

# Security between the Legal and the Judicial: Discussion of Roles and Effectiveness

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**Abstract.** Judicial security is one of the most important components of legal security. The relationship between them is strong and complementary, and together they contribute to achieving effectiveness because they share common objectives. This leads to a key conclusion: whenever judicial security is effectively ensured, legal security is also ensured.

## 1. INTRODUCTION

The availability of security in a society ensures continuity and safety for society. It is the fundamental pillar on which states are built. Moreover, it is through it that the state's ability to maintain its sovereignty, stability and safety is assessed. Security has many areas, the most important of which is the legal field, commonly referred to as "legal security."

Perhaps the primary role of legal security is to achieve a degree of relative stability in legal relations and a minimum level of stability in legal positions, and to ensure the preservation of rights and freedoms.

The Algerian legislator has sought to ensure the continuity of legal security and maintain its stability, especially in legislation related to fundamental rights and public freedoms, which is stipulated in Article 34, paragraph 4, of the Constitutional Amendment of 2020, which gives legal security constitutional value.

Legal security is one of the basic comprehensive principles that cover several areas of security, the most important of which is judicial security. one of its most important roles is applying the law and ensuring rights and freedoms. It is thus a mechanism for protecting legal security, which confirms the existence of a relationship between legal security and judicial security, which enables the study how effectiveness can be achieved and mutual roles, which we will address through the following problem:

To What Extent Can the Role of Judicial Security Achieve Effective Legal Security in Algeria?

We will address this problem through the following axes:

- First: The concept of legal security within the framework of achieving effectiveness
- Second: The concept of judicial security within the framework of achieving effectiveness
- Third: The relationship between judicial security and legal security and the study of roles and effectiveness

The First Axis: The Concept of Legal Security Within the Framework of a Discussion that Achieves Effectiveness

The principle of legal security is one of the basic principles upon which the state of law is based, which is characterized by the rule of law, guaranteeing the rights of individuals and preserving their legal positions. This is the reason that led to interest in this principle and giving it priority. To understand this principle, it is necessary to first determine its definition and the most important principles on which it is based.

First: Definition of Legal Security

In fact, there is no unified definition of the principle of legal security, and this is due to many reasons, perhaps the most important of which is that it is a principle formed from many principles, meaning that it is a complex principle, and to determine its definition, its fields must be deconstructed and defined. However, jurisprudence has provided many definitions, the following of which can be presented:

- Legal security is the a clear, accessible, and predictable legal rule that allows addressees to reasonably anticipate the legal consequences of their actions and behavior<sup>1</sup>.

<sup>1</sup> - Shorsh Hassan Omar, Khamush Omar Abdullah, The Role of Legislative Justice in Achieving Legal Security – An Analytical Study - Academic

- Legal security is any guarantee aimed at ensuring the proper implementation of obligations and avoiding uncertainty in the application of the law in a way that ensures the right of individuals to security.<sup>2</sup>
- Legal security is the ability of individuals to know their legal positions accurately, conclusively, and clearly. This enables them to know their rights and duties, and also enables them to feel reassured and act accordingly without fear of the consequences of such behavior.<sup>3</sup>
- Legal security is the existence of a kind of relative stability in legal relations and a minimum level of stability in legal positions for the purpose of spreading security and reassurance between the parties to legal relations regardless of whether the legal persons are public or private, so that these persons can arrange their situations in accordance with the existing legal rules at the time they carry out their work without being exposed to surprises and unexpected actions issued by one of the three state authorities. It would destroy the pillar of stability and destabilize the spirit of confidence and reassurance in the state and its laws<sup>4</sup>.
- Legal security is the stability of legal positions and their inviolability. It means that they are inviolable in the field of amending laws or issuing judicial decisions<sup>5</sup>.

Through these jurisprudential definitions, we find that legal security is the relative maintenance of stability in legal relations and positions while achieving a sense of reassurance, which achieves the material and moral aspects in most of the definitions provided by jurisprudence. In addition to these jurisprudential definitions, judicial jurisprudence has also provided some definitions of legal security, and among the most important of these definitions is the definition of the French Council of State: It is a principle that requires that the citizen be able to determine what the law prohibits without difficulty, through the clarity of the laws issued, that they are not subject in time to repeated and unexpected changes, and that the legal positions remain relatively fixed." "<sup>6</sup> Therefore, from the definitions presented, we can define legal security as a principle that ensures relative stability of the legal position and achieves reassurance for the parties to legal relations through the ability to understand legal rules.

