

THE IMPACT OF LEGAL SECURITY ON PROMOTING INVESTMENT ACTIVITY IN ALGERIA

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Abstract

This research addresses the importance of legal security in the development and support of national investment by clarifying the concept of legal security and exploring its constituent elements. It also highlights the key laws related to investment activity, which every investor reviews in order to gain an understanding and familiarize themselves with the legislative policy of the country hosting their investment before proceeding with the investment. To achieve this, developing countries make changes and amendments to their laws to provide the greatest guarantees and incentives for investors, as well as work on developing a judicial system that ensures the necessary protection for these investment activities.

Keywords: investment, legal security, legislative stability, investor.

INTRODUCTION

Development represents a strategic goal for developing countries, and investment is one of the most prominent solutions to achieving this development due to its importance in the short term by providing the necessary financial resources to support planned projects and, consequently, achieve social security. In the long term, it contributes to acquiring local scientific and technical expertise, which can later be invested in independent investment projects. However, this requires creating an investment-friendly environment that can attract investors.

However, a review of the current situation in Algeria reveals that it is characterized by instability, which has resulted in the lack of significant foreign investment inflows. This led the constitutional legislator to enshrine the freedom of investment as a constitutional right, ensuring its protection. In the 2016 constitutional amendment, it adopted the approach of improving the business climate, stating: "Freedom of investment and trade is recognized and exercised within the framework of the law, while the state works to improve the business environment and encourages the flourishing of institutions without discrimination for the benefit of economic and national development."¹ This was further reinforced in the 2020 constitutional amendment,² making investment a pillar for reducing social inequalities and eliminating regional disparities by building a productive and competitive economy within the framework of sustainable development.

However, the activation of investment can only be achieved by enshrining legal security, a principle highlighted by the new constitutional amendment. This makes the subject highly significant, especially after the issuance of numerous investment laws in Algeria, the latest of which is Law 22-18 related to investment. Therefore, it is necessary to define the foundations of legal security needed to provide a conducive environment for attracting investments, as well as highlighting the legal obstacles faced by investors in realizing their projects.

Based on the above, the research problem to be addressed is: What is the concept of legal security in the investment context? And how effective is legal security in improving the investment climate?

To achieve this, we structured our plan into two sections: the first focuses on highlighting the conceptual aspect of the topic, while the second addresses the practical implementation of legal security in the investment sector.

Section One: The Conceptual Framework of Legal Security in the Context of Investment

Legal security is a concept that has yet to achieve a universally accepted definition. Therefore, it is necessary to explore its various definitions (Section 1) and then identify the concepts related to investment (Section 2) to clarify their interactive relationship in support of the national economy.

¹ See Article 43 of Law No. 16-01, which includes the constitutional amendment, Official Gazette of the People's Democratic Republic of Algeria (abbreviated as J.R.), Issue 14, dated March 7, 2016

² Refer to Article 61 of Presidential Decree No. 20-442 dated December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum of November 1, 2020, in the Official Gazette of the People's Democratic Republic of Algeria, J.R. No. 82, Year 2020."



Section 1: The Concept of Legal Security

The concept of legal security requires examining the different actors that have attempted to define it, whether at the judicial or doctrinal level (Subsection 1). This allows for its deconstruction to determine its subcomponents (Subsection 2).

Subsection 1: Definitions of Legal Security

(1) Judicial Definitions of Legal Security¹

Numerous legal institutions have contributed to defining legal security, as the judiciary has played a pivotal role in shaping this concept. The German Constitutional Court was a pioneer in this regard, emphasizing that legal security is a fundamental element and a central pillar of the rule of law. It consists of clear, unambiguous legal rules and consistent standards, coupled with an organized legal process that ensures predictability. The court obligated the legislature to adopt this principle during the legislative process.

This principle subsequently gained prominence in various judicial bodies, enriching its understanding. The Court of Justice of the European Union (CJEU), in the *S.N.U.P.A.T.* case, and the European Court of Human Rights (ECHR), in the *Marckx* judgment, adopted it as one of the recognized principles of the European legal system. Under the influence of these bodies, the principle permeated the national courts of EU member states.

