

## Legal Security in Algeria: Between Constitutional Enshrinement and Legislative Instability

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**Abstract:** This study examines the enshrinement of the principle of legal security in Algeria, focusing on its constitutionalization in the 2020 amendment. It analyzes the relationship between this constitutional recognition and the reality of the Algerian legal system, exploring the challenges facing its effective implementation. The study hypothesizes that the characteristics of the Algerian legal system are the primary factor in explaining the challenges of applying the principle, and that the 2020 constitutional reforms are significant in strengthening it despite these challenges.

Employing a multi-dimensional methodology, the study concludes that the constitutionalization of the principle represents an important step towards reforming the legislative environment, despite the persistent challenges of legislative instability. The study emphasizes the importance of the principle even in legislatively unstable systems and calls for future research to focus on the relationship between constitutional reforms and mechanisms for achieving legislative stability, to gain a deeper understanding of the principle's effectiveness in enhancing citizens' confidence in the Algerian legal system.

**Keywords:** Legal Security, Algeria, Constitutional Reform, Legislative Instability

### Introduction

The principle of legal security is a fundamental concept gaining significant attention in contemporary democratic states. As Jean-Louis Bergel emphasizes, legal security is inherent to law, representing one of its fundamental values that enables predicting and relying on legal solutions<sup>1</sup>. Building on this perspective, Gustav Radbruch characterizes law as a "reality whose meaning lies in subservience to justice"<sup>2</sup>, while Martínez further elaborates that legal security is not antithetical to justice, but constitutes a dimension of it<sup>3</sup>. This multifaceted understanding highlights the principle's core significance in modern legal systems, ensuring stability, predictability, and the protection of fundamental rights.

In this context, Algeria stands among the few countries that have constitutionally enshrined this principle through the 2020 constitutional amendment. This constitutional recognition represents a critical step towards legislative environment reform, and a serious attempt to address the chronic legislative disruptions experienced by Algeria. As Guillaume Valdelièvre notes, every living legal system requires a delicate balance between effective legal security for citizens and the necessary adaptability of law to evolving factual situations<sup>4</sup>, which makes studying the application and effectiveness of this principle critically important for legal and institutional reform in light of the structural challenges of the Algerian legal system.

The research question centers on: To what extent can the constitutionalization of the principle of legal security strengthen the stability and predictability of the legal system in Algeria in light of existing challenges?

To address this problematic, the study relies on two fundamental hypotheses:

<sup>1</sup> Jean-Louis Bergel, "La sécurité juridique", *Revue du notariat* 110/2 (September 2008), 273.

<sup>2</sup> Eduardo García Maynez, "Justice and Legal Security", *Philosophy and Phenomenological Research* 9/3 (1948), 496.

<sup>3</sup> Martínez G. P.-B, "Legal Security from the Point of View of the Philosophy of Law", *Ratio Juris* 8/2 (1995), 141.

<sup>4</sup> Guillaume Valdelièvre, "La sécurité juridique – Le point de vue de l'avocat", *Titre VII* 5/2 (2020), 12.

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The characteristics of the Algerian legal system constitute the main factor in explaining the challenges facing the application of the principle of legal security.

The constitutional reforms in Algeria in 2020, primarily the constitutionalization of the principle of legal security, are of great importance in strengthening this principle despite existing challenges.

This study seeks to analyze the constitutional enshrinement of the principle of legal security in Algeria and identify its manifestations, while examining the extent to which the legislator balances between the requirements of this principle and the need for necessary legislative change. It also aims to explore the interactive relationship between constitutional reforms and pressures resulting from legislative instability, in order to reach a deeper understanding of the effectiveness of the principle of legal security in achieving the desired legislative stability in the Algerian context.

To address this problematic, the study adopted a multidimensional methodology. The descriptive analytical method was employed to analyze constitutional and legal texts related to the principle of legal security in Algeria, and to describe and analyze the current situation of the Algerian legal system and its challenges. The historical method was also used to trace the development of the principle of legal security in the Algerian constitution, focusing on its enshrinement in the 2020 amendment. Additionally, the comparative tool was sometimes used to enrich the analysis and deepen understanding by comparing the application of the principle in Algeria with experiences of other countries.

