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Obstacles of Applying Legal Stability Principle for Investment in Algerian Law

Abstract

This study aims to highlight the principle of legal stability (legislative stability) as one of the essential guarantees for attracting investment, especially in developing countries like Algeria. Investment, both local and foreign, is the lifeblood of modern economies, and the importance of foreign direct investment emerges as a vital source of financing and development. To achieve this, countries strive to provide an attractive investment environment through a set of legal guarantees, foremost among which are the assurance of capital and its returns transfer, non-expropriation, in addition to the principle of legal stability, which aims to reassure investors and create "legal security" that enhances their confidence and the sustainability of their projects. The main issue of the study is based on the existing tension between investors' urgent need for legislative stability to ensure the security of their investments in the long term, and the state's sovereign right to amend and repeal the laws regulating the investment sector in line with the public interest and the requirements of changing policies. The study seeks to define the principle of legal stability and its regulations, and then analyze the issues and practical challenges that hinder its effective application in Algerian law, and to answer the extent to *which this principle can form a real and effective guarantee for creating a secure investment environment in Algeria.*

Keywords: *Investment, Law, Obstacles, Stability, Algeria*

Cezayir Hukukunda Yatırım İçin Yasal İstikrar İlkesinin Uygulanmasının Önündeki Engeller

Öz

Bu çalışma, özellikle Cezayir gibi gelişmekte olan ülkelerde yatırım çekmenin temel güvencelerinden biri olan yasal istikrar ilkesini vurgulamayı amaçlamaktadır. Hem yerli hem de yabancı yatırım, modern ekonomilerin can damarıdır ve doğrudan yabancı yatırımın önemi, hayati bir finansman ve kalkınma kaynağı olarak ortaya çıkmaktadır. Bunu başarmak için ülkeler, yatırımcılara güven vermeyi ve güvenlerini ve projelerinin sürdürülebilirliğini artıran "yasal güvenlik" yaratmayı amaçlayan yasal istikrar ilkesine ek olarak, sermaye ve getirilerinin transferi, kamulaştırılmama güvencesi başta olmak üzere bir dizi yasal garanti yoluyla cazip bir yatırım ortamı sağlamaya çalışmaktadır. Çalışmanın ana konusu, yatırımcıların uzun vadede yatırımlarının güvenliğini sağlamak için yasal istikrara duydukları acil ihtiyaç ile devletin yatırım sektörünü düzenleyen yasaları kamu yararı ve değişen politikaların gereklilikleri doğrultusunda değiştirme ve yürürlükten kaldırma hakkı arasındaki mevcut gerilime dayanmaktadır. Çalışma, yasal istikrar ilkesini ve düzenlemelerini tanımlamayı, ardından Cezayir hukukunda etkili bir şekilde uygulanmasını engelleyen sorunları ve pratik zorlukları analiz etmeyi ve bu ilkenin Cezayir'de güvenli bir yatırım ortamı yaratmak için ne ölçüde gerçek ve etkili bir garanti oluşturabileceğini yanıtlamayı amaçlamaktadır.

Anahtar Kelimeler: *Yatırım, Hukuk, Engeller, İstikrar, Cezayir*

Introduction

Investment, both domestic and foreign, is a fundamental pillar for the growth of national economies in both developed and developing countries. While developed countries seek to maximize profits and expand their economic influence, developing countries, including Algeria, focus on utilizing investment to achieve sustainable developmental goals while maintaining their national sovereignty. In this context, foreign direct investment emerges as a vital source of funding for developmental projects, prompting many countries to compete to attract foreign capital by improving their investment environment. Countries' efforts to create attractive legal frameworks for investment are manifested through the establishment of a set of fundamental guarantees. Among the most prominent of these guarantees are the assurance of the principle of free transfer of capital and its returns, the guarantee of the principle of non-expropriation, in addition to the principle of legal stability or legislative consistency applied to investment. The latter, enshrined by the Algerian legislator, is one of the most important mechanisms aimed at reassuring investors by providing "legal security" that enhances their confidence and encourages them to inject their investments in the long term. Although the principle of legal stability represents a pivotal tool in attracting and drawing foreign investments due to its role in creating a stable and favorable investment climate, the nature of the relationship between it and the sovereign right of the state to issue, amend, or repeal legislation remains a central issue. The state retains its absolute authority to review and update its laws in any sector, including the investment sector, and has full authority to penalize anyone who violates those laws, creating tension between the necessity of legislative stability and the flexibility of legal sovereignty.