In France, a 1991 report highlighted the declining quality of the legislative process, reiterating this concern in 2006. It asserted that legal security requires citizens to easily discern what is permissible or prohibited under the law. Consequently, legal rules must be clear, comprehensible, and devoid of ambiguity, avoiding sudden and frequent changes. This principle was officially recognized by French judicial authorities through administrative court rulings.² Subsequently, ordinary courts embraced the concept, emphasizing that its essence lies in ensuring free access to law and justice³. This demonstrates the consistency of judicial outcomes in France, as they derive their principles from a single source (the Constitution and various Declarations of the Rights of Man).

(2) Doctrinal Definitions of Legal Security

Among the doctrinal definitions of legal security, some define it as: *"The foundation of the natural right of humans to feel secure, encompassing the sense of safety from tangible threats to one's person, property, and rights, as well as freedom from constraints that hinder fulfilling one's needs, combined with a sense of social justice."*⁴ This definition aims to address security broadly, protecting human activity across various domains, such as economic and social fields. Another definition describes it as: *"All guarantees that ensure the proper execution of obligations and prevent uncertainty in the application of the law, thereby safeguarding individuals' right to security."*⁵

Subsection 2: Elements of Legal Security

Legal security is based on several components and principles, the most important of which are:

1. Ease of Access to and Awareness of Legal Rules:

This is achieved through the publication and dissemination of laws in the official gazette, which serves as proof of the existence of legislation and the date of its entry into force. The official gazette is the

¹ These definitions are discussed in: Nabil Khadem, *"The Impact of Legislation by Orders on Legal Security: A Comparative Study Between Algeria and France,"* *Journal of Judicial Ijtihad*, Vol. 13, No. 28, 2021, pp. 683-684.

² Legal security is a legal principle aimed at protecting citizens from the negative side effects of law, particularly inconsistencies or the complexity of laws and regulations, as well as their excessively frequent changes (legal insecurity). This principle encompasses several requirements. Laws must be... *Report of the French Council of State, Legal Security and Complexity of Law*, France, French Documentation, 2006. <https://www.conseil-constitutionnel.fr/>.

³ For more information, see: French Court of Cassation, Civil Chamber 2, March 19, 2020, No. 19-12.990.

⁴ Belhamzi Fahima, *"Legal Security of Rights and Freedoms,"* (Doctoral Thesis), specialization: Public Law, University of Mostaganem, 2017-2018, p. 27.

⁵ Badawi Abdel Jalil and Hanan Ali, *"The Concept of Legal Security and Its Requirements,"* *Journal of Public Function Studies*, Vol. 04, No. 08, 2021, p. 04.

sole means of confirming a law's validity, as no other form of announcement can replace it¹. This accessibility facilitates the predictability of legal rules, as one of the objectives of legal security is to ensure relative—not absolute—stability of laws and regulations, as well as to foster the concept of legitimate trust.²

2. Respect for Acquired Rights:

An acquired right is defined as: "A legal status that protects the benefit obtained by a person through a law or administrative decision from being modified or revoked." The protection of acquired rights involves a balance between the principles of legal security and legality. While legal security requires safeguarding the rights individuals have obtained, the principle of legality mandates the withdrawal of any unlawful decision, regardless of the rights it has created. This principle prohibits infringing on the lawful rights of individuals—whether by other individuals or public authorities—provided these rights were acquired legally, especially those related to fundamental freedoms, such as property rights.³

3. Equality Before the Law:

This principle implies that legal rules must be general and abstract, applying equally to all those who meet their conditions and criteria. This ensures equality among individuals subject to the law.⁴

4. Non-Retroactivity of Laws:

Both the principles of legality and legal security agree that new laws should not apply to actions or events that occurred before their enactment. This is because such actions were based on the legislation in force at the time, which individuals were presumed to be aware of. Consequently, it is impermissible to subject these actions to laws that were not in effect and whose provisions could not have been known.⁵

The legislator enshrined the principle of legal security in the Algerian Constitution through the 2020 constitutional amendment. Article 34/4 states: "To achieve legal security, the state ensures, when enacting legislation related to rights and freedoms, that the laws are accessible, clear, and stable." This constitutional guarantee serves as a significant incentive for investment in Algeria.

