Priority Should be Given to the Case in which the Accused is Detained.**

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[1] - Ramadan Ghassmon, **Ibid.**, p. 42.
[2] - Law (No.: 25/14) **Containing the Algerian Code of Criminal Procedure**.
[3] - Gharib Taher, **Guarantees of a Fair Trial in the Code of Criminal Procedure**, Master's Thesis, Faculty of Law and Political Science, Kasdi Merbah University, Ouargla, 2013-2014 CE, p. 44.
[4] - Muhammad bin Mshirah, **The Right of the Accused to Refuse to Make a Statement**, Master's Thesis, Public Law, Faculty of Law and Political Science, Mentouri University, Constantine, 2008-2009 CE, p. 35.
[5] - **International Covenant on Civil and Political Rights**, p. 40.
[6] - Youssef Dalanda, **The Concise Guide to Guarantees of a Fair Trial**, Dar Houma, 2nd Edition, Algeria, 2006 CE, p. 43.

❖ **The Basis of the Judiciary is the Principles of Sharia and Equality Before the Law.** No One may be Prevented from Attending the Sessions, especially if the Parties to the Case are an Accused or a Victim, because that Leads to a Breach of the Principles of a Public Trial and a Fair Trial, and thus to the Loss of One's Own Right.[1]

❖ **Judgments, Decisions, and Judicial Orders Must Be Reasoned.** Reasoning here refers to the Justification for the Judgment, which is the Body of Factual Evidence and Legal Arguments Upon which the Court Based its Conviction regarding the Solution Contained in its Ruling. It also Includes Reference to the Legal Texts that were Invoked in the Dispute. Before the judge states the Operative Part of the Judgment; He must Present all the Arguments and Evidence that Led Him to be Convinced of the Content of this Ruling over others.[2]

❖ **Every Person who has been Convicted has the Right to Have their Case reviewed by a Higher Judicial Authority.** Referring to the International Conventions; We Find that the Universal Declaration of Human Rights stated in (Article: 11): "The Accused has the Right to a Public Trial in which He is Afforded all Guarantees. Among these guarantees is the Right to Appeal, because the Court of First Instance may Err in Characterizing the Act Attributed to the Accused, as well as in Applying it". Therefore; The Accused must be Enabled to Exercise their Right to Appeal and Have their Case Heard by a Higher Authority. This is what the International Covenant on Civil and Political Rights Stipulated in (Article: 14), which states: "Everyone Convicted of a Crime Shall Have the Right to Appeal the Judgment of Conviction and Punishment Before a Higher Court".[3]

Section II: Protecting the Legality Principle of Human Rights from the Substantively Standpoint:

The Principle of Legality requires the Legislator to Define the Legal Model for Each Crime, thereby Determining its Punishment. This Protects Individuals from the Danger of Criminalization and Punishment without a Legal Basis. This is Embodied in the Penal Code in the Phrase "No Crime, No Punishment, and No Security Measures without a Law". This reflects the Misconception that the Principle of Legality Pertains Only to Substantive Criminal Law and Not Procedural Law. However; The Criminal Law in All its Branches is Subject to the Principle of Legality.[4]

The Principle of Legality of Crime, and the Punishment Stipulated in the Algerian Penal Code; Cannot Exist without a Legal Text. Therefore; An Act is Not Considered a Crime Unless there is a Text in the Penal Code that Prohibits or Mandates it. It is Sufficient that the Text be Issued by the Competent Authority. In this Context; Legal Scholars Fiah and the Judiciary Emphasize the Necessity of Ensuring Respect for this Principle. The Legislative Authority Should Only Relinquish its Original Power to Enact Criminal Legislation to a Limited Extent. It also Follows that Custom, Principles of Natural Law, and Rules of Justice Should Not be Considered Sources of Criminalization.[5]

