

LEGAL SECURITY IN ALGERIA: A STUDY IN THE INTERNATIONAL AND NATIONAL CONTEXTS

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Abstract

Legal certainty represents one of the most important research topics due to its connection with a range of fundamental legal principles, such as the rule of law and sub-principles like the stability of transactions and the respect for acquired rights. This has led to various studies on the topic by scholars both globally and in Algeria. This paper aims to make a significant and qualitative contribution by clarifying the different concepts of legal certainty, attempting to establish characteristics for this concept, and then outlining the position of the Algerian legal system on it.

Keywords: *legal security, constitutionalization, stability of legal positions*

INTRODUCTION

The evolution and increasing complexity of life have served as a catalyst for activating the social role of law, pushing legislators to constantly draft new laws to meet these changing demands. However, this ongoing legislative activity has led to the neglect of certain important rules in legal drafting and has resulted in a proliferation of laws, causing them to become a source of insecurity. This insecurity stems from the inability to track the development of these laws and fully comprehend their content. As a result, the idea emerged to describe this situation, which was named legal security, or similar terms like legal certainty.

However, the idea of legal security was not universally embraced but rather met with skepticism. Some even considered it a mere illusion based on subjective desires, far from any objectivity. Yet, the worsening state of legal insecurity made legal security a global demand, revealed by judicial decisions, developed by legal scholars, and eventually adopted in legislation, whether explicitly or implicitly.

Based on this, the main issue addressed in this research paper is: How do various global legal systems, and Algeria in particular, perceive the concept of legal security?

To answer this question, we will employ the descriptive method to study the concept of legal security, the analytical method to interpret legal texts and judicial decisions, and occasionally, the comparative method to understand how different systems approach this concept.

To address this issue, we will divide our research into two parts:

1. The Concept of Legal Security
2. The Position of the Algerian Legal System on Legal Security

1- The Concept of Legal Security.

The concept is fundamental to understanding ideas, and it does not emerge by chance but is the result of continuous effort. Therefore, we will outline here the various attempts to define the concept of legal security and then identify its key characteristics.

A. Defining the Concept.

Legal security has been a subject of great interest across different legal research contexts. It was first brought to light by the judiciary (a), then the judiciary sought to refine and develop the idea (B), eventually leading to its adoption by some legislations (b), as we will illustrate below.

a. The Judicial Concept: The judiciary was the revealing source of legal security, with Germany being the pioneer in this regard. This can be demonstrated through the constitutional legacy of the



German Constitutional Court. In one of its rulings, BvL 23/51, dated July 1, 1953, it stated: "Constitutional law is not solely composed of the written rules in the constitution; it also includes some general ideas and principles, including the rule of law, which is based on guaranteeing legal certainty (security) as an essential element. This requires not only an organized legal process but also assured outcomes."

In another ruling, 1BvL 106/53, dated December 18, 1953, legal security was considered one of the subsidiary principles of the rule of law, which must be respected by constitutional institutions as it guarantees the security of legal positions—a fundamental goal of the law that must be preserved. Furthermore, this principle became one of the foundations for the unification of East and West Germany. Ensuring legal security necessitated respect for all administrative decisions made prior to unification, so as not to infringe upon legal positions and the rights derived from them. (CCFA, 04-12-2021)

Following this, the principle of legal security was formally recognized by the Court of Justice of the European Communities (CJEC) on March 22, 1961, in the "S.N.U.P.A.T joint cases Nos. 42 and 49-59". Additionally, in its "judgment C-17/03", issued on June 7, 2005, the Court stated: "The principle of legal certainty specifically requires that regulations be clear and precise, and that their application is foreseeable for litigants" , Furthermore, in "Case C-435/00, Kühn & Heitz NV and Productschap voor Pluimvee en Eieren", dated January 13, 2004, the Court emphasized that legal security requires challenges to be made within reasonable deadlines to ensure the stability of legal situations, preventing continuous instability. The European Court of Human Rights (ECHR) followed this line of reasoning in the case "Marckx v. Belgium, Case No. 6833/74 ", dated June 13, 1979.

These decisions were instrumental in promoting the concept of legal security across European nations. In Belgium, for instance, a ruling by the Constitutional Court held that legal security requires the content of the law to be predictable (Delpérée Francis, 1999-2000, p. 120). In "judgment No. 59/99" of May 26, 1999, it was ruled that violating legal security infringes upon individuals' legitimate expectations. Similarly, in "judgment No. 48/2016" of March 24, 2016, the Constitutional Court reinforced this principle. Belgium's Court of Cassation also acknowledged this principle in its 2003 report, recognizing it as a key interpretive standard, critical for both law-making and enforcement.