Section 2: Legal Foundations of Investment

Investment is based on a large legal framework, as investment legislation alone is insufficient to address all issues related to this topic. Therefore, accompanying laws are necessary to avoid legislative shortcomings on one hand and to maintain legal coherence by avoiding the inclusion of topics that may only be marginally or supplementary related to investment. Hence, we will break this down into laws related to investment (Subsection 1) and complementary laws, particularly those related to finance and real estate, as they are essential tools for implementing investment ideas (Subsection 2).

Subsection 1: Investment Laws

A review of the investment laws in Algeria shows that over a quarter of a century, three investment laws have been enacted, most of which were accompanied by significant amendments. These laws are as follows:

(A) Ordinance 01-03 on Investment Promotion:⁶

This ordinance has been amended several times, the most notable amendments include:

¹ Ismail Jabo Rabi, "The Foundations of the Concept of Legal Security and Its Elements," *Transformations Journal*, Vol. 01, No. 02, 2018, p. 194.

² Wahib Abdel Wahab, "Legal Security and Its Impact on the Stability of Legal Transactions," article published on the website of the Moroccan Virtual Legal University: <https://www.aljami3a.com>.

³ Omar Zghoudi, "The Previous Reference," p. 84.

⁴ Badawi Abdel Jalil, "The Previous Reference," p. 08.

⁵ Mariam Yahia, "Legal Security and Foreign Investments in Algeria," *Journal of Legal Studies and Research*, University of M'sila, Vol. 03, No. 02, June 2018, p. 56.

⁶ Order No. 01-03 dated August 20, 2001, concerning Investment Development, Official Gazette No. 47, published on August 22, 2001.



1. Amendment by Ordinance 06-08 on Investment Promotion¹:
This was a major amendment affecting 9 articles: 3, 4, 6, 7, 9, 11, 12, 18, and 33. In contrast, 5 new articles were introduced: Articles 7 bis, 12 bis, 12 bis 01, 32 bis, and 32 bis 01. Two articles, 19 and 20, were repealed.

2. Amendment by the 2009 Supplementary Finance Law:
This law introduced a series of amendments to Ordinance 01-03, notably concerning the non-retroactivity of laws. Article 58, paragraph 5, stipulated that "*foreign direct investments or joint ventures must provide a surplus of foreign currency to Algeria during the entire duration of the project,*" which meant that foreign investors were required to bring more foreign currency into Algeria than they would take out. It also introduced a minimum partnership requirement under Article 58, paragraph 2, specifying that foreign investments could only be made in partnership where the national contribution was at least 51%, which affected the freedom of investment guaranteed by Article 04 of Ordinance 01-03.

3. Amendment by the 2010 Finance Law²:
Article 48 of this law subjected investments related to cultural activities, particularly in cinema and publishing, to the provisions of Ordinance 01-03.

4. Amendment by the 2010 Supplementary Finance Law³:
Article 04 bis of this law lowered the national contribution requirement to 30% and clarified provisions related to the right of preemption for the state and economic institutions.

5. Amendment by the 2013 Finance Law⁴:
This amendment clarified exceptions for foreign investors, exempting them from the provisions of Article 04 bis, and introduced incentives such as exemptions from registration fees, real estate transaction costs, and amounts related to the right of privilege on granted properties.

6. Amendment by the 2014 Finance Law⁵:
This amendment reinstated the 49-51% national ownership requirement for investments related to "import activities for resale in the same condition."

7. Amendment by the 2015 Finance Law⁶:
Article 74 of this law amended Article 09 of Ordinance 01-03 and introduced a new set of incentives to support investment, including customs exemptions for goods directly involved in investment projects.

(B) Investment Law 16-09⁷:
After the instability of the previous investment laws, the Algerian legislator decided to enact a new law, Law 16-09. This law was a direct result of the 2016 constitutional amendment, which enshrined investment freedom as a constitutional right. It aimed to create an environment conducive to investment to promote the national economy.

(C) Investment Law of 2022⁸:
This law came with a vision for a new Algeria, focused on moving away from an oil-dependent economy towards sustainable investment. Its goal was to activate investment, thereby enabling long-term development projects without being tied to fluctuations in oil prices.