#### Second: The Added Constitutional Value of Legal Security in the 2020 Constitutional Amendment

We have included this topic within the framework of the concept of legal security, for many reasons, the most important of which is highlighting the position of the legislator or constitutional founder on legal security, and the reason for giving this value to legal security.

It is known that previous constitutions did not address the concept of legal security, and the 2020 constitutional amendment addressed it<sup>7</sup> This gives constitutional value to legal security, as Article 34/4 stipulates: "In order to achieve legal security, the state shall ensure access, clarity and stability when drafting legislation related to rights and freedoms."

Through the text of this paragraph, we find that the legislator or constitutional founder has clarified an aspect of the definition of the principle of legal security, which we have previously explained in the definitions presented for legal security, which is represented in ensuring that the positions of law are not infringed upon, as well as the clarity of legislation and the absence of continuous amendment that affects the understanding of legal texts. Accordingly, the constitutional founder has defined for us the objectives of legal security, and has emphasized the legislative authority to ensure their achievement. This adds a constitutional value to legal security.

However, it would have been more appropriate for the Algerian constitutional founder to adopt this clear position within previous constitutional texts, especially since the Algerian legislator adopts the principles of legal security, especially since some constitutions of countries have adopted this clear position since many constitutions, perhaps the most prominent of which is the Portuguese Constitution of 1976<sup>8</sup> However, the founder's constitutional position for the year 2020 remains a positive position to highlight and give constitutional value to legal security, and even better for the goals of legal security.

#### Third: The Principles on Which the Principle of Legal Security Is Based and Their Role in Achieving Effectiveness

Legal security within the rule of law includes many principles on which it is based. Once these principles are met, security is achieved for the individual and society. We will address these principles in a way that contributes to studying the concept of legal security and the extent to which effectiveness is achieved. The principles of legal security are as follows:

##### 1. The principle of non-retroactivity of laws:

The principle of non-retroactivity of laws is one of the fundamental principles upon which the principle of legal security is based. It is a constitutional principle, meaning that a law is effective from the date of its issuance and cannot be applied to previous actions. This achieves non-retroactivity of the law and justice, especially in the face of those addressed by the law who act in accordance with existing law.

As we have previously said, it is one of the most important principles on which the principle of legal security is based, because legal security requires the non-retroactivity of laws except in exceptional cases, especially since one of the most important goals it seeks to achieve is preserving legal positions and previously acquired rights<sup>9</sup>.

It is a principle applied in most branches of law. In the Penal Code there is a principle of no crime, no punishment, and no measure without law. In the Civil Code, within Article 2/1, "the law applies only to future actions and shall not have a retroactive effect." If this indicates anything, it indicates the application of the principle of non-retroactivity of the law in the legislation of the Algerian state. This is an achievement of the principle of legal security, and a work to achieve it And achieving its effectiveness

Journal of Legal and Political Research, Volume 3, Issue 2, 2019. p. 340

<sup>2</sup> - Ahmed BouqartThe role of legal security in stabilizing legal transactions, International Journal of Legal and Policy Research, Vol. 8, No. 2, 2024, p. 167.

<sup>3</sup> - Saeed bin Ali bin Hassan Al-Maamari, Radwan Ahmed Al-Haf, The Principle of Legal Security and the Components of Legislative Quality, Journal of Legal Research Economic, number 79, 2022, p. 15

<sup>4</sup> - Shorsh Hassan Omar, Khamush Omar Abdullah, reference Previous, S339

<sup>5</sup> - Ibid.

<sup>6</sup> - Ahmed Bouqart, op. cit., p. 166

<sup>7</sup> - Constitution of the People's Democratic Republic of Algeria, dated December 30, 2020, Official Gazette, No. 82, dated December 30, 2020.