France adopted a similar approach. In 1991, the French Council of State highlighted concerns regarding the poor quality and excessive volume of legislation. However, as these issues persisted, the Council issued a second report in 2006, defining legal security as "a state in which citizens can easily understand the laws and their prohibitions, requiring clear, comprehensible, relatively stable, and predictable standards. "This led the French judiciary to apply this principle in European-related cases, notably in the famous ruling of "SOCIETE KPMG et autres, decision No. 288460 " on March 24, 2006. Subsequent rulings, such as "decisions No. 468221 and No. 465308 " in 2023, highlighted the importance of transitional provisions in ensuring legal security. The courts also rejected, for the sake of this principle, leaving the door open for legal challenges, as it would undermine legal stability, even in cases of fraudulent tax benefits.

Furthermore, the French Court of Cassation, in recent 2020 rulings, affirmed that: "The principle of legal certainty entails the ability to access and predict new rules, fundamentally representing the right to actual access to a judge." In another decision, it described legal certainty as "one of the components of a fair trial".

Despite these judicial decisions, a proposed constitutional article aimed at codifying the principle of legitimate expectations—considered by some researchers as the French equivalent of legal security—was rejected. The proposed article read as follows (MEYLAN, 2000): Before the first paragraph of Article 34 of the Constitution, two paragraphs are added as follows:

- The law must be certain, and its application must be foreseeable by citizens.
- The law shall apply only to future events and may have retroactive effect only when the intended goal exceptionally requires it, provided that the legitimate trust of citizens is duly respected.

In the Arab context, there are some rulings that reference this concept. In Tunisian jurisprudence, the Court of Cassation, in its decision No. 27632 dated April 24, 1997, held that the theory of appearances, which respects matters that have remained settled for a long period, constitutes a recognition of legal security in legal relationships. Similarly, the Iraqi Court of Cassation emphasized that protecting the principle of transaction stability is achieved through good



faith. In "Civil Decision No. 412", dated July 26, 2015, the court prohibited the annulment of a public auction sale from 1990 due to the appearance of a new heir, as such a decision would undermine trust and affect the legal positions of the beneficiaries of that sale. Additionally, in "Civil Decision No. 277", dated September 25, 2017, the court rejected any challenge to a registration in the land registry after proper procedures were followed, considering any contradiction a threat to transactional stability.

In these rulings, the courts protected the legal security of individuals, recognizing that their stability is the material aspect of their legal security.

b. The Doctrinal Concept: After the judicial establishment of legal security, legal scholars have focused on defining this concept precisely. While some scholars argue that legal security is merely an illusion or a speculative project that cannot be accurately conceptualized (MORARD, 2008, p. 412) (FATOUBOS, 1963, pp. 121-125), its proponents have managed to provide various definitions, affirming its conceptual reality despite differing views on its definition.

One group of scholars, following Jeremy Bentham, defines legal security as: "A principle aimed at protecting and anticipating the future, requiring that the law, as much as possible, secures this anticipation" (Tulkens, 1990, p. 27) Eric Capron, on the other hand, views legal security as: "The quality of a legal system that guarantees citizens understanding and confidence in the law at a specific time. It represents a translation of the necessary requirements for the quality of law and its predictability." (Ourak, 2018, p. 47)

Some scholars attempt to define it based on the conditions that led to its emergence, describing it as: "An antidote to legal insecurity, and a reaction to the sense of legal uncertainty experienced by individuals concerning laws (Grech, 2015, p. 406), Others consider it a commitment from the three branches of government to avoid any actions that could undermine stability or disrupt trust and confidence, which might destabilize the public's trust in the state and its laws (Al-Akili, 2019, p. 15).

Another perspective defines legal security as synonymous with stability, describing it as: "The presence of clear and certain legal rules that regulate legal positions, ensuring predictable outcomes so that every individual can anticipate and rely on these results" (Hassan A. I., 2001, p. 180).

As for the second group of scholars, due to the difficulty in arriving at a universally accepted definition, they have taken a different approach by treating legal security as a core concept encompassing several subsidiary principles. These include: non-retroactivity of laws, respect for acquired rights, ease of material and moral access to the law, quality of legislative drafting, consistency of legal standards without conflicts, stability and permanence of laws, and avoidance of legal text proliferation, among others. Consequently, they attempt to define legal security through the functions it seeks to achieve, which are aligned with the functions of other principles.