The topic of legal stability for investment is of great importance, as investment, both domestic and foreign, is a fundamental pillar for economic development in both developed and developing countries. For a country like Algeria, foreign direct investment is a vital source of funding for developmental projects. Attracting capital requires a favorable and reassuring investment environment, and this is where the legal guarantees provided by the state come into play, foremost among them being the principle of legal stability (or legislative stability). This principle aims to instill confidence in investors and provide "legal security" that encourages them to inject their investments, and it is a crucial mechanism for creating a stable and suitable investment climate.

This study is based on a main hypothesis that the application of the principle of legal stability for investment in Algerian law faces significant practical challenges that diminish its effectiveness as a genuine guarantee for creating a safe and reliable investment environment. These obstacles are primarily attributed to the underlying tension between the urgent need of investors for legislative stability that ensures clarity of vision and long-term investment, and the sovereign right of the state to amend and adapt its legislation to serve the public interest and the changing requirements of economic development. Consequently, this fundamental conflict leads to an unstable legal environment, negatively impacting Algeria's ability to attract both foreign and local investments, and hindering the achievement of desired developmental goals. The research problem of this study revolves around the inherent contradiction between the urgent need for investors for stable legislation governing investment to ensure the continuity of their projects and their trust, and the sovereign right of the state to amend or repeal laws in accordance with the public interest and the evolution of economic policies. This main problematic branches into the following question: Does the principle of legal stability constitute an actual and effective guarantee capable of creating a secure investment environment in Algeria? We relied on the descriptive methodology to complete this study, aiming to establish a comprehensive understanding of the theoretical and legal framework of the principle of legal stability for investment. This includes providing an accurate definition of the principle, tracing its origins and development in its international and local contexts, and highlighting its significant importance in shaping an attractive investment environment. This section will also focus on identifying the legal controls of the principle by reviewing and analyzing the relevant Algerian legislative texts, including investment laws, administrative contracts, and any other legal frameworks that impact the achievement of stability. Additionally, the types of legal stability (legislative, judicial, and administrative) will be classified, with an explanation of the importance of each type for the investor, aiming to build a solid foundation of theoretical and legal knowledge that will serve as a basis for transitioning to the analysis of practical challenges later in the study.

1. The Concept of the Principle of Legal Stability for Investment

Before detailing the concept of legal stability for investment, also known as legal security or legislative stability, it was necessary for us to address the concept of investment.

1.1. Definition of Investment:

Investment maybe defined as well as: *“Investment is defined as the commitment of current financial resources in order to achieve higher gains in the future. It deals with what is called uncertainty domains. From this definition”* (CMA, p. 1).

1.2. Terminologically

There are several definitions, including "the allocation of capital to obtain new productive means or to develop existing means with the aim of increasing production capacity." At first, defining investment may appear deceptively simple.

The term forms part of everyday usage, which may give the impression that there is a common or shared understanding of the term. However, investment is a broad term invoking different meanings in everyday, economic and legal usage. In particular, the definition of investment has farreaching legal implications in an IIA as it determines the scope of the treat (Malik, 2009)**.** It is essential to distinguish between productive investments, which aim to obtain productive goods that in turn lead to the production of new productive goods or consumer goods and services, and non-productive investments, which are funds allocated to produce services that meet citizens' needs, such as building a hospital or a school (Aliya, 1985)**.** Investment is also defined as "the ownership of an asset with the hope that it will yield a return in the future," and investment can be in a tangible asset or a financial asset (Hindi, 1999)**.** The commonly used terms investment, foreign investment and foreign direct investment (FDI) entail different meanings, varying in the breadth of assets they cover. The term investment is defined in The Compact Oxford English Dictionary as “1. the action or process of investing. A thing worth buying because it may be profitable or useful in the future.” Foreign investment is simply “investment originating from another country.” The definition of investing is similarly broad: “investing: the act of investing; laying out money or capital in an enterprise with the expectation of profit” (Malik, 2009)