<sup>8</sup> - Shorsh Hassan Omar, Khamush Omar Abdullah, reference Sabiq, p. 344.

<sup>9</sup> - Warda Mahni, Houria Ben Sedhom, Dilemmas of establishing the principle of legal security and the requirements for achieving it in the context of the process of building a state of law And the lawBook of Works of the Legal Security Forum as a Standard Concept of the State of Right and Law, Theoretical Approaches and Mechanisms of Embodiment, Part 1, Faculty of Law and Political Science, Mohamed Lamine Dabbaghin University, Setif 2, 04-21-2021, p. 78.

within all legislation and legal texts, and in this regard enhancing the effectiveness of the rule of law in Algeria.

## 2. The principle of acquired rights:

The principle of acquired rights is one of the basic principles of the principle of legal security, and its definition is linked to the definition of an acquired right. Accordingly, an acquired right is defined as "that right arising from a legal act that creates legal centers."<sup>10</sup> Through this clear and simplified definition of the concept of the principle of acquired rights, we find that it is based on the idea of the stability of legal positions or situations and legal actions related to them, and thus it achieves a balance between the necessity of protecting acquired rights and the necessity of amending legal rules on the one hand, and the stability of legal positions and the principle of legitimacy on the other hand<sup>11</sup> This is an achievement of the objectives of legal security, and Algeria adopts the principle of acquired rights. Many judicial decisions issued by the Algerian Council of State have ruled on acquired rights in accordance with the general principles of law. Accordingly, the embodiment and application of this principle achieves effectiveness in applying the principle of legal security in Algeria. Given that the Algerian Council of State adopts this principle to settle many disputes, this is evidence of the Algerian state's efforts to achieve this principle, "the principle of acquired rights." This equates to achieving legal security objectives, and thus achieving effective legal security.

## 3. The principle of predictability of legal texts

The principle of legal predictability is one of the principles on which the principle of legal security is based. This principle is called legitimate expectation, and it means that legal texts should be presented in a way that does not contradict the legitimate expectation of individuals<sup>12</sup>

It follows from its adoption that the laws issued by the legislative authority, as well as the regulatory decisions issued by the executive authority, should not be issued in a sudden and abrupt manner that conflicts with the legitimate expectations of individuals. The trust that has grown among individuals in the existing systems must be protected in the face of any legislative or administrative corps that constitutes a thwarting of legitimate expectations.<sup>13</sup>

From the above, we can say that the principle of predictability of legal texts, or what is known as the principle of legitimate trust, contributes to achieving the effectiveness of the principle of legal security, by providing stability and predictability in the legal environment. The more predictable the law is, the more it can be adhered to. Accordingly, the principle of legitimate trust enhances trust in the legal system and strengthens the principle of legal security as a whole<sup>14</sup>

In Algeria, this principle is guaranteed to be applied, as the legislative authority ensures the publication of laws issued in the Official Gazette, with the aim of informing Algerian citizens, most of whom know this. In addition, most regulatory decisions are also published, as well as judicial decisions are communicated through various judicial notification methods to the parties concerned. Through this, we find that these procedures contribute to achieving the principle of predictability of the law and thus achieving the effectiveness of the principle of legal security in Algeria.

In addition, the Algerian Constitution stipulates the principle of legitimate expectation, as it stipulates in Article 117 of the Constitutional Amendment of 2020: "Parliament, within the framework of its constitutional powers, remains loyal to the trust and aspirations of the people, and accordingly the principle of legitimate expectation remains one of the principles that the law cannot ignore".

## 4. In addition to the principles mentioned, they fall within the principles on which the principle of legal security is based, which also have a role in achieving effectiveness:

We will mention it briefly: The principle of equality before the law, through which equality is achieved between citizens in the face of the law. It is impossible to achieve the rule of law without equality between citizens, and it is impossible to achieve the goals of legal security and its effectiveness without this principle. Therefore, its availability is a basic source for achieving the effectiveness of legal security in Algeria. In addition to this principle, the principle of stability of laws, It is not intended for legal texts to remain rigid and unamendable, but rather to achieve a kind of stability and constancy for legal texts and to prevent them from being subject to repeated amendments that may affect the most important goals of legal security, which are the stability of legal positions and acquired rights. By achieving this principle, the principle of legal security becomes effective, and the principle of the right to litigation can be added: Which is one of the most important rights stipulated in the Constitution, which enables individuals to resort to the judiciary to protect and restore their rights

From the above, it can be said that the principles upon which the principle of legal security is based contribute significantly to achieving effectiveness in the practice of legal security and achieving the rule of law in most countries, including Algeria. Since Algeria is activated and the legislator has adopted these principles, legal security will certainly be effective in all fields. However, we have devoted our study to determining the role of judicial security in achieving effective legal security, which we will attempt to address in the following sections.