For instance, researcher "Thomas Piazzon" defines it as: "The ideal of reliability through the accessibility of rights, the ability to predict the legal consequences of actions, and the embodiment of respect for the legitimate expectations of those subject to the law." (Piazzon, 2010, p. 61) , "Rémy Cabrillac" defines legal security as: "The ideal state that the law should achieve, characterized by having coherent and relatively stable texts, and being accessible, which allows individuals to build their expectations." (Piazzon, 2010, p. 61)

"Rémy CABRILLAC" defines it as: 'The ideal state that the law should achieve, which includes coherent and relatively stable provisions, and is accessible in a way that allows individuals to build their expectations.' On the other hand, 'Moderne' views it as: 'A matrix of principles that encompasses a set of partial principles aimed at achieving similar objectives, including: legitimate expectations, non-retroactivity of laws and administrative procedures, the principle of stability of contractual relationships, and the principle of legal accessibility (DALIL, 2015, p. 122).

As for us, we see legal certainty as: a blend of interests/ it does not mean stability as it would stifle the legislator/ a general principle that includes partial principles/ it balances between static and dynamic certainty.

B.Characteristics of Legal Certainty: The concept of legal certainty has several features, including:

a. Objective Characteristics:



- **Judicial Source:** The judiciary plays a crucial role in discovering legal certainty, as explained above. Due to the extensive use of this term, one researcher has compared it to "the opium of judges," which is supported by the following statistics (Brunet, 2007, pp. 247-250):

Figure (01): Table Showing the Frequency of the Term "Legal Certainty" Usage"

| Years | Number of Times Used |
|-----------|--|
| 1967-1982 | 64 times |
| 1988-1990 | Approximately 50 times |
| 1998-2002 | 303 times |
| 2012 | 162 out of 687, which constitutes 25% of total judgments |
| 1962-2012 | 2500 judgments containing this expression |

Source: Prepared by the researcher based on statistics from Jérémie van Meerbeeck, *De la certitude à la confiance, p19.

- **Natural Vitality:** This characteristic arises from how researchers adapt the concept. It can be viewed as:

- A General Principle: According to Patricia Popelier, it is a general principle for enacting appropriate laws, serving as a tool for coordinating policies across sectors, thereby becoming the legislative absolute in legal design. (Chowdhury, 2014, p. 52)

- A Standard: For the French Court of Cassation, it is a standard for a fair trial. Eric Carpon considers it a standard for the quality of the legal system. It is a standard for the rule of law in Germany, as mentioned in the judicial definition, and a standard for confidence in the legal and judicial system according to the Algerian Court of Conflicts (Algerian Court of Non-Dispute, File No. 000114, 2012).

- A Goal: Some view it as a goal of the law. For example, the German Constitutional Court sees it as a goal for maintaining peace between legal entities.

- A Requirement or Need (besoin ou exigence): Many legal scholars view it in this way. Démougue sees it as "the central driving force behind social, economic, and legal desires." (Demougue, 1996, p. 63) Roubier, in his classification of social values, considers legal certainty to be "the primary social value that must be achieved." Carbounier describes it as an innate value, stating: "Legal certainty is the fundamental legal need, if we dare say the innate need." According to Ehring, wealth and personal rights are meaningless if not safeguarded by the value of certainty (Ripert, 1955, p. 133).

- A Right: This approach was adopted by the Belgian Court of Cassation in a ruling dated March 27, 1992, which stated: "The general principles of good administration include the right to legal certainty... This right specifically means that citizens should be able to trust public services." The European Court, in its decision *Fiatagri UK Limited and New Holland Ford Limited v. Commission of the European Communities*, aff T-34/92, issued on October 27, 1994, affirmed that the right to legal certainty in transactions must be guaranteed.

b. Formal Characteristics:

- Dynamic Framework: This refers to a general principle that includes several elements such as clear drafting, physical and formal accessibility, predictability, consistency between legal texts, logical processing, non-retroactivity of laws and administrative decisions, acquired rights, legal stability, and reasonable deadlines. It is a subsidiary principle to some major principles such as the rule of law and fair trial.

- Flexibility: Flexibility represents the ability to respond to changes and adapt to new developments. It serves as a basis for comprehensive development. The above characteristics make legal certainty a flexible concept that can be relied upon for legislative reform, judicial interpretation, and balancing various conflicting interests and legal positions.



2- The Position of the Algerian Legal System on Legal Security

We can understand the stance of the legal system in Algeria by analyzing its official sources, which are judicial rulings, legislation, and decisions of the Constitutional Court.