## **I. Constitutional Enshrinement of the Principle of Legal Security in Algeria**

The principle of legal security, which refers to the clarity, predictability, and stability of legal rules and their consistent application, is considered one of the most important foundations upon which the rule of law is built. This principle plays a vital role in stabilizing legal relationships and positions, while guaranteeing rights and freedoms. It has become a focal point in national constitutions, including Algeria's, which initially adopted this principle implicitly before explicitly enshrining it in the 2020 constitutional amendment.

### **A. The evolution of the constitutional value of the principle of legal security in Algeria**

The principle of legal security is not new in its application in Algeria; rather, it has been enshrined in several successive constitutional amendments. However, its explicit recognition came through the constitutional amendment of 2020.

#### **1. The implicit recognition of the principle of legal security before the 2020 constitutional amendment**

When examining comparative constitutions, we find that the majority have not recognized the constitutional value of the principle of legal security, except for a few, such as the German and Spanish constitutions. In France, this principle still only carries legislative force, despite the Constitutional Council's acknowledgment of its requirements, such as clarity, ease of access to the law, and predictability<sup>5</sup>.

As for Algeria, this principle did not reach the desired level after independence under the unity of power, and its first signs did not appear until the adoption of democracy and multi-party system, pursuant to the 1989 Constitution, which was the first constitution whose provisions reflected a concern for legal security. This constitution represented a radical shift that coincided with the wave of democratic transformations that affected Third World countries during this period, which in turn affected Algeria

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<sup>5</sup> Fateh Khellaf, "On the Impact of Constitutionalizing the Principle of Legal Security on Attracting Investors to the Algerian Investment Market", *Journal of Legal and Social Sciences* 6/2 (June 2021), 931.

through the transition from the socialist system to the democratic system and the adoption of multi-party politics<sup>6</sup>.

The constitutional founder's orientation towards ensuring the principle of legal security - even if not explicitly enshrined - was clear in the 1989 Constitution, through the provision for establishing the Constitutional Council and adopting a system of constitutional review of laws, which is considered a distinctive means of protecting legal security, ensuring the supremacy of the constitution and respect for its provisions<sup>7</sup>.

The constitutional founder then proceeded to adopt an important mechanism in protecting legal security, pursuant to the 2016 constitutional amendment, mainly related to the establishment of the constitutional exception, enabling individuals to challenge before the judiciary any legislative or regulatory provision they believe violates their fundamental rights or freedoms guaranteed by the constitution<sup>8</sup>.

## **2. The explicit recognition of the principle of legal security in the 2020 constitutional amendment**

In 2019, Algeria witnessed a popular movement that reflected citizens' aspirations for comprehensive change in the political, economic, and social systems. The absence of legal security was one aspect of the deep crisis society faced, contributing to declining public trust in the legal and political system.

The 2020 constitutional amendment came as part of comprehensive reforms, establishing legal security as one of the fundamental pillars in building the new state. The constitution's preamble, in its fifteenth paragraph, laid down essential guarantees: balanced separation of powers, judicial independence, and legal protection, while explicitly ensuring legal and democratic security.

These guarantees were deepened in Article 34, which placed clear obligations on the state: making legislation accessible, ensuring legal texts are clear, and maintaining their stability. These commitments came to address real problems citizens had lived through - from sudden changes in laws to complexities in understanding and applying them.

Today, implementing legal security faces new challenges, especially with accelerating technological development and complex transactions. The requirement is no longer just stable laws, but flexible legislation that keeps pace with the times while protecting citizens' rights.

This transformation in the constitutional structure reflects a deep understanding of the need for comprehensive reform. Establishing legal security as an independent constitutional principle represents one step in a long path toward renewing trust between citizens and state, building a legal and political system that responds to society's aspirations.

### **B. Manifestations of the constitutional enshrinement of the principle of legal security**

The manifestations reinforcing the enshrinement of the principle of legal security in the 2020 constitutional amendment are clear through defining the foundations of this principle, determining its scope of application, in addition to restricting and obliging all public authorities and bodies to the contents of this principle.

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<sup>6</sup> Fouzia Kassi, *Requirements for Establishing the Rule of Law: Constitutionalization of the Principle of Legal Security - A Comparative Study between European and Algerian Experiences* (Algeria: University of Oran, PhD Thesis In Political Sciences, 2018), 221.

<sup>7</sup> The Constitutional Council was established under Articles 153 to 159 of the 1989 Constitution, and was provided for in Articles 163 to 169 of the 1996 Constitution, as well as Articles 182 to 191 of the 2016 Constitutional Amendment.