1.3. Definition of Investment within Certain Agreements

Many agreements have addressed investment, including the Seoul Agreement signed on 11/10/1985, which Algeria ratified under Presidential Decree No. 95/345 dated 30/10/1995, and under which the International Investment Guarantee Agency was established. Investment is addressed in the Article 12 as follows: "Eligible investments for guarantees include ownership rights and medium or long-term loans established and guaranteed by participants in the ownership of the relevant project, and what the Board of Directors defines as forms of direct investment." Through this clause, the agreement defined the investment that qualifies for guarantees within its framework.

Meanwhile, the fourth point of the first chapter of the Agreement on the Promotion and Guarantee of Investment among the Arab Maghreb Union countries, which Algeria ratified under Decree 90/420, stated that investment "is the use of capital in one of the permitted areas in the countries of the Arab Maghreb Union." The agreement narrowed the concept of investment by requiring the use of capital only in the permitted areas within the concerned Union countries and not elsewhere (Aicha, 2022-2023). According to the Algerian legislator; the investment is identified a renewing activities and production abilities through assets or financial/ symbolic contributions in a company capital. Also, making up activities within the frame of a full/ partial privatization, which means, giving advantages to achieving economic projects and activities that produce goods and services (Guessouri, 2021).

2. Types of Investment

Investment can be classified according to various criteria and classifications, based on the nature of the investment itself, the type of ownership in the investment, the diversity of investment tools, the geographical location, the nationality of the investor, and others. We will highlight the most important classification, which is local or national investment and foreign investment.

2.1. Local or National Investment

This is the investment in which regional communities play a prominent role from any aspect, and it is the investment that is linked to its geographical area and is subject to its authorities, reflecting material or moral benefits on both the investor and the state in general, regardless of the ownership or nationality of the investor or the nature of the activity or its duration, unless there is a legal provision to the contrary (Haded, 2012-2013).

2.2. Foreign Investment Which is the Flow of Private Capital into Developing Countries

2.2.1. Foreign direct investment

It is represented by those projects that are established, owned, and managed by the foreign investor, either due to their complete ownership of the project or their participation in the project's capital with a share that grants them the right to manage. The International Monetary Fund defined it as "a set of various operations aimed at influencing the market and managing the enterprise located in a country different from that of the parent company." According to the standard set by the International Monetary Fund, investment is considered direct when the foreign investor owns one or more shares of the capital of a business entity. The number of votes in it should be sufficient to give the investor a say in the management of the enterprise (Abdou, 2008). Thus, direct investment results in the investor owning part or all of the investments in a specific project. It is also considered an important source of financing in host countries through driving economic development (Abualfutouh, 2015).

2.2.2. Indirect foreign investment

It refers to the purchase of securities, such as bonds and stocks in the form of loans with the aim of achieving a certain rate of return without the investor having ownership of all or part of the investment project, and the investor does not enjoy control or management of the project. Therefore, this type of investment is referred to as portfolio investment. Its main sources include "granting loans - purchasing bonds and stocks" (Ouali, n.d.)

2.3. Definition of Investment in Algerian Legislation

Law 16/09 defines investment as follows: "1- Acquiring assets that fall within the framework of establishing new activities or expanding production capacities or restructuring. 2- Contributing to the capital of an institution in the form of cash or in-kind contributions. 3- Reviving activities within the framework of partial or complete privatization" (Article 02, 2016). As for Law 22/18, it did not provide a definition of investment but only defined the investor in Article 02 (Article 02 of Law 22/18).

3. The concept of Legislative or Legal Stability

3.1. Definition of Legal Stability

Legal stability refers to the existence of a relative permanence in legal relationships and a minimum level of stability in legal positions, with the aim of promoting security and reassurance among the parties involved in the legal relationship. Regardless of whether they are private or public legal entities, these entities should be able to arrange their situations according to the existing legal rules at the time they conduct their activities, without being subjected to surprises or actions that were not anticipated, issued by one of the three state authorities. This could undermine the pillar of stability or shake the spirit of trust and reassurance in the state and its laws (L'amari, 2016).