A. The Judiciary's Position.

Algeria adopts the Latin judicial system, characterized by a dual judiciary, consisting of the ordinary judiciary (a), the administrative judiciary (b), and the Court of Conflict (c), as follows:

a. The Supreme Court's stance on legal security: The Supreme Court has a clear position on legal security, as evidenced by Decision No. 43,301 of the Family Affairs Chamber on 22/09/1986, which refused to annul a contract 50 years after its issuance due to the potential harm to transaction stability. Another example is Decision No. 1206937 on 11/05/2021, which prohibited acquisitive prescription in surveyed areas, based on the principle of the absolute force of survey results. This decision was praised by the First President of the Supreme Court (currently the Minister of Justice), who emphasized that it protects property rights by confirming the legal validity of land registration certificates issued based on land surveys, against acquisitive prescription claims. The goal is to provide legal protection for investors and ensure legal security, promoting economic development and encouraging both national and foreign investment (Tabi, March 31, 2021).

b. The Council of State's stance: The Administrative Chamber was the first to implicitly reveal this principle when it annulled an administrative decision by Decision No. 37,578 dated 23/11/1985. The decision had granted a commercial property to one person, although the property had already been legally granted to another person according to final judicial rulings. The court ruled that the administrative decision clashed with the concept of the stability of individuals' legal status. Additionally, it refused to annul an administrative decision 17 years after it was issued (the decision was in 21/10/1992, and the appeal was on 08/11/2009). It thereby established a legal principle stating that preserving the legal security of administrative decisions and avoiding disputes over their legality after an extended period requires reasonable time limits for appeals. Moreover, in Decision No. 122328 of 2018, it prevented laws from having retroactive effects, as this could threaten acquired rights and stable situations. In Decision No. 072515 of 2012 (Council of State Journal, Issue: 16, 2016, pp. 193-198), it was stated that after the legal appeal deadlines expire, the administration cannot cancel its decisions except through the judiciary, respecting the rule of protecting acquired rights and maintaining the stability of both public and private transactions (Council of State Journal, Issue: 11, 2013, p. 146).

c. The Court of Conflict's stance: The Court of Conflict is the first judicial body in Algeria to explicitly issue a ruling on legal security. This ruling provided an opportunity to define the interactive relationship between legal security and a range of principles. The court considers that exceptions to the principle of non-retroactivity of laws can be introduced if the strict application of this principle threatens legal or judicial stability, or acquired rights and legal statuses. Such a situation would undermine confidence in the legal and judicial system. Through this, it becomes clear that protecting legal security is essential to safeguarding confidence in the law, both in its static and dynamic forms (judicial decisions) (Court of Conflict, Case No.: 000114,, 2012, pp. 468-475).

B. The Position of the Algerian Constitution.

Since its independence in 1962, Algeria has had several constitutions, but none of these constitutions explicitly mentioned the concept of legal security. However, the 2020 Constitution (Presidential Decree No. 20-442,) introduced a clear provision that gives constitutional status to this principle. Article 34/04 states: "To achieve legal security, the state ensures, when enacting legislation related to rights and freedoms, that it is accessible, clear, and stable." Additionally, the preamble emphasizes: "The Constitution guarantees the separation and balance of powers, the independence of the judiciary, legal protection, oversight of the work of public authorities, and the assurance of legal and democratic security".



C. The Position of the Constitutional Court.

The Constitutional Court, which is responsible for ensuring compliance with the constitution, has had several opportunities to affirm the principle of legal security directly. One example is its refusal to declare Article 643 of the Administrative Procedures Law unconstitutional, (Official Journal No. 55 of 2023) on the grounds that it does not require notification for the registration of a seizure order in the land registry. The court ruled that the principles of legal security and urgent judicial action require this to protect the creditor's interests.

In another decision, the court clarified the concept of interpreting a constitutional provision. Such interpretation must not be isolated from other related constitutional provisions, as the constitution, in its superior and elevated status, forms an indivisible system. The interpretation must not deviate from the goals and purposes for which the provisions were enacted, and must not be read outside their true meaning or context (Official Journal No. 59 of 2023). Furthermore, if the parties in a dispute believe that certain legal rules violate constitutional principles, they have the right to invoke the unconstitutionality of those rules. The purpose of this is to uphold the principle of the supremacy of the constitution and maintain legal security, as both are manifestations of a state governed by the rule of law.

CONCLUSION

Based on what has been discussed in the core of this research, it can be said that the concept of legal security is a universal idea. It has been recognized in many legal and judicial systems, and this has led the legal system in Algeria to adopt it as well. It has been enshrined as a constitutional principle under Article 34/04 of the 2020 constitutional amendment, making it a binding principle for all authorities in Algeria. This applies both when drafting laws with precise wording and ensuring their publication, which allows for both intellectual and material enforcement, and when applying them by the judiciary, where the legitimate expectations of individuals must not be violated, taking into account rules of interpretation.

Therefore, here are some recommendations regarding legal security in Algeria:

- Continuing scientific research on legal security to benefit the legal system in Algeria and ensure the protection of rights and legal positions.
- Defining precise criteria that allow for the measurement of legal security so that it is not just a theoretical concept disconnected from reality.
- Revising Article 03/04 of the Algerian Constitution to include other components of legal security, such as drafting, respecting acquired rights, and the hierarchy of laws.

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