

# JUDICIAL JURISPRUDENCE AND LEGAL SECURITY... WHAT RELATIONSHIP?

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## Abstract:

*The inability of the law, does not mean the inability of the judge, the administrative judge bypassed the literal application of the law due to its finite. The judicial jurisprudence contributed to devising solutions and establishing new legal rules .no one deny that Jurisprudence contributed to finding solutions and setting new legal rules in order to consecrate the principle of justice among litigants, and to achieve the principle of judicial security.*

*In this study, I looked closely at the contribution of the administrative judge in establishing the principle of justice and embodying the principle of judicial security through jurisprudence.*

**Key Words:** *The rule of law, judicial precedent, legal certainty, the principle of justice, the development of law.*

## 1. INTRODUCTION:

Judicial interpretation has always played, and continues to play, a significant role in any country's legal and judicial system, especially in light of the deficiencies inherent in legal texts. It serves as an important gateway for enacting any judicial reform aimed at fostering a state of justice and law by providing the necessary adaptation and continuity of legislative rules. Judicial interpretation specifies legal norms and works to adapt and update them according to the requirements of achieving the principle of justice among litigants and individuals, and the imperatives of establishing the principle of legal security within the judicial system.

Indeed, the interpretative role of the administrative judge underscores their active, dynamic, and evolving role, refusing to remain rigid or static. Rather, they have assumed their desired role of striving for innovation and interpretation, offering solutions that rise to the level of legal principles with the objective of enshrining justice and establishing the rule of law.

### 1.1 Study Problem:

From this standpoint, we ask the following question:

**To what extent does judicial interpretation contribute to achieving justice among litigants and establishing the principle of legal security?**

To answer this question, this research paper utilizes both the descriptive and analytical methodologies to explore the following structure:

- First section: Judicial interpretation and legal security: "between concept and relationship."
- Second section: Judicial interpretation as an approach to consolidating legal security and achieving justice.

## 2. JUDICIAL INTERPRETATION AND LEGAL SECURITY: "BETWEEN CONCEPT AND RELATIONSHIP"

Judicial interpretation in the context of the judiciary refers to the approach judges take in their rulings, whether it pertains to legal texts or deriving the necessary rulings when no explicit provision exists (Farija, 2004, p. 12), in order to ensure justice and achieve the principle of legal security. The true meaning of judicial interpretation and its connection to legal security can only be fully understood by revealing its concept (first requirement), and further by exploring the meaning of legal security and clarifying its relationship to judicial interpretation (second requirement).

## 2.1 The Concept of Judicial Interpretation and Its Relationship to Legal Security

In this requirement, we will clarify the terminological definition of judicial interpretation (first subsection), followed by an exposition of the jurisprudential definition of administrative judicial interpretation from a comparative law perspective, and its relationship to legal security (second subsection).

### 2.1.1 Definition of Judicial Interpretation

The term "judicial interpretation" (la jurisprudence) is derived from the Latin root "jurisprudencia," which means the science of law. The term "juris" refers to law, while "prudencia" denotes knowledge and science (Al-Majni, 2011, p. 04). Indeed, the term judicial interpretation holds multiple meanings, but it generally refers to a collection of court rulings on a specific issue (Al-Badrawi, 1972, p. 244).

Historically, the term "judicial interpretation" was widely used to refer to the science of law. However, the current definition is more precise, as judicial interpretation represents the legal solutions provided for a particular legal situation:

"Previously, the term 'jurisprudence' was widely used to broadly designate the science of law. The current definition is more precise. Jurisprudence is the collection of solutions provided for a given legal situation... (Leuvrey, 2013, p. 09)"

Judicial interpretation is also referred to as "the judiciary." However, the term "judiciary" here does not refer to all court rulings, but specifically to those judgments that involve judicial interpretation when disputes are presented to a judge, requiring resolution (Yahya, 1987, p. 141). Judicial interpretation is the solution offered by the judicial authority in cases where there is no applicable legal provision, or where the provision is ambiguous or insufficient (Amokrane, p. 01).