On the One Hand; The Penal Code Only Applies Retroactively to the Less Severe Provisions—those Most Favorable to the Accused—as Stipulated in (Article: 02) of the Algerian Penal Code. This Means the Law must Have Been Enacted before the Act was Committed and Cannot be Applied Retroactively. Furthermore; The Judge is Prohibited from Resorting to Analogy in Matters of Criminalization and Punishment. The Judge is Also Bound by the Principle of Strict Interpretation, adhering to Specific Rules of Interpretation that Reveal Only the Legislator's Intent when the Text was Drafted.[6]

The Principle of Non-Retroactivity is One of the Greatest Guarantees for the Accused. If the Legislature Violates this Principle by Issuing Laws and Regulations that Apply Retroactively, they are Considered Unconstitutional. The Judiciary is the

[1] - Youssef Dalanda, **Op. Cit.**, p. 43.
[2] - Ammar Boudiaf, **The Fair Trial: A Comparative Study**, Joussour Publishing and Distribution, 1st Edition, Algeria, December 2010 CE, p. 55.
[3] - **Op. Cit.**, p. 61.
[4] - Shahira Boulahia, **Constitutional Guarantees for the Accused in the Trial Stage**, Thesis Submitted for the Degree of Doctor of Philosophy, Specialization: Public Law, Faculty of Law and Political Science, Mohamed Khider University, Biskra, 2015-2016 CE, p. 191.
[5] - Shahira Boulahia, **Ibid.**, p. 194.
[6] - Ben Taher Hakima, **The Principle of Criminal Legality**, Master's Thesis, Faculty of Law and Political Science, Department of Public Law, Akli Mohamed El-Hadj University, Bouira, 2015-2016 CE, p. 18.

Foundation of Legitimacy and Equality, and Criminal Penalties are Subject to the Principles of Legality and Personal Circumstances. Consequently; The Judge—Who is Fundamentally Subject to the Law—Cannot Arbitrarily Impose Rulings on Anyone in the Absence of a Legal Basis. Therefore; The Principle of Non-Retroactivity means that No One Can Be Punished for an Act that Was Not Criminalized at the Time It Was Enacted. Anything Not Prohibited or Forbidden by Law remains Permissible. This is in accordance with Respecting Individual Freedoms, Dignity, and the Right to Legal Protection.[1]

It is Worth Noting the Exception Stipulated in (Article: 02) Above; Which Concerns the Protection of Individuals and their Interests. The Absolute Non-Retroactivity of Penal Laws May Sometimes be Detrimental to Individuals, particularly when a New Law is Enacted that repeals the Old One, thereby rendering an Act Criminalized Under the Old Law Permissible Under the New One. Finally; There is the Provision for Mitigating Circumstances (Article: 53) of the Algerian Penal Code.[2]

[1] - Ramadan Ghassmon, **Op. Cit.**, p. 48.
[2] - **Op. Cit.**, p. 49.

Conclusion:

There is a Close and Fundamental Relationship between the Principle of Legality and the Protection of the Human Rights and Freedoms, given that the Principle of Criminal Legality is in itself Considered a Guarantee of this Protection in its Procedural Aspect, represented by the Code of Criminal Procedure, and the Substantive Aspect, represented by the Penal Code, as We Have Previously Explained. This is at the National Level, in addition to Numerous Published International Agreements, whether General or Regional in Scope, which Algeria Has Ratified and Acceded to. From this; We Have Arrived at the Following Conclusions:

- The Guarantees Still Contain Some Shortcomings that May Lead to Violations of Human Rights.
- No Matter How Much Legal Texts Try to Get Closer to Reality; They Will Not Be Able to Do So Except by Giving the Judge a Degree of Freedom to Bring this Rule Closer to the Social Reality for which It Was Created.
- Following the Procedures in accordance with the Legal and Procedural Limits Will Lead to the Integrity of the Criminal Procedures, and consequently, the Integrity of the Trial, and Will Embody the Principle of Justice and Achieve a Balance between Society and the Accused.

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