Section 2: Laws Supporting Investment

¹ Order No. 06-08 dated July 15, 2006, amending and supplementing Order No. 01-03, Official Gazette No. 47, published on July 19, 2006.

² Order No. 09-01 dated July 22, 2009, containing the Supplementary Finance Law for the year 2009, Official Gazette No. 44, 2009.

³ Law No. 09-09 dated December 30, 2009, containing the Supplementary Finance Law for the year 2009, Official Gazette No. 78, published on December 31, 2010.

⁴ Order No. 10-01 dated August 26, 2010, containing the Supplementary Finance Law for the year 2010, Official Gazette No. 49, published on August 29, 2010.

⁵ Law No. 12-12 dated December 26, 2012, containing the Finance Law for the year 2013, Official Gazette No. 72, published on December 30, 2012.

⁶ Law No. 14-10 dated December 30, 2014, containing the Finance Law for the year 2015, Official Gazette No. 78, published on December 31, 2014.

⁷ Law No. 16-09 dated August 3, 2016, concerning the Promotion of Investments, Official Gazette No. 46, published on August 3, 2016.

⁸ Law No. 22-18 dated July 24, 2022, concerning Investment, Official Gazette No. 50, published on July 28, 2022.

The laws supporting investment primarily include real estate laws, as real estate is the focal point of investment operations, as well as tax laws, which serve to extend the project over time, benefiting the social development of the state.

(A) Real Estate Laws:

The demand for real estate is considered a pivotal indicator in the equation of development, which necessitated the establishment of real estate laws that support investment, particularly foreign investment, which relies on the stability and suitability of these laws to carry out its long-term projects. Given the importance of real estate in supporting the investment sector, real estate legislations have become a key legal framework supporting development, requiring tight regulation to ensure stability in legal positions and guarantee clarity and consistency, facilitating the implementation of investment projects.

However, real estate laws, especially industrial laws, are in constant motion due to the lack of a stable visionary outlook, which led to the issuance of Ordinance 06-11 to define the conditions and procedures for granting concessions and transferring lands from public property for investment projects.

To facilitate its implementation, several executive decrees were issued, including Executive Decree 07-121¹, which applies the provisions of Ordinance 06-11, as well as a decree establishing the National Agency for Real Estate Mediation and Regulation,² and a decree organizing the Committee for Assistance in Determining Sites and Promoting Investments and Regulating Real Estate.

However, this legal framework was reviewed within just one year, with the cancellation of Ordinance 06-08 by Ordinance 08-04, which defines the conditions and procedures for granting concessions on state-owned lands for investment projects³. This was followed by two executive decrees, the first of which defined the conditions and procedures for granting these concessions, and the second, which outlined the conditions and procedures for granting concessions on remaining assets of liquidated public institutions and surplus assets of public economic institutions.

Continuing the lack of legislative stability, subsequent finance laws amended Ordinance 08-04. The first amendment came with Law No. 11-11, the Supplementary Finance Law of 2011, which amended Articles 3, 5, 8, and 9 of the ordinance and repealed Articles 6 and 7. It was further amended by Articles 32-34 of Law No. 12-12, the Finance Law of 2013, and then again by Ordinance No. 15-01, the Supplementary Finance Law of 2015. Finally, it was amended by Law No. 19-14, the Finance Law of 2020.

These repeated changes to both the Investment Law and the legislation governing industrial real estate undermine the credibility of the legal system of the host country and pose a threat to the trust of economic operators, who have the legitimate right to enjoy the preservation of the legal statuses arising from the law.

(b) Tax Laws:

Taxes and fiscal policies are among the most significant factors influencing the attraction or deterrence of foreign investors. Accordingly, the Algerian legislator, through investment laws, has introduced tax exemptions for investors for a specified period and in specific regions. However, this does not provide sufficient guarantees for investors, prompting some countries to exempt foreign investors from taxes for a certain period regardless of the location of their activities, even outside tax-exempt or guaranteed zones. This is particularly relevant in cases of double taxation⁴, where an investor may be exempted from paying taxes in the host country if they are taxed in their home country, or vice versa.