The term "judicial jurisprudence" refers to a set of decisions and rulings issued by courts and judicial councils to resolve a specific legal situation.

"...The term 'jurisprudence' encompasses all the rulings and judgments rendered by Courts and Tribunals to solve a given legal situation... (Definition of Jurisprudence, n.d.)"

### 2.1.2 The Jurisprudential Definition of Administrative Judicial Jurisprudence and its Relationship to Legal Security

At the outset, it should be noted that neither the Algerian nor the French legislature provided a definition for the general meaning of judicial jurisprudence. This is natural since the legislature has consistently refrained from engaging in the debates that arise from the definitions provided by jurists and legal practitioners. However, a simplified definition of the objective meaning of administrative judicial jurisprudence can be offered: it is based on a collection of judicial rulings and decisions issued by administrative judicial bodies in specific cases and issues where the legislature remains silent or where ambiguity and shortcomings exist.

Fundamentally, the focus in defining administrative judicial jurisprudence should not be solely on the collection of judicial decisions, but rather on the set of standards established by the administrative judge to reach a decision and build judicial jurisprudence. According to the jurist "Laferrière," jurisprudence is a fundamental judicial right, given that jurisprudence, in principle, is not a source of law but rather an authority.

"...According to Laferrière, it is an essentially jurisprudential right, whereas in principle, jurisprudence is not a source of law but an authority... (Administrative Jurisprudence, n.d.)"

By administrative judicial jurisprudence, we mean, first and foremost, the rulings issued exclusively by the administrative judiciary in administrative matters, which contain principles not addressed by the law or which resolve disputes within the law itself. These rulings are referred to as fundamental rulings or rulings with principles (Miftah, 2006, p. 116).

As a result, it becomes clear that administrative judicial jurisprudence is the contribution of the judiciary, or in other words, the additions made by administrative judges, and the results of their efforts in interpreting the law, addressing its deficiencies, or complementing it, as well as resolving contradictions between two legal rules or clarifying the meanings of rules when they are

ambiguous. In explicit terms, the administrative judge becomes a "legislator," with their judgments taking the place of the law (Brahimi, 2009, p. 330).

## 2.2 The Concept of Judicial Security and Its Relationship to Judicial Jurisprudence

The concept of judicial security carries broad implications, which cannot be fully clarified without uncovering the terminological meaning of judicial security (First Section) and highlighting the most important jurisprudential definitions provided in the context of establishing a comprehensive definition of the objective meaning of judicial security (Second Section).

### 2.2.1 The Terminological Definition of Legal Security

At the outset, we must agree that the meaning of the term "legal security" is a branch of the broader concept of security, which finds its source in natural law. The term "legal security" at first glance seems clear and precise, but the content of this composite term carries many meanings within it.

The term "security" in the linguistic sense means safety and trustworthiness, as in "I felt secure, so I am safe," and "I ensured the safety of others, providing security and safety." Security is the opposite of fear and betrayal; and faith is the opposite of disbelief, meaning belief, and its opposite is denial. It is said that some people believed, and others denied, as security is the opposite of fear—when one is secure, they are free from fear (Manzur, 2007, p. 141).

Based on what has been previously mentioned, we can say that the terminological meaning of "legal security" is the existence of a relative stability in legal relationships and the stability of legal positions to promote security and reassurance among the parties to legal relationships, whether they are private or public legal entities. These parties can organize their affairs according to the existing legal rules at the time of their actions, without being exposed to surprises or unforeseen acts issued by any of the state's competent authorities (Al-Omari, 2022, p. 15).

### 2.2.2 The Jurisprudential Definition of Legal Security and Its Relationship to Judicial Jurisprudence

There are multiple jurisprudential definitions that have been provided in the context of defining the concept of legal security in jurisprudence, to the point where they have evolved into two directions, each with its own criterion and approach. One direction adopts the material criterion, which defines legal security broadly (first), while the other sees that the concept of legal security itself must be based on a narrow objective criterion to achieve the desired goal (second).