3.2. The Principle of Legal Stability in Algerian Investment Law

Law 22/18 has stipulated the principle of legal stability, stating that the effects resulting from the review or repeal of this law, which may occur in the future, shall not apply to investments made under this law unless explicitly requested by the investor.We find that the content of this article is consistent with the provisions of Article 22 of Law 16/09. It can be inferred from this text that if a foreign investor submits a request for an investment project under a specific law, any future amendments or cancellations to that law will not apply to the investor unless they explicitly request it.

According to the text of this article, the principle requires the stability of the legal system applicable to investment throughout the duration of the investment itself. Therefore, this guarantee, in fact, contains two elements: the principle and the exception. The established principle is that amendments or new laws related to investment do not apply to investments made under the current law (Khadija, 2016). As for the exception, it consists of the investor's request to be subject to the new rules established by the new legislation. This is known as the principle of legislative reinforcement, where the investor can benefit from the new provisions if they offer additional advantages, by applying the rule of the law that is more favorable to the investor.

It is reasonable to assume that the object and purpose of investment treaties is closely tied to the desirability of foreign investments, to the benefits for the host state and for the investor, to the conditions necessary for the promotion of foreign investment, and to the removal of obstacles which may stand in the way of allowing and channelling more foreign investment into the host states. Thus, the purpose of investment treaties is to address the typical risks of a long-term investment project, and thereby to provide stability and predictability in the sense of an investment friendly climate (Dolzer, Kriebaum & Schreuer, 2022).

4. Types of the Principle of Legal Stability

The principle of legal stability in investment is considered one of the most important guarantees granted to foreign investors and it is of two types:
- A. The Principle of Contractual Legal Stability: This principle includes a condition agreed upon by both the state and the foreign investor when concluding the investment contract, stipulating that the law applicable when a dispute arises is the law agreed upon at the time of concluding the contract in question, excluding any amendment or change to this contract. (Abdelhamid, 2009). In the case of agreeing on this principle in the contract, it becomes binding for both parties, and the investor cannot demand the application of the more favorable law.
B. The Principle of Legislative Legal Stability: This principle is represented by the total legal texts contained in the state's "Investment Laws," under which the state commits not to amend or change its laws or to repeal the law regulating the contractual relations between it and the investor (Achour, 2010-2011). Stability may be absolute, in which the state commits to not applying any new law to the contract, or it may be relative, in which the state pledges not to apply laws that would make it difficult for the investor to fulfill their obligations (Kassal, 2016).

5. Obstacles and Alternatives to the Principle of Legal Stability for Investment

According to leading analysts, the main problem of investment policy is to achieve the best ratio of liberalization and protectionism, i.e. the balance between the facilitation and promotion of foreign investment on the one hand and the measures of restriction, prevention and deterrence on the other (Sapir & Andreevich, 2020). Despite the significant importance of the principle of legal stability in providing an investment climate that attracts foreign investments, its implementation faces several obstacles.

5.1. Lack of Stability in Investment Regulations

Legislation is the tool through which the host state expresses its investment policy, and the stability of legislative provisions provides a solid foundation for the investor's expectations and calculations, reflecting confidence in the stability of the general conditions surrounding investments.

However, legislative stability, while serving the investor in securing sufficient safety for their investment project to achieve their goal of obtaining profits, also faces the reality that the host state, in its effort to attract foreign capital to boost its economy, imposes oversight on investments that may conflict with the interests of the foreign investor from their perspective.

The state may withdraw the treatment previously afforded to the investment or repeal or amend the legislation governing it, which could impact the investor's calculations. This necessitates that the regulations governing investments strike a balance between the interests of both parties, through alignment between the means of attracting foreign investments and the requirements of sovereignty (Al-Nnajar, n.d.). Investment law in Algeria is characterized by numerous amendments, both concerning the basic text related to investment and the complementary laws, in addition to amendments in financial laws. Furthermore, the multiplicity and abundance of texts, along with their differing content, creates instability in the principle.