<sup>8</sup> See Article 188 of Law No. 16-01 dated March 06, 2016, including the Constitutional Amendment, Official Gazette No. 14, issued on March 07, 2016.

## 1. Defining the elements of legal security by explicit constitutional text

To ensure legal security that protects the fundamental rights and freedoms of both individuals and the community, the following elements<sup>9</sup> enshrined in the Constitution must be available:

Achieving access to the legal text: To achieve access to the legal rule, whether constitutional or otherwise, all modern media and techniques based on advanced technology should be used to target the largest possible group of those addressed by the legal text<sup>10</sup>.

In Algeria, achieving access to the legal text is considered a constitutional principle through Article 78, paragraph 1 of the 2020 constitutional amendment: "No one can be excused for ignorance of the law."<sup>11</sup> Therefore, publication is considered the most important condition for applying this text through including the law in the Official Gazette to reach those addressed by it<sup>12</sup>.

In this regard, we find that publication in the Official Gazette, despite its importance, is insufficient and does not achieve its intended purpose. Even legal professionals struggle to easily obtain and review relevant laws, particularly when these laws are frequently amended and reference other texts. Therefore, reconsidering another modern technique has become extremely important. This can be done by organizing the applicable legal and regulatory texts in the form of a comprehensive database, which is classified and up-to-date for laws. This will facilitate the search process, especially given the abundance of texts and amendments published in the Official Gazette.

Clarity of the legal text and its predictability: The principle of legal security can only be achieved through legal rules characterized by clarity in the text and predictability of the latter. Legal security clashes with the necessary adaptation and evolution of legal rules over time. It must be announced, communicated, and available, or at least be the logical and expected complement to previously adopted legal rules. Otherwise, those addressed by it cannot bear this development and do not consider it in their interest. The predictability of the law allows for ensuring the legal security of those addressed by it<sup>13</sup>.

The European Court of Justice defined legitimate expectation as: 'Any situation in reality, unless otherwise decided, is assessed in light of the applicable rules of law, and the law must be clear and precise so that the individual can know their rights and duties and take a position towards it.' This principle, while originating from European jurisprudence, has universal relevance and reflects similar concerns in the Algerian legal system. Therefore, the idea of legitimate expectation or legitimate trust means that legal rules should not be issued in a sudden manner that conflicts with individuals' legitimate expectations built on objective foundations derived from existing systems<sup>14</sup>.

It should be noted that the constitutional founder did not address the element of law predictability but rather sufficed with the three elements (achieving access to the legal text, clarity of the legal text, achieving stability) as indicated in the text of Article 34 of the Constitution.

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<sup>9</sup> It should be noted that the elements constituting legal security are numerous and diverse, including: the principle of equality, clarity of the legal rule, non-contradiction of legal texts, stability of contractual relationships, the predictive nature of the law, respect for acquired rights, respect for legal positions, non-retroactivity of laws, the principle of legitimate expectations. However, we have adhered to what is stated in the constitutional text.

<sup>10</sup> Khaled Rouchou, "The Role of Constitutional Rule in Establishing Legal Security", *Journal of Public Function Studies* 3/1 (June 2018), 114.

<sup>11</sup> Article 78 of Presidential Decree No. 20-442, dated December 30, 2020, including the constitutional amendment approved in the referendum of November 1, 2020, Official Gazette No. 82, dated December 30, 2020.

<sup>12</sup> Fadwa Benbenaissa, "Legal Security as a Guarantee for the Protection of Human Rights and Freedoms", *Moroccan Journal of Legal and Judicial Governance* 6 (2019), 27.

<sup>13</sup> Mukhtar Douini, "The Principle of Legal Security and Requirements for Its Achievement", *Journal of Legal Studies* 3/1 (June 2016), 9.

<sup>14</sup> Abdel Jalil Badawi - Ali Hannan, "The Concept of the Principle of Legal Security and Its Requirements", *Journal of Public Function Studies* 4/2 (June 2021), 9.

Achieving relative stability: If the law expresses the needs of society, which are naturally in a state of development, but a development with known features, then the legislator is obliged not to issue laws with unexpected or sudden provisions when amending the law. Legal security does not only mean protecting existing legal positions and respecting and guaranteeing rights and freedoms in the present and future, but also means, with equal force, respecting legitimate expectations and hopes<sup>15</sup>.