¹ Executive Decree No. 07-121 dated April 23, 2007, concerning the application of the provisions of Ordinance No. 06-11 dated August 30, 2006, which defines the conditions and procedures for granting concessions and transferring lands from private property for investment projects, Official Gazette No. 27, issued on April 25, 2007.

² Executive Decree No. 07-119 dated April 23, 2007, concerning the establishment of the National Agency for Real Estate Mediation and Regulation and defining its basic law, Official Gazette No. 27, issued on April 25, 2007.

³ Ordinance No. 08-04 dated September 1, 2008, defining the conditions and procedures for granting concessions on state-owned lands designated for investment projects, Official Gazette No. 49, issued on September 3, 2008.

⁴ Adnan Ibrahim Malkaoui Beshar, "Legal Stability and Its Role in Attracting Foreign Investment," *Arab Researcher Journal*, Vol. 01, No. 01, 2020, p. 19.



In this regard, it is advisable for the host country to establish a specialized tax system that supports the types of investments it seeks to attract over others. It is not necessarily appropriate to treat all investments equally. For example, is the investment focused on extracting and processing natural resources? Is it directed toward finding a market for local goods and services that can replace imports? Or is the investment aimed at increasing exports by improving production efficiency? Such considerations should reflect the host country's priorities¹ and address its specific needs for each type of investment.

Section Two: Implementing Legal Security in Investment

Legal security is one of the most important principles underpinning investment. Therefore, it must be adopted and embedded within the legal system of nations, both at the legislative level (First Requirement) and the judicial level (Second Requirement). This will be detailed as follows:

First Requirement: Legislative Manifestations

Legislation serves as the framework governing various investment matters, reflecting the philosophy of the state. Therefore, the manifestations of legal security in investment appear within the legislation itself through ensuring its stability (First Subsection), as well as through the incentives provided in various laws (Second Subsection).

First Subsection: Legislative Stability

We will clarify its concept and the sources from which it derives its strength:

(First) Its Concept:

Like any contract, investment agreements create a series of obligations for all parties involved. Thus, it is essential to provide guarantees for enforcement and protection of the acquired rights of both parties. Since the state, being the sovereign authority, has the right to legislate, amend, and repeal laws, investors often fear for their interests if the authorities decide to make legal amendments that may affect the investment agreement. Consequently, mechanisms must be established to ensure legislative stability that safeguards the rights of investors.

In the investment domain, legislative stability is commonly referred to as the "legislative freeze clause." It is defined as: "*The application of the law governing the investment contract between the host state and the foreign investor, as it stood at the time of the contract's conclusion.*"² This implies that the state refrains from making any amendments that would favor itself at the expense of the investor.

Second: Sources of the Stability Clause

The legislative stability clause encompasses two legal mechanisms utilized by parties to achieve stability:

(a) Contractual (Conventional) Source:

The principle of contractual freedom aligns with the principle of legal stability. This allows the parties to an investment contract to include a clause guaranteeing the stability of the law applicable to the investment. This results in restricting the legislative authority of the state in this regard, specifically concerning the amendment of the contract's terms or the governing law. This means that any changes to the law will not apply to the pre-existing contract unless there is a subsequent agreement between the parties allowing it. This ensures the preservation of acquired rights, as the principle of legal security serves as a safeguard for these rights.

(b) Legal Source:

Legislative stability constitutes an exception to the principle of the immediate application of new laws due to its suspensive effect on subsequent legislations³. It provides for the continuity of the provisions of the old law, particularly concerning investment contracts, even if they are repealed or amended⁴. Foreign investment contracts are international agreements subject to specific rules not only because they involve foreign elements but also due to the interests they bring. For this reason, developing countries often incorporate a legal stability clause within their investment laws to benefit investors who fear the consequences of sudden legal changes.

¹Roberto Echanti, Erin Scronce, *three key idea for creating effective investment policies*, published on the trade post 07 june 2016, see: <https://blogs.worldbank.org/trade/three-key-ideas-creating-effective-investment-policies>

² Hashemi Omar, *The Sovereignty of Developing Countries in Investment Contracts*, (Master's Thesis), Business Law Specialization, Mouloud Mammeri University of Tizi Ouzou, 2016, p. 43.