#### A. First Direction

The proponents of this view see legal security as merely a branch of security, which finds its source in natural law. In this sense, it reflects confidence in the competent legislative authority, which undertakes legislative tasks of various types and levels (Lilo, 2019, p. 127). Some add in this context that the guarantee given to each individual to exercise freedom, mobility, investment, and other fundamental rights and freedoms is that feeling of confidence that resides in every individual, natural or legal, which grants them trust in the legislative institution (Trial, 2006, p. 04).

#### B. Second Direction

The proponents of this approach agree on the necessity of a precise and narrow definition of legal security to serve the requirements of its achievement, especially as it relates to judicial jurisprudence. Accordingly, this narrow concept is primarily linked to the role of the legislative authority in ensuring the stability, consistency, and quality of legal positions, and the judicial authority's effort to unify judicial jurisprudence and create judicial consistency (Ihssad, 2015, p. 82). Most studies that refer to the narrow concept of legal security link it primarily to achieving two elements (Al-Omari, 2022, p. 17):

- The law must allow individuals to build expectations.
- The legal rule applied must be clear.

## 3. JUDICIAL JURISPRUDENCE AS AN INTRODUCTION TO STRENGTHENING LEGAL SECURITY AND ACHIEVING JUSTICE

The unrestrained application of judicial jurisprudence without any limitations or restrictions will undoubtedly pose a threat to the stability of legal positions and the rights and freedoms they establish. Therefore, several motives and reasons must justify allowing the administrative judge to engage in interpretation and innovation (First Requirement) while adhering to specific guidelines that form a fundamental pillar in the realization and consolidation of justice (Second Requirement).

### **3.1 Motives of Judicial Jurisprudence and Their Impact on Strengthening Legal Security**

Legal security is the solid foundation upon which the rule of law is built. It is a feeling instilled in every individual, granting them confidence in the legislative institution, which aims to place the stability and continuity of the law above all else. While it is true that there can be no jurisprudence in the presence of a legal text, this rule has exceptions that permit and encourage the administrative judge to search and innovate for various reasons and motives, in pursuit of achieving the principle of judicial security and embodying justice.

#### **3.1.1 Legislative Deficiency and Shortcomings**

Unlike ordinary judges, the administrative judge not only applies the rules of administrative law and interprets them in a manner appropriate to the case before them, but this very act is considered a form of jurisprudence. The administrative judge plays a proactive role, particularly when a legal text is available. However, they play an even more positive, serious, and bold role in crafting legal rules when there is an absence of legislative text (Zain, 2006, p. 108), utilizing tools of jurisprudence such as methods of interpretation and analogy in cases of ambiguity or legislative deficiency. This type of jurisprudence contributes to the development of administrative law theories and principles (Cossalter, 1999, p. 126).

Article One of the Algerian Civil Code states:

"The law applies to all matters dealt with in its text either explicitly or implicitly. If no legislative text exists, the judge shall rule in accordance with the principles of Islamic Sharia. If none exist, then in accordance with customary law. If that is also absent, then based on the principles of natural law and the rules of justice (Ordinance No. 75-58, 1975)."

#### **3.1.2 The Necessity of Resolving Disputes**

A judge who refuses to issue a ruling on the grounds of silence, ambiguity, or the insufficiency of the law can be prosecuted for denial of justice<sup>1</sup>, as stipulated in Article 4 of the French Civil Code:

"The judge who refuses to rule, on the pretext of silence, ambiguity, or insufficiency of the law, may be prosecuted as guilty of denial of justice (Article 4 the French Civil Code)."

This act is highlighted for its severity by the French legislature, which has imposed strict penalties for it under the French Penal Code, as outlined in Article 434-7-1 of the French Penal Code.