## The Second Axis: The Concept of Judicial Security Within the Framework of Achieving Effectiveness.

Judicial security is one of the most important areas of legal security. Just like legal security, there is no comprehensive and unified definition of judicial security. This is due to many reasons, the most important of which is the lack of importance given to it in the past by researchers, in addition to its connection to many concepts, perhaps the most important of which is the legal system (the state in general, the judiciary in particular). However, this has changed in recent years due to developments in daily life, which prompted the majority of the state to work to bring about changes in its judicial system to achieve judicial security. We will address this issue through the following points:

<sup>10</sup> - Abdel-Hay Yahya, The Principle of Legal Security and its Applications in the State Council Judiciary, a thesis to obtain a doctorate in science, law branch, specializing in public law, Faculty of Law and Political Science, Department of Law, Shahid Hama Lakhdar University, Al-Wadi, 2022-2023, p. 67

<sup>11</sup> - Hamdi Owais, The principle of respect for acquired rights in law Administrative, T1, Dar Al Fikr Al Jami', Alexandria, 2011, p. 11.

<sup>12</sup> - Ahmed Bouqart, op. cit., p. 169.

<sup>13</sup> - Walid Mohamed El-Shenawy, Legitimate Expectations and Informal Administrative Promises in Investment Law, Dar Al-Fikr and Law, Mansoura, 2013, p. 177.

<sup>14</sup> - Abdul-Hay Yahya, previous reference, p. 73.

### First: Definition of Judicial Security:

There are many definitions provided for the subject of judicial security, which we will present, but not limited to:

- Judicial security: It reflects confidence in the judicial institution and reassurance about its outcomes as it carries out its mission of applying the law and achieving justice, by reaching a fair judicial ruling in which the factual truth matches the legal truth.<sup>15</sup>
- Judicial security: It is one of the pillars upon which the legal state is based. According to it, the public authorities in the state are committed to ensuring stability in legal relations and positions in order to plant and spread peace between the parties to this relationship. From here, people are able to act with complete peace and comfort in carrying out their work without encountering any illegal or illegitimate actions issued by any state agency that would create a kind of chaos, randomness and uncontrolled disorder.<sup>16</sup>
- Judicial security: It is the principle that reflects the litigant's confidence in the judicial institution, and reassurance of what results from it in carrying out its traditional tasks of applying the law to the facts and cases presented to it.<sup>17</sup>
- Judicial security: It is a sense of reassurance for every natural or legal person and which entitles him to trust the institution because it places the rule of law above all considerations.<sup>18</sup>

From the above, and in comparison with the presenter's definitions of legal security, we find that both of the presented definitions are not uniform. However, there is a shared focus on the aspect of feeling reassured and the stability of legal positions, although most of the presented definitions of judicial security did not focus on this aspect, while the aspect of feeling reassured towards judicial institutions was focused on by most of the definitions.

### Second: The Importance of Judicial Security <sup>19</sup>

Judicial security plays a crucial role in achieving the actual stability and constancy of the legal state and in controlling and maintaining its system. This importance is evident in the following:

- Establishing an honest judiciary that guarantees individuals' rights and consolidating confidence in the judicial institution because it places the rule of law above all considerations (By achieving the integrity of the judiciary, establishing the rule of law, and consolidating citizens' confidence in the judicial institution, the goals of judicial security will be achieved and its effectiveness will be achieved.)
- Judicial security contributes to achieving the quality of rulings and the stability of jurisprudence in accordance with the requirements of legislation
- Judicial security contributes to the effective strengthening of the rule of law and provides the necessary protection of fundamental rights and freedoms
- Under judicial security, state agencies are obligated to provide complete stability in legal relations and positions so that individuals can ultimately act comfortably without being exposed to deviant behaviors or actions that destabilize this stability.
- Judicial security contributes to economic development
- Judicial security contributes to protecting national and foreign investments
- Judicial security contributes to social development

The above gives us some importance to the role of judicial security in achieving effective judicial security, especially since they share some objectives that are fundamental to legal security, namely achieving the rule of law and stabilizing legal centers.