³ El-Hadj Ben Ahmed, *The Legislative Stability Clause Between the Realization of Legal Security and the State's Interest in Investment Law*, *Journal of Legal and Political Studies*, Vol. 03, No. 05, 2017, pp. 530-542.

⁴Phillipe le Boulanger, *les contrat entre Etat et Entrepriseétrangères,economica,paris,1985,p13.*



The Algerian legislator has enshrined this principle. Article 15 of Ordinance No. 01-05 on investment development stipulates that future amendments or repeals do not apply to investments made under this ordinance. Hence, the legislator explicitly committed to exempting investment contracts established under this law from any subsequent laws or amendments. Similarly, Article 29 states: *"Investors retain the rights acquired regarding the benefits they enjoy under the legislation that establishes measures encouraging investments. These benefits remain effective until the expiration of their term and under the conditions on which they were granted."* The purpose is, therefore, to protect acquired rights and extend the lifespan of investment activities.

Although the aforementioned law was repealed by Law No. 16-09, the latter preserved the principle of the non-retroactivity of laws. Article 22 states that amendments or repeals of the law in the future do not apply to completed investments unless the investor expressly requests it. Likewise, Law No. 22-18 on investment stipulates the same principle in Article 13, with identical wording as the preceding law. The legislator's desire to attract investment likely motivated a shift from legislative stability to legislative enhancement, which serves as an exception to the principle of legislative stability. It allows new laws to apply to investment contracts if the investor expressly requests it. This is reflected in the investment agreement between Orascom Telecom Holding and the National Agency for Investment Promotion, Support, and Monitoring.¹ Article 6 of this agreement states: *"The Algerian state prohibits itself, after signing this agreement, from adopting any special measures against the company that could directly reconsider the rights and privileges granted under this agreement. If future Algerian laws or regulations provide for an investment system more favorable than the system established in this agreement, the company may benefit from this system, provided it meets the conditions set forth in these future laws or regulations."*

Section Two: Legal Incentives and Guarantees Granted to Foreign Investors

In this part of the study, we will outline the incentives and guarantees due to their importance in promoting investment as an alternative to an oil-dependent economy, as follows:

First: Definition of Legal Incentives and Guarantees

Law No. 22-18 outlines these incentives and guarantees in Chapter Four, under the title "Incentive Regimes and Conditions for Benefiting from Incentives." These are categorized into three systems: sectoral systems, regional systems, and structured investment systems². Article 18 of this law establishes the general condition for benefiting from these systems, which is the registration of investments at unified windows before their realization. Various articles elaborate on these conditions as follows:

- **Article 26** specifies the types of investments eligible under the sectoral system, which include activities in mining and quarries, agriculture, aquaculture, fishing, industry, agro-industry, pharmaceutical and petrochemical industries, services, tourism, new and renewable energies, knowledge economy, and information and communication technologies. Article 27 lists a set of fiscal incentives and tax exemptions applicable during both the implementation and operational phases.
- **Article 28** identifies the investments eligible under the regional system. These include investments made in areas located in the high plateaus, the southern and far southern regions, areas requiring special development support from the state, and regions with significant natural resources that can be valorized. These investments, like those under the sectoral system, benefit from a tax exemption regime specified in Article 29.
- **Article 30** outlines investments eligible under the structured investment system, which are projects with high potential for wealth creation, job generation, and enhancing regional attractiveness, forming a basis for sustainable development. Article 31 of the same law details the range of benefits that these investments can access.

Secondly - Guarantees:

To ensure the effectiveness of investments, the legislator has established a series of guarantees included in Chapter II, titled "Guarantees and Obligations." By examining Articles 6 to 13, it becomes

¹ Executive Decree No. 01-416 dated December 20, 2001, approving the Investment Agreement signed between the National Agency for Investment Promotion, Support, and Follow-Up and Orascom Telecom Algeria, Official Gazette No. 80, issued on December 26, 2001.