## **2. Limiting legal security to the field of public rights and freedoms**

The constitutional founder, through the constitutional amendment of 2020, has confined the principle of legal security within the framework of public rights and freedoms. This is clearly evident through its reference in the first chapter of the second section, titled "Fundamental Rights and Public Freedoms", specifically in the fourth paragraph of Article 34, which states: "To achieve legal security, the state ensures, when establishing legislation related to rights and freedoms, to guarantee its accessibility, clarity, and stability"<sup>16</sup>.

It is clear from this text that the constitutional founder has granted a distinguished position to the issue of public rights and freedoms in this amendment, and addressed the deficiencies that were marring legislation related to rights and freedoms when enacted, without considering the practical aspects and mechanisms for achieving the legislation's objectives. This is credited to the constitutional founder in this regard<sup>17</sup>.

In addition, the third paragraph of the same article emphasized that: "In all cases, these restrictions cannot affect the essence of rights and freedoms." From this text, one can discern the real guarantee for protecting individuals' rights and freedoms, which at the same time embodies the constitutional founder's forward-looking vision in preserving rights and freedoms, which are fundamentally one of the pillars of the rule of law that the state, with all its institutions, seeks to enshrine in reality.

## **3. Restricting public authorities and bodies to the contents of the principle of legal security**

The concept of legal security extends to the necessity for all public authorities in the state, whether legislative, executive, or judicial, to commit to achieving stability for this principle. This is confirmed by the first paragraph of Article 34, which states: "The constitutional provisions related to fundamental rights, public freedoms, and their guarantees are binding on all authorities and public bodies."

The Legislative Authority: If the legislative authority, within the framework of the modern state and based on the principle of separation of powers, is the original competent authority in providing society with necessary legislation to regulate various relationships, this does not mean that it has absolute freedom to amend and cancel whatever laws it wishes without oversight and without legal basis. Rather, there are supreme rules that it must observe in all its actions to establish the principle of legality and ensure legal security, otherwise its actions would be subject to nullification and unconstitutionality<sup>18</sup>.

Therefore, in order to mitigate the risks that may threaten legal certainty, the legislative authority must rise to the requisite level, as it is the entity responsible for ensuring this principle as a fundamental function of the modern state. This is achieved through its proper enactment of laws and diligence in respecting constitutional provisions, procedural integrity, and quality of content<sup>19</sup>.

The Executive Authority: Granting the executive authority the right to propose draft laws provides us with an aspect of the legislator's consideration for the principle of legal clarity and ease of

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<sup>15</sup> Benbenaissa, "Legal Security as a Guarantee for the Protection of Human Rights and Freedoms", 27-28.

<sup>16</sup> Fourth paragraph of Article 34 of the 2020 Constitutional Amendment.

<sup>17</sup> Abu Dawood Tawahriya - Abdelkader Ghitawi, "Legal Security and Its Role in Protecting Rights and Freedoms in the Algerian Constitutional System", *Journal of Law and Society* 10/1 (June 2022), 128.

<sup>18</sup> Ali Al-hanoudi, "Legal Security: Its Concept and Dimensions", *Moroccan Journal of Local Administration and Development* 96 (February 2011), 134.

<sup>19</sup> Benbenaissa, "Legal Security as a Guarantee for the Protection of Human Rights and Freedoms", 35.



understanding. The executive authority, by virtue of its role in applying the law and its continuous interaction with reality and the public, has the ability to present a draft law that is appropriate in its formulation and clarity to the culture of the individuals addressed by it<sup>20</sup>.

On the other hand, draft laws proposed by the government are referred to one of the committees of the National People's Assembly for examination and reporting. This is in contrast to proposals submitted by members of parliament, which are only referred after being examined by a special committee to express an opinion on them. This implies that the executive authority has all the apparatus and capabilities that enable it to ensure the accuracy of its proposed laws, both technically and legally<sup>21</sup>.

**The Judicial Authority:** The independence of the judicial authority, as stipulated in the Constitution, is one of the pillars contributing to the enhancement of legal security<sup>22</sup>, especially given the importance of the role undertaken by the judge in protecting rights, freedoms, and judicial security through the application of the law. Moreover, the mechanism of challenging the constitutionality of a law by one of the parties to a lawsuit, against a law that infringes upon the rights and freedoms guaranteed by the Constitution, is considered one of the genuine guarantees reinforcing the principle of legal security.