Similarly, Article 10 of Organic Law No. 04-11, which includes the Judicial Statute, states (04-11, 2004):

"The judge must rule on the cases presented before them in the best possible time frame." Additionally, Article 136 of the Algerian Penal Code stipulates (Article 136 of the Algerian Penal Code):

"Any judge or administrative official who refuses, under any pretext, to resolve a matter they are required to judge between the parties, after being requested to do so, and persists in their refusal after being notified or ordered by their superiors, may be prosecuted... "

This underscores the Algerian legislature's position that both ordinary and administrative judges are obligated to resolve the disputes brought before them, without accepting any excuse or reason for not doing so, even in the absence of legislative text. This reinforces the jurisprudential nature of the Council of State in particular (Organic Law No. 98-01, 1998), and administrative judiciary in general.

#### **3.1.3 Inequality Between the Parties in Administrative Proceedings**

In private law, where an accusatory nature prevails, an ordinary judge cannot take the place of the litigants in presenting their claims and evidence (Baali, 2009, p. 297) (Mahyou, 2008) (Talbah,

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1- The crime of denial of justice is based on a negative act by the judge, through which they refrain from adjudicating the dispute before them, whether for a reason or without cause.

2009), as the judge serves as a neutral arbiter between the parties. The judge cannot ease the burden on one party or increase it for the other. However, administrative judicial procedures, which are often described as investigative, differ. In such procedures, the administrative judge oversees and directs the process from beginning to end. The judge orders investigations, examines submitted documents, and may even intervene to compel the administration to provide the necessary documents (Article 819 of Law No. 08-09, 2008), ultimately evaluating the evidence presented.

The primary justification for the investigative nature of administrative proceedings stems from the fact that the two parties in an administrative dispute are not equal in their legal standing. Therefore, the administrative judge must intervene—compensating for this imbalance—to protect the rights and freedoms of individuals from the authority and privileges wielded by the administration over them. The judge's intervention ensures a fair balance between the parties. While the principle that "there is no jurisprudence in the presence of a legal text" holds true in general, it is not always applicable in administrative law, which inherently involves judicial interpretation.

### **3.2 Guidelines for the Practice of Judicial Jurisprudence and Their Impact on Upholding the Principle of Justice**

If no clear boundaries are set to regulate the jurisprudential role of the administrative judge, this will pose a significant threat to the principle of judicial security, potentially undermining the trust and reassurance that this security offers to litigants (First Section). These boundaries are essential for realizing and enforcing justice (Second Section).

#### **3.2.1 The Restrictive Limits on the Practice of Judicial Jurisprudence**

The principle of non-retroactivity of laws is one of the most important legal rules or principles in a state governed by law. It is a key outcome of the principle of legality, ultimately guaranteeing the protection of individuals' rights, freedoms, and legal positions. In contrast, judicial jurisprudence is retroactive by nature—in our view, this may occur without affecting the principle of acquired rights—because the interpretation of the law is the function of the judiciary, and changes in judicial jurisprudence are akin to changes in the law, applied to all ongoing disputes. However, this may pose a threat and danger to judicial security, as jurisprudence will be applied to all disputes, regardless of the timeline of events. This principle affects the notion of legitimate expectations and trust in judicial rulings (Ghellai, 2019, p. 228).

The central issue is the impact of the instability of judicial jurisprudence on upholding the principle of justice and the stability of individuals' legal positions. Naturally, the answer is that this retroactivity will undoubtedly pose a threat to the principle of judicial security, which we consider a key aspect of overall legal security. Consequently, the current state of Algerian judicial jurisprudence, as noted by Dr. Boubchir Mohand Amokrane, remains unclear and inconsistent overall, and its rulings are often conflicting. Even when they are not contradictory, they are not consistently applied or upheld in subsequent similar disputes (Amokrane, p. 17).

#### **3.2.2 The Impact of Judicial Jurisprudence in Serving Justice and Establishing the Rule of Law**

At the outset, we must agree that judicial jurisprudence plays a crucial role in ensuring the continuity of legislative rules by adapting them to facts and incidents. Legislation, characterized by its generality and abstraction, does not provide specific solutions for every dispute. This makes judicial jurisprudence an independent source of law, equal to other sources, as it specifies and updates legal rules. Without it, legislation would struggle to balance stability and continuity (Abdelnabawi, p. 43).