### Third: The Position of the Algerian Constitutional Founder on Judicial Security

The constitutional framer did not take, within the constitutional amendment of 2020, the same position that he took towards legal security, which is the explicit position to define the objectives of legal security, as well as to emphasize the legislative authority to seek to achieve it, as we previously discussed. However, the constitutional legislator took an implicit position by stipulating some features of judicial security through a number of constitutional texts, some of which can be referred to:<sup>20</sup>

- Article 164: The judiciary protects society and the freedoms and rights of citizens in accordance with the Constitution
- Article 165: The judiciary is based on the principles of legality and equality

Many constitutional texts have implicitly included the principle of judicial security. Algerian legislation and the constitution seek to achieve this security. However, it is better to add an explicit constitutional value to the concept of judicial security because it is no less important and is considered one of the most important areas of legal security. To study this topic, it is necessary to study the relationship between judicial security and judicial security and its role in achieving legal security.

### The Third Axis: The Relationship Between Judicial Security and Legal Security: A Study Roles and Effectiveness:

From the above, and through studying the concepts of legal security and judicial security, it becomes clear that judicial security has a close relationship with legal security, as judicial security is among the areas of legal security, as judicial security is considered a mechanism to protect the principles of legal security by ensuring the application of the law and guaranteeing rights and freedoms<sup>21</sup> We will study this topic through the following points:

#### First: The Role of Legal Security Principles in Achieving Effective Judicial Security:

The legal principles on which legal security is based have previously been presented, which are among the basic principles of the rule of law. In most of them, the jurisdiction of the judiciary is to monitor the extent of respect for and application of them, and they are also obligatory to be applied by the judiciary. By applying the principle of non-retroactivity of laws, the rights associated with this principle are protected. In addition to participating in some principles such as the principle of equality, the

<sup>15</sup> - Hanem Ahmed Mahmoud Salem, Constitutional Components for Achieving Judicial Security, Journal of Jurisprudential and Legal Research, Issue 39, October 2022, p. 2865

<sup>16</sup> - Bakkar Reem Hajar, Bouras Abdel Qader, Judicial Security in Establishing the State of Law, Journal of Research in Law and Political Science, Volume 7, Issue 2, 2021, p. 275

<sup>17</sup> - Ramses Benham, Judicial Psychology, Knowledge Facility, Alexandria, 1979, p. 30.

<sup>18</sup> - Hanem Ahmed Mahmoud Salem, previous reference, p. 2867

<sup>19</sup> - Bakkar Reem Hajar, Bouras Abdel Qader, previous reference, pp. 276-277.

<sup>20</sup> - Constitution of the People's Democratic Republic of Algeria, previous source.

<sup>21</sup> - Hanem Ahmed Mahmoud Salem, reference Previous, p. 2872

judiciary must be subject to the principle of equality so that litigants are equal before the judiciary and their right to resort to litigation is legally guaranteed, and the separator between them is the legal text in force. The stability and relative constancy of legal texts also facilitates the process of interpreting legal texts as well as resolving disputes based on habituation to legal texts. Although a judge is a legal expert and an interpreter of legal texts, the clarity of the legal text does not make him fall into the legal loopholes of the unclear legal text. From the above, it can be said that the principles on which legal security is based, by applying them, achieve effectiveness in the exercise of the judicial authority's duties, and help achieve stability in legal positions as well as the confidence of disputants in the judicial authority, which achieves the goals of judicial security, as well as achieving effectiveness in judicial security.