Accordingly, the judicial system and its procedures represent the center of gravity in this regard. Here, reference is always made to enabling the ordinary citizen to resort to the judiciary, which is considered the foundation of legal security due to its impartiality and independence. This enables it to issue judgments based on acceptable evidence within the framework of legality, and with the authority of res judicata that binds all authorities and individuals alike<sup>23</sup>. The French Council of State has proven that judicial oversight of administrative actions has a more effective and positive role in protecting individual rights and achieving legal security<sup>24</sup>.

However, the role of the judiciary in achieving the requirement of legal security in Algeria, despite the constitutional guarantees enshrined in the 2020 constitutional amendment, cannot be determined in terms of its effectiveness. This is due to the ambiguity and vagueness posed by some legal rules on one hand, and the legislative vacuum in some branches of law on the other.

## **II. An approach to the Causes of Legislative Instability and Ways to Avoid Them**

One of the goals of the effectiveness of the principle of legal security is to protect individuals from the negative effects of flawed legislation, as well as from frequent amendments that result in legislative instability.

In order to determine whether legal security and legislative stability are achieved in Algeria, it is necessary to identify the manifestations and causes of legislative instability, as well as the solutions and means adopted by the Algerian legislator in this regard.

### **A. Identifying the manifestations and causes of legislative instability that threaten legal security**

The principle of legal security necessarily requires that every person has the right to be subject to stable legal rules, to be safe from sudden amendments, and from all manifestations and causes that may affect that stability, including:

#### **1. Legislative inflation and poor quality of legal texts**

Legislative inflation and poor quality of legal texts constitute a fundamental challenge threatening legal security in Algeria, negatively impacting stakeholders' confidence in the legal system. While traditional

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<sup>20</sup> Rifaat Eid Sayed, "Legal Security - An Analytical Study in Light of Administrative and Constitutional Judiciary Rulings", *Journal of the Association of Arab Universities for Legal Studies and Research* 34 (October 2013), 159.

<sup>21</sup> Eid Sayed, "Legal Security - An Analytical Study in Light of Administrative and Constitutional Judiciary Rulings", 159.

<sup>22</sup> See Articles 163, 164 of the 2020 Constitutional Amendment.

<sup>23</sup> Al-hanoudi, "Legal Security: Its Concept and Dimensions", 123.

<sup>24</sup> Al-hanoudi, "Legal Security: Its Concept and Dimensions", 133.

analysis attributes this phenomenon merely to deficiencies in legislative drafting<sup>25</sup> and translation issues, reality reveals deeper structural causes involving intertwined political, administrative, and organizational factors.

The investment sector emerges as a clear illustration of this problematic, as the legislative landscape has undergone profound transformations since independence. From the socialist era laws (1963, 1966, 1982, 1986, 1988) to the economic liberalization period, the legal framework for investment has experienced continuous amendments reflecting the transition from a socialist system to a market economy.

The 1990s marked a decisive turning point with the promulgation of the Money and Credit Law (1990) and the Legislative Decree on Investment Promotion (1993). Subsequently, Ordinance 01-03 of 2001 was enacted, which itself underwent successive amendments through supplementary finance laws (2015-2009).

Despite the enactment of a new law in 2016 (Law 16-09), the pattern of continuous modification persisted through successive finance laws (2018, 2020, 2022), before its ultimate repeal by Law 22-18 in July 2022. This frequency of amendments reflects a structural problem manifesting in three main dimensions:

Firstly: The multiplicity of legal sources and overlapping jurisdictions, requiring legislators to balance constitutional provisions, international conventions, bilateral treaties, and comparative laws.

Secondly: Profound political and ideological transformations, particularly the transition from a socialist system to a market economy, necessitating continuous amendments to the entire economic legal framework.

Thirdly: Institutional fragmentation and administrative complexities, where the absence of a unified investment code has led to the dispersion of provisions across various texts (tax, customs, financial), resulting in redundancy and conflicting provisions.

The recurring need to revise legal texts shortly after their promulgation reveals a methodological defect in the legislative process. This situation poses a significant challenge to investors, particularly foreign ones, who seek a stable and transparent legal environment. Addressing this issue requires a comprehensive approach that considers both technical<sup>26</sup> and structural factors causing legislative inflation and poor quality of legal texts.