The abundance and diversity of legal texts related to any investment activity, along with the parallel application of existing texts, presents a complex situation for the foreign investor in particular, which may deter them from making an investment decision in a particular country, even if the principle of freezing the legislative text is established (Ouali, 2015). One of its examples is the cancellation of the provisions of Order 01/03 under Law 16/09, except for Articles 6, 18, and 22. However, it retained the same investment bodies established, namely the National Agency for Investment Development and the National Council for Investment Development, which negatively affects the investor and does not provide a sense of security and stability.

6. Non-compliance with the Application of the Principle

The essence of the principle of legal stability lies in ensuring the legislative text and clauses, which negates the obligation to adhere to the principle. Examples of this include: in the field of hydrocarbons, the case of the Algerian oil company Sonatrach and the two American companies Anadarko and Maersk, where Algeria amended the hydrocarbons law in 2006, leading to the imposition of additional taxes on the profits earned by the two companies. This coincided with a significant rise in oil prices, prompting Algeria to apply exceptional taxes on the company's profits whenever the price of a barrel exceeded $30. This was not mentioned in the content of the last contract signed in 2004, resulting in a dispute between the two parties, with the company arguing that these taxes could not be applied retroactively due to the existence of a tax stability clause.

7. Ambiguity of Investment Legislation and its Conflict With Other Legislation

It is observed that some investment legislations, whether they are laws, executive regulations, or even administrative decisions, lack clarity, which leads to variations in the interpretations of these texts. This, in turn, poses an obstacle for foreign investors. As is known, an investor does not proceed to implement their investment project in a country without a thorough study of the investment climate in that country, including reviewing its investment legislation. It may occur that some provisions in the host country's investment law overlap or conflict with some provisions in its other laws. Due to the obstacles in applying the principle of legislative stability, some jurists have called for the inclusion of additional conditions in the contract, including a renegotiation clause and a compensation clause.

7.1. Renegotiation Clause

The goal of legal stability is to try to find a balance between continuous modification and the permanence of laws in order to achieve legal security for foreign investors. Therefore, some jurists have advocated for the necessity of including a clause in the contract that takes into account the public interest of the host state for investment, which is represented in the renegotiation clause.

7.1.1. The Condition of Review or Renegotiation

It refers to the commitment of the parties to renegotiate the contract in order to address the emergency circumstances that have arisen, with the aim of modifying the contractual obligations to a reasonable extent to mitigate the severe damage incurred by one of the parties for that purpose.

7.1.2. Characteristics of the Negotiation Condition

It is a contractual condition, and its content depends on what the parties agree upon in the contract. It specifically details and defines its content, the events it faces, its impact on the contract, and the solutions that the parties will resort to in the event of those occurrences (Salama, 2001). As well as a special condition that varies according to the contracts and their circumstances; in other words, its content is not the same in all contracts, but rather it varies according to the desires of the parties and the nature of the circumstances surrounding the conclusion and execution of the contract. Thus, the form of the condition changes from one contract to another. A condition in one contract may face economic circumstances, while in another contract it may face political or financial circumstances. The parties may agree to apply the condition simply due to harm occurring to one of them, regardless of the extent of that harm. They may also agree in other contracts to resort to specialists in law and arbitration courts to oversee the negotiation process (Arab, 1988). It is a fixed clause in many bilateral agreements, particularly because, unlike stability conditions that require the state not to apply any new or future laws that harm the interests of foreign investors, the renegotiation clause does not limit the sovereign privileges of the state that ensure its freedom from all constraints. However, it does pave the way for renegotiating certain terms of the agreement, as these conditions stipulate the obligation of the state or government entity to compensate the foreign investor for any economic damages arising for any reason from any new laws or regulations affecting the terms or conditions of the agreement (M'azouza, 2015-2016). Investment support conservation in regional natural resources in the country is characterized by two opposite trends: on the one hand, the increasing degradation of the natural systems and disintegration in the conservation and reproduction, and on the other - the changing nature of the investment processes. (Nurmukhankyzy, 2014). As a rule the state affects the level of mining operations through the use of administrative and economic instruments, namely, through the distribution of resources and with the fiscal regime. Thus, the state exercises section of economic rent between itself and the investor, thus increasing or decreasing the attractiveness of natural resources (Nurmukhankyzy, 2014).