² Article 24 of Law No. 22-18 dated July 28, 2022

evident that investors and investment projects are entitled to several guarantees as incentives from the state to attract investments. These guarantees include:

- **Access to state-owned private lands:** Investors may acquire state-owned private lands through agencies responsible for land management under pre-defined conditions in accordance with applicable laws and regulations, as stipulated in Article 6 of Law No. 22-18 on Investment. All information related to available land is made accessible to investors via these agencies, particularly through the digital platform for investors.
- **Exemption for in-kind contributions:** Contributions in kind related to the transfer of activities from abroad are exempted from foreign trade procedures and bank domiciliation. New goods included in external in-kind shares are also exempt.
- **Protection against requisition:** Investments are protected from requisition by the administration, except in cases specified by law. In the event of requisition, fair and equitable compensation is guaranteed.
- **Protection of intellectual property rights:** The state guarantees the protection of the investor's intellectual property rights in accordance with applicable legislation.
- **Non-retroactivity of legal amendments:** The state ensures that no provisions or revisions to this law will apply retroactively to an investor unless explicitly requested by the investor.

Second Requirement: Judicial Manifestations

Previously, the judicial origin of legal security was highlighted, as the judiciary serves as the primary revealer of this principle in most legal systems that uphold it. This emphasizes its positive role in the realm of investment (Section One). However, obstacles may arise that hinder the efficiency of this institution (Section Two).

Section One: The Role of the Judiciary in Protecting Investment

According to the English scholar **Dicey**, the judiciary is the guarantor and enabler of legal security¹. It provides effective protection for citizens in general by ensuring adherence to the legal rules established by the legislature and preventing any deviations from their requirements. Based on the principle of separation of powers, the judiciary administers justice on behalf of the state, interpreting and applying the law through fair resolution of disputes, enforcement of rights, and ensuring the right to a fair trial. To this end, the judiciary performs its function of dispensing justice in a manner that is reliable, independent, impartial, efficient, and swift.

In alignment with this approach, the Algerian legislator has introduced various mechanisms for resolving investment disputes, including resorting to national courts. Article 24 of Law No. 16-09 states:

"Any dispute between a foreign investor and the Algerian state, caused either by the investor or by an action taken by the state against the investor, shall fall under the jurisdiction of the competent Algerian courts."

Similarly, Law No. 22-18 allows investors to appeal to the judiciary in addition to filing complaints before the **National High Appeals Committee for Investment-Related Matters**. It also stipulates that any dispute between the investor and the state shall be subject to the jurisdiction of Algerian courts, whether the dispute arises due to the investor's actions or as a result of measures taken by the Algerian state. However, this is unless there is a prior agreement to resort to alternative dispute resolution mechanisms. The Algerian legislator has granted jurisdiction over such disputes to national courts as a natural application of the principle of national sovereignty², given that the dispute arises within its territorial boundaries—unless an agreement provides otherwise, such as resorting to amicable dispute resolution methods.

Enhancing judicial independence and equality with the legislative and executive branches will significantly impact investment growth, aligning it with the expectations and needs of investors. This cannot be achieved without ensuring **judicial security**, which requires essential components such as fair justice, independence, high-quality rulings, ease of access, and efficient administration. These

¹Walid Mohamed Al-Shennawy, *Legal Security and Principles of Good Lawmaking*, Journal of Legal and Economic Research, Mansoura University, Issue No. 56, October 2014, p. 292.

²Ftissi Chamama, *Disputes of Foreign Investment in Algeria Between Judiciary and International Commercial Arbitration*, Sawt Al-Qanun Journal, Vol. 06, Issue No. 02, 2019, p. 04.

elements foster investor trust in the judicial institution and ensure the effective presence of judicial security.¹

Ordinarily, civil courts have jurisdiction over investment-related disputes. However, administrative courts also play a significant role, particularly as they contribute to the protection and guarantee of the principles of the rule of law and legal security by overseeing the legality of administrative actions and addressing abuses of power by the administration.² Examples of disputes handled by administrative courts include those related to administrative contracts and public procurement.

To strengthen the judiciary's role, comparative laws, such as those in Morocco, have established specialized courts to adjudicate business disputes. This initiative aims to encourage commercial activity, entrepreneurship, and foreign investments by providing incentives and support for both domestic and international investments. Given that investment is a vital tool for driving economic growth, the judiciary plays a pivotal role in resolving disputes related to it, serving not only as a source of reassurance for citizens but also as a fundamental instrument for economic development .