This persistent modification of legislation creates a state of legal uncertainty that adversely affects Algeria's investment climate. The continuous changes, whether through new laws or recurring amendments in finance laws, make it difficult for investors to predict the legal framework that will govern their investments in the future, thereby undermining the stability and predictability essential for a conducive investment environment.

## **2. Contradiction of legal texts**

The drafting style of some legal texts in Algeria suffers from several problems, most notably the reliance on literal translation at times. This approach often leads to emptying the text of its original content and purpose, undermining its legal effectiveness.

On the other hand, it is noticed that some legal texts use terms that are unfamiliar in Algerian legislative custom, or employ words that are not appropriate to the local legal context. This puts judges in a difficult

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<sup>25</sup> Benbenaissa, "Legal Security as a Guarantee for the Protection of Human Rights and Freedoms", 31.

<sup>26</sup> Walid Mohamed El-Shenawy, "Legal Security and Principles of Good Law-Making", *Journal of Legal and Economic Research* 56 (October 2014), 300.

position when trying to apply or interpret these texts<sup>27</sup>, which may lead to discrepancies in judgments and inconsistency in the application of the law.

What makes matters more complicated is that the text written in French may in some cases be more accurate and complete in expressing the intended meaning than its counterpart written in Arabic. This disparity in accuracy and clarity between the two versions creates a problem in determining the basic legal reference, and opens the door to multiple interpretations that may conflict with the spirit of the law and its purposes.

In addition to the aforementioned, the existence of overlapping or sometimes contradictory legal texts leads to undermining the legitimate expectations of individuals, wasting rights and freedoms, and affecting legal positions. This situation leads to legal instability<sup>28</sup>. Two prominent examples illustrate this issue in the Algerian legal system:

First, the legal framework for investment in Algeria demonstrates this instability clearly. Those who examine the legal texts regulating investment notice their instability and contradiction at times, due to frequent amendments through annual finance laws or by repealing existing legal provisions and replacing them with new ones.

Second, the Public Procurement Code provides another striking example of legislative instability. For an extended period, it was issued as a regulatory text by presidential decree, undergoing numerous amendments. The 2020 constitutional reform elevated its status to that of a law, transferring its issuance authority from the President to the legislative branch. This shift, while potentially positive for legal security, illustrates the historical volatility in the legal framework.

This situation would shake investors' confidence and negatively affect the flow of foreign investments to Algeria<sup>29</sup>. The lack of clarity and stability of laws creates an unfavorable investment environment, discouraging investors and limiting their ability to plan for the long term.

### **3. Political instability and frequent constitutional amendments**

The constitutional rule is one of the basic legal guarantees to provide a state of legal security for those addressed by it. The rights and freedoms stipulated in the constitution enjoy a supreme status, as all legal and regulatory texts related to these rights and freedoms must comply with the principle of legal security, in accordance with the principle of the hierarchy of legal rules<sup>30</sup>. This leads us to question the possibility of constitutionally preserving the principle of legal security in Algeria, in light of the constitution itself being subject to continuous review and amendment.

To answer this question, it should be noted that legislative stability in some countries is related to the stability of their constitutional texts. For example, the United States of America still retains its original constitution issued in 1787, and France has settled on the 1958 constitution. Even if some amendments have been made to it, they are secondary and do not affect the essence of the constitution, which spared the legislator confusion and frequent amendments to legal texts<sup>31</sup>.

As for Algeria, the situation is different, as constitutional amendments have become almost linked to presidential terms. Each president seeks to amend the constitution, announcing his vision for reforming

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<sup>27</sup> Badawi - Hannan, "The Concept of the Principle of Legal Security and Its Requirements", 10.

<sup>28</sup> Kassi, *Requirements for Establishing the Rule of Law: Constitutionalization of the Principle of Legal Security - A Comparative Study between European and Algerian Experiences*, 164.

<sup>29</sup> Abdullah Laouiji, "Legal Security and Obstacles to its Achievement in Algeria", *Journal of Research in Contracts and Business Law* 6/2 (June 2021), 110.

<sup>30</sup> Ouarida Iftissan - Wahiba Ben Nasser, "Constitutionalization of the Principle of Legal Security: The Algerian Experience as a Model", *Journal of Legal Studies* 8/2 (June 2022), 982.

<sup>31</sup> Ahsan Rabhi, "Reference of Inflation in Algerian Constitutional Documents", *Journal of Law for Legal, Economic and Political Sciences*, 48/2 (June 2011), 83.



and developing the country, which leads to similar amendments in existing legislative texts in order to align them with the amended constitutional provisions. One of the most prominent examples of this is the election law, which has undergone many amendments in line with constitutional amendments<sup>32</sup>.