Despite the importance of judicial jurisprudence (Ihssad, p. 82) (Loushen & Boughel, 2018, p. 260) in filling gaps and clarifying ambiguities in legislation or legal rules, it can also pose a threat to judicial security, potentially undermining the stability of transactions and legal positions, thus harming the principle of justice among individuals and litigants. Many legal systems today are striving to implement fundamental mechanisms to firmly establish judicial security.

Judicial jurisprudence plays a prominent role in clarifying the ambiguities in legal texts. As a mechanism through which the judge eliminates uncertainty and obscurity in the law, it provides effective and fair legal solutions. However, this makes the task of interpretation particularly

difficult, as interpretation precedes application. Legal rules cannot be applied before they are interpreted, especially when their meaning is ambiguous and difficult to ascertain, which may disrupt the principle of justice among litigants.

Judicial jurisprudence has become a legal necessity, as it unifies judicial solutions and enhances predictability, thereby reinforcing legal security, clarity, stability, and foreseeability (Abdelnabawi, p. 45). However, accepting this viewpoint leads us to question whether the administrative judiciary in Algeria has effectively achieved judicial security, which is, in practice, one aspect of establishing the principle of judicial security (Abdelnabawi, p. 45).

It is important to remember that judicial jurisprudence serves as a source that nourishes the legal system. While legislation is connected to law, judicial jurisprudence is tied to the life of the law. Therefore, the law created by courts—judicial jurisprudence—is the living, dynamic, and evolving force that renews legal texts (Deumier, 2007, p. 56).

#### 4. CONCLUSION

In conclusion to this research paper titled "Judicial Jurisprudence and Legal Security," we have highlighted the role of judicial jurisprudence in upholding the principle of justice and establishing the principle of legal security, which is one of the main pillars of a state governed by law. This is fundamentally reflected in the principle of the supremacy of the law and its respect by both citizens and state institutions. To achieve this, an independent supreme judicial body must exist to oversee the application of legal rules by lower judicial bodies at all levels and ensure the creation, enrichment, and unification of judicial jurisprudence nationwide.

How can the Algerian Council of State fulfill its role of judicial jurisprudence in administrative matters, while also contributing to codifying and developing the principles of Algerian administrative law, especially during the phase of duality in the legal system, if its assigned competencies are diverse and numerous? Nonetheless, there is a consensus today that the administrative judge, through the avenue of judicial jurisprudence, has established the theories, rules, and fundamental principles upon which administrative law is based. These have also become the cornerstone of building a state governed by law and ensuring justice among litigants and individuals, to the extent that the administrative judge has come to be known as the judge of public service.

In conclusion to this study, we propose several recommendations summarized in the following points:

- The inclusion of the principle of legal security in the 2020 constitutional amendment is a significant constitutional guarantee that strengthens the safeguarded rights and freedoms. However, it requires effective mechanisms to ensure its implementation in practice.
- The activation of the jurisprudential role of the Council of State will only be practically achieved by expanding the jurisdiction of the Algerian Council of State. This will enable it to ensure the respect of the law and the unification of its application throughout the national territory, particularly through reconsidering its assigned competencies.
- The procedures established for the application of judicial jurisprudence should be considered a matter of public order from the first to the last instance. Additionally, the right to request a review—without being restricted by time limits—should be granted against any decision issued without considering judicial jurisprudence.
- We emphasize the importance of publishing judicial jurisprudence and recommend codifying and regulating it—at least at the level of the Council of State as a first phase—to facilitate access to and review of this jurisprudence by judges.
- We suggest learning from the experiences of certain comparative legal systems that have established specialized technical circles and bodies within the higher judicial authorities, dedicated solely to regulating, selecting, and publishing all matters related to judicial jurisprudence. A notable example is the technical office of the Egyptian Court of Cassation and the Documentation and Research Department of the French Court of Cassation.



- The administrative judge must be convinced that their jurisprudence is a means to the proper application of the law and the establishment of the rule of law, by filling the gaps that exist in legislation and clarifying the ambiguities it contains. This can only be achieved by aligning legislative developments with judicial jurisprudence.

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