Section Two: Challenges to the Effectiveness of the Algerian Judiciary in the Investment Sector

The relationship between investment and justice is inherently interdependent, as the judiciary is expected to be the primary guarantor of protecting investment from obstacles or impediments that may face investors, whether caused by the state or third parties. However, the judiciary itself encounters challenges in fulfilling this role, which include:

- **Impact of Sovereignty on Judicial Neutrality:** Investors often fear that national judges may favor their own state's interests over those of foreign investors, thereby compromising the neutrality of judicial decisions.
- **Lack of Specialization:** A significant concern for foreign investors seeking recourse in national courts is that judges in ordinary courts often lack expertise in investment laws and may not possess the necessary competence to adjudicate technical and specialized issues in the commercial or economic fields.³
- **Seizure of Assets:** Another risk facing investors is the issue of state immunity, which can hinder the enforcement of judicial rulings involving the seizure of public funds, even if the investor obtains a favorable judgment.
- **Slow Judicial Processes:** The protracted resolution of disputes, which may take years, imposes heavy losses on investors, including missed opportunities for profits and, in many cases, the failure of the project due to bankruptcy.

However, it must be noted that recent amendments to the Code of Civil and Administrative Procedure provide an implicit response to these concerns⁴. These reforms emphasize the concept of structural specialization by introducing commercial courts tasked with resolving investment disputes. These disputes are to be referred to mandatory conciliation before litigation. This structural shift signals a long-term commitment to achieving functional specialization. According to the Minister of Justice,⁵ the objective is to enhance the judiciary's role in the fields of commerce and investment, thereby contributing to the establishment of the judicial and legal security necessary for improving the business and trade environment.⁶

¹Soumia Ben Taiba, *Legal Security as a Mechanism to Drive Development in the Field of Investment*, Journal of Research in Contracts and Business Law, Vol. 06, Issue No. 02, 2021, p. 46.

²Al-Baqali Tayyib, *The Role of the Judiciary in Protecting Investment*, Journal of Law and Business, Hassan I University, Issue No. 18, 2017, p. 10.

³Fetissi Chemama, *Op. Cit.*, p. 8.

⁴ Law No. 08-09 of February 25, 2008, containing the Code of Civil and Administrative Procedure, Official Gazette No. 21, issued on April 23, 2008, as amended and supplemented by Law No. 22-13 of July 12, 2022, amending and supplementing the Code of Civil and Administrative Procedure, Official Gazette No. 48, issued on July 17, 2022.

⁵ Intervention of the Minister of Justice during the presentation of the draft law on Civil and Administrative Procedures, Ninth Legislative Period, Ordinary Parliamentary Session (2021-2022), Official Journal of Debates of the People's National Assembly, First Year, Issue No. 69, published on June 16, 2022, p. 04.

⁶ Intervention of the Rapporteur of the Committee on Legal, Administrative, and Freedoms Affairs during the presentation of the draft law on Civil and Administrative Procedures, Ninth Legislative



CONCLUSION

Based on the content presented in this scientific paper, it can be concluded that legal security, along with its associated principles, constitutes essential guarantees for investors to launch their investment projects and ensure their sustainability over time, thereby serving the national economy and positively impacting development projects.

At the conclusion of our research, we have reached a set of findings and proposals, which are summarized as follows:

(First) Findings:

1. The central role of the judiciary in unveiling legal security as a principle to ensure the stability of legal positions.
2. The evolving nature of investment makes it a cornerstone for building a sustainable economy aligned with the vision of a New Algeria.
3. The significance of legal security in providing the necessary protection for investment.
4. The Investment Law contains numerous guarantees that positively contribute to creating an attractive environment for foreign investment.

(Second) Proposals:

1. Activating all the requirements of legal security and providing the necessary legal protections to maintain the mutual interests of the state and investors.
2. Developing a national legislative framework that aligns with economic life requirements, ensuring it does not act as a barrier to progress.
3. Enhancing the performance of the judicial system by expediting litigation procedures and dispute resolution through the activation of judicial specialization, supporting the structural jurisdiction embodied in the Civil and Administrative Procedures Law.
 4. Accelerating the digitization of the justice sector to bring the judiciary closer to litigants and simplify its processes.

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