7.2. Compensation Clause

7.2.1. The meaning of the Compensation Clause

Stability or permanence conditions may fail to limit the actions of the state when it comes to public interest; therefore, a penalty clause should be included that requires compensation for the foreign investor in the event of termination or unilateral cancellation of the contract. When the state terminates the contract, the investor acquires an absolute right to compensation. This compensation has a stronger legal value in the presence of this clause than in its absence. The presence of this clause constitutes a special circumstance that must be taken into account when compensating, as it represents a breach of one of the agreed-upon contractual conditions.

Usually, stability conditions and renegotiation conditions are combined with penalty clauses, which stipulate the commitment of the state or government entity to compensate the foreign investor for any economic damages occurring for any reason resulting from any new laws or regulations affecting the provisions or terms of the agreement (Lamari, 2018-2019)**.** The system of investment dispute settlement has borrowed its main elements from the system of commercial arbitration. However, investor-state disputes often raise public interest issues which are usually absent from international commercial arbitration. As a result, the traditional manner in which governmental measures are reviewed for compliance with international law in a private setting, i.e. confidential in camera proceedings has come under increased scrutiny and criticism (OECD, 2025).

7.2.2. The Importance of the Compensation Clause

Its importance appears in the case of the state terminating the contract, as it grants the foreign investor a clear right to compensation, which is greater in value when the stability clause is present than in its absence. Therefore, the existence of this clause constitutes a special circumstance that must be taken into account when assessing the appropriate amount of compensation in favor of the contracting party with the state, by compensating them for the losses incurred and the profits foregone. On this basis, this clause plays an important role in activating investments by ensuring the right to compensation. This is the policy that most developing countries aim to achieve. A penalty clause is included in the contract, whereby in the case of modification, the investor can receive a predetermined amount paid as compensation and even obtain profits in the event of termination or failure to complete the project, balancing the interests of the contracting state and those of the investing party (l'aziz, 2015). This changes when stabilization clauses come to play. They create a tighter legal regime for host states, and demand specific legal answers when it comes to balancing overlapping fields of investment protection and public interest regulation. This paper intends to give an insight in the context and debate of stabilization clauses (B.) and arbitral decisions which have directly or indirectly dealt with stabilization clauses (C.). Against this backdrop, the paper explores possible interpretative leeway to reconcile conflicts with socially or environmentally related public interest regulation of host states (D) (Gehne & Brillo, 2017).

Conclusion

This study has meticulously explored the intricate balance between fostering a secure investment environment through legal stability and upholding the sovereign right of the Algerian state to amend its legislation. It has become evident that while the principle of legal stability is paramount for attracting and retaining both domestic and foreign investment—serving as a crucial guarantor for investor confidence and project sustainability—its effective application in Algerian law faces considerable practical obstacles. These challenges primarily stem from the inherent tension between investors' urgent need for legislative predictability and the state's prerogative to adapt its laws in response to evolving public interest and developmental priorities. While Algeria recognizes the *principle* of legal stability as vital for attracting investment, significant structural, regulatory, and institutional obstacles prevent its effective application in practice. The unresolved tension between regulatory sovereignty and investor security, manifested through volatile legislation, restrictive ownership rules, bureaucratic fragmentation, and weak enforcement, creates an environment of legal uncertainty. This undermines investor confidence, hinders FDI inflows, and ultimately constrains Algeria's economic development and diversification goals. Bridging this gap requires deep, systemic reforms focused on predictability, institutional coherence, and enforceable guarantees. The research has identified that this fundamental conflict often leads to an unstable legal landscape, characterized by potential legislative inconsistencies, administrative ambiguities, and a degree of unpredictability that can undermine investor trust. Consequently, despite the Algerian legislator's commitment to enshrining legal stability as a key assurance, its practical implementation is frequently hampered. Ultimately, achieving a truly secure and attractive investment climate in Algeria hinges on developing robust mechanisms that can effectively reconcile the imperative of legislative stability with the legitimate exercise of state sovereignty, thereby transforming this principle from a mere theoretical ideal into a tangible guarantee for investors.

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