Some researchers believe that the instability of constitutional rules in some systems and its extension to the legislative system as a whole is a result of the constitutional founder's attempt to cover all basic and detailed matters together. This is in contrast to stable constitutions that define basic principles in general terms and leave the details to legislative initiatives, making them more capable of keeping pace with practical developments continuously<sup>33</sup>.

Therefore, the stability of constitutional texts is in itself a consecration of the principle of legal security, due to the relative stability it produces in legislative and regulatory texts. It is illogical to review the constitutional text partially or completely without making amendments to the texts lower than it in degree.

#### **4. Relying on comparative legislation in drafting texts**

The Algerian legislator's influence by comparative legislation, especially French, is clearly evident through the existence of many texts that lack good drafting. When these texts are translated from their original language into Arabic, they may become truncated and clearly flawed. In fact, they may carry solutions from comparative systems that do not fit the reality, circumstances, and nature of Algerian society, which may lead to compromising the principle of legal security. This influence is particularly evident in commercial law, where, for example, some corporate systems and bankruptcy procedures clearly reflect the French model, as well as in civil law regarding contract theory and civil liability. Furthermore, criminal law shows influence from the French system in the classification of certain crimes and investigation procedures. These borrowed legal frameworks often create challenges in implementation due to their misalignment with local social and economic contexts.

#### **5. Increasing referral to regulatory texts**

Executive regulation, or what is known as regulatory texts, is considered the primary means of implementing legislative texts in the legal system of any state, because legislation often defines general provisions, leaving the field of detailing them to regulation<sup>34</sup>. However, the frequent referral to regulatory texts, and suspending the enforcement of those texts on their issuance, negatively affects the rights of individuals and their legal positions, and even the legal system as a whole. The violation of the principle of legal security worsens with the delay in issuing regulatory texts, and sometimes exceeding the limits set for them by the legislator.

There are many and varied examples of legal texts whose related regulatory texts have been delayed for many years. For example, the general basic law of the civil service, which was issued in 2006, and its regulatory texts are still incomplete to this day.

#### **B. Ways to reduce the risks of legislative instability**

After we have shown the manifestations of legislative instability and their negative impact on the effectiveness of the principle of legal security, we can now discuss some possible solutions and means to limit this phenomenon, even relatively.

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<sup>32</sup> For more details on the amendments to the election law, see: Samir Bara, "Reform of the Electoral System in Algeria: A Study of Electoral Laws from 1989 to 2021", *Eliza Journal for Research and Studies* 8/1 (December 2013), 114–134.

<sup>33</sup> Bara, "Reform of the Electoral System in Algeria: A Study of Electoral Laws from 1989 to 2021", 84.

<sup>34</sup> Siham Heriche, "Executive Regulation and the Issue of Legal Security", *Journal of the Researcher Professor for Legal and Political Studies* 2/4 (December 2017), 108.

## **1. Subjecting laws to constitutional oversight**

Granting the principle of legal security a constitutional value makes laws lower in degree than the constitution subject to the requirements of this principle when issued by the competent authorities, under sanction of their unconstitutionality. This is done through the implementation of oversight on the constitutionality of laws by the Constitutional Court, which has the original jurisdiction to ensure respect for the constitution, whether this oversight is mandatory or optional, or through challenging unconstitutionality, as stipulated in the constitution<sup>35</sup>.

Preventive constitutional oversight prior to the issuance of laws is one of the most important mechanisms for achieving legal security, because it addresses the text that violates the constitution before it has its legal effects on those addressed by its provisions. Therefore, this mechanism is considered a greater guarantee for the stability of legal relations between individuals<sup>36</sup>, especially since the legal text that the Constitutional Court decides is unconstitutional may not be issued or applied. Also, the decisions of the Constitutional Court are final and cannot be appealed, and they are binding on all public administrative and judicial authorities and bodies<sup>37</sup>.

## **2. Balancing between the requirements of development and guaranteeing the rights and freedoms of individuals**

Legal security contradicts sudden changes in the provisions of legal texts, as any development that occurs to legal rules must be expected. It should be noted that what is meant is not the stability of the law itself, but the stability of rights and legal positions. Therefore, it is not a matter of establishing a debate between the development and advancement of the law on the one hand and its stability on the other, but rather it is about protecting personal rights and legal positions formed before the adoption of the new law and its entry into force<sup>38</sup>.

Therefore, some believe that the good concept of legal security is a model of interaction between the legislator and the addressee of the law; where both parties carry out their activities in a changing world. The legislator provides a framework for choices while the addressee of the law builds his decisions on the basis of this framework. Thus, both the legislator and the addressee of the legislation must maintain an area that allows them to adapt to new developments<sup>39</sup>.

## **3. Maintaining the relative stability of laws**

It is known that legal texts, no matter how good they are, remain subject to deficiency and criticism because they are man-made. This prompts the legislator to amend these texts and search for the best to keep pace with developments. But this must be done in accordance with the requirements of legal security, which ensures the stability and consistency of legal texts, under sanction of the unconstitutionality of these texts for not respecting one of the constitutional principles.

However, we do not mean here absolute stability and consistency, but at least the ability to keep laws for a certain period of time, that is, their relative stability. It is unacceptable for those addressed by the law to be surprised each time with a new amendment to the texts or the issuance of entirely new texts that affect their positions and acquired rights, which makes them lose confidence in these texts or in the law in general.

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<sup>35</sup> See Articles 185 to 198 of the latest constitutional amendment of 2020.

<sup>36</sup> Al-hanoudi, "Legal Security: Its Concept and Dimensions", 138.

<sup>37</sup> See Article 198 of the constitutional amendment of 2020.

<sup>38</sup> Douini, "The Principle of Legal Security and Requirements for Its Achievement", 32.

<sup>39</sup> Mohamed El-Shenawy, "Legal Security and Principles of Good Law-Making", 320.

#### **4. Constitutionalizing controls for issuing regulatory texts**

When reviewing the Algerian constitution with its successive amendments, it is noticed that there is no restriction or condition that obligates the executive authority to issue regulatory texts, especially those referred to it by virtue of a legislative text. This legal vacuum has led to the suspension of the application of the provisions of many legislative texts for long periods, pending the issuance of related regulatory texts.

To address this problem, it seems appropriate to include in the constitution a provision that specifies a maximum period for issuing the regulatory texts necessary to activate and implement legislative texts. This measure would limit the negligence and procrastination in issuing regulatory texts, and ensure the application of laws within reasonable timeframes. It is also possible to oblige the government to submit an annual report to the parliament on the application of laws, including the issuance of regulatory texts.

#### **Conclusion**

This study aimed to examine the extent of establishing the principle of legal security in Algeria, as a state characterized by the recent constitutional adoption of this principle. Despite existing institutional and constitutional challenges, the study concluded that there are tangible efforts to enhance legal security, although these efforts face practical implementation obstacles that extend beyond the theoretical legal framework.

The study found that the constitutionalization of the legal security principle, despite current constraints, represents a significant step toward reforming Algeria's legislative environment. However, challenges related to legislative instability persist within the context of the Algerian legal system, directly affecting the application of the legal security principle. Analysis of constitutional and legislative texts confirmed the study's initial hypotheses, as the characteristics of the Algerian legal system constitute the primary factor in explaining the challenges facing the implementation of this principle.

The study of legal security's reality in Algeria revealed a fundamental truth: the constitutional enshrinement of the principle, despite its crucial importance, cannot yield its desired results without parallel institutional and administrative reforms. The Algerian legal system, which experiences successive legislative changes, requires profound development of its executive and judicial institutions' capabilities through an integrated system of measures. These measures begin with implementing specialized training programs for judges and legislators, progress through enhancing the independence of judicial and oversight institutions and providing them with necessary resources, and extend to modernizing legal information management systems. Accordingly, the success of recent constitutional reforms in achieving the desired legal security is closely tied to institutions' ability to adapt to these new requirements and develop effective administrative practices that translate constitutional texts into tangible reality.

Based on these findings, the study suggests directing future research efforts toward three main axes: First, conducting a comprehensive empirical assessment of the impact of the 2020 constitutional reforms, particularly regarding the effectiveness of constitutional oversight mechanisms and the Constitutional Court's role in achieving legal security. Second, studying the practical effects of legislative instability on specific sectors such as investment, rights and freedoms, and commercial transactions. Third, conducting comparative studies on the effectiveness of institutional capacity-building programs, focusing on improving legislative drafting quality and enhancing judicial independence.

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