#### Second: The Role of Judicial Security Principles in Achieving Effective Legal Security

It is clear to the reader of these research pages that we have not addressed the principles on which judicial security is based, and perhaps the main reason is to give a prior introduction to studying this aspect related to the role of judicial security in achieving the effectiveness of legal security

#### Among The Most Important Principles on Which Legal Security Is Based, With an Explanation of Their Role in Achieving Effective Legal Security

- The principle of separation of powers is one of the basic principles of judicial security. It aims to achieve balance and cooperation between powers. Legal security is achieved through the role of the principle of separation of powers in protecting rights and freedoms and achieving justice, given that the principle of separation of powers ensures that the judiciary is independent and impartial, which contributes to achieving justice and equality before the law.
- The principle of judicial independence: This is also one of the fundamental principles of judicial security, as it ensures the independence of the judiciary in carrying out its duties and in resolving disputes submitted to it without any party interfering in this regard. This enhances the protection of individual rights and preserves their legal status, thus contributing to the achievement of legal security and its effectiveness.
- Constitutionalizing the principle of judicial security: The principle of Granting judicial security constitutional recognition is one of the most important principles on which judicial security is based, as the constitutional nature of judicial security gives it a constitutional value that the state seeks to achieve its goals by all available legal means. Here, the question arises as to whether the implicit position of the constitutional founder places it within the circle of not achieving judicial security. As we have previously explained in these points, the constitutional founder did not explicitly stipulate judicial security, but he stipulated the most important factors and principles that achieve judicial security in Algeria, such as the principle of judicial independence, the principle of separation of powers, and other principles that achieve judicial security. We only affirm our demand to constitutionalize judicial security to give it constitutional value, just like legal security.
- Unification of jurisprudence: Unification of judicial rulings is one of the components upon which judicial security is built. Therefore, the judiciary must address the facts in subsequent cases on an equal footing in order to achieve judicial stability. If this is the role that the Supreme Court should play, then at the level of the subject courts, the differences in their rulings are normal due to their abundance and presence in different aspects, unless the rulings were issued by the same court. Otherwise, you will be obligated to apply the same ruling later in a later case with similar facts, to the previous case. Therefore, the primary goal of the Supreme Court is to unify judicial jurisprudence across the entire national territory, and the unity nature of the Supreme Court is what allows for unification of interpretation and thus achieves judicial security.<sup>22</sup> Unifying judicial jurisprudence also contributes to enhancing legal security, as a feeling is generated among citizens that the law is being applied in a fair, equitable and consistent manner, which achieves legal stability, and thus the effectiveness of legal security is achieved.
- Quality of rulings: It is one of the factors of judicial security. The quality of rulings is determined by the clarity and strength of their reasoning. Thus, the judge must use clear language that is understandable to all parties to the ruling.<sup>23</sup> The quality of judgments also enhances legal security, prevents injustice and arbitrariness, enhances confidence in the judicial system and achieves justice, thus achieving effective legal security.

#### Third: The Nature of Achieving Effectiveness Between Judicial Security and Legal Security

From what has been previously studied, it can be said that effectiveness is achieved in an integrated manner, and this is due to the nature of the complementary relationship between judicial security and legal security. Accordingly, the principle of legal security is based on legal principles that enhance effectiveness for legal security in Algeria. By the nature of the common goals between legal and judicial security, an integrated rule is achieved, which is that whenever judicial security is achieved, legal security is achieved, and vice versa.

## 2. CONCLUSION

Judicial security has a role in achieving effective legal security, just as legal security has a role in achieving effective judicial security, as both rely on principles that serve their common objectives of judicial and legal security. Accordingly, it can be said that whenever judicial security is achieved, legal security is achieved and its effectiveness is achieved.

This study produced several results:

- The concept of legal and judicial security contributes to a sense of reassurance and stability in legal centers
- The founder's constitutional position between explicit and implicit in stipulating legal and judicial security
- The relationship between judicial and legal security is a complementary relationship

When judicial security is achieved, legal security is also achieved

Through this study, we reached the following recommendations

<sup>22</sup> - Zakia Hamidou, Legal Security and Judicial Security, What Relationship?, Mediterranean Journal of Law and Economics, Volume 9, Issue 2, 2024, p. 11

<sup>23</sup> - Ibid.

- We propose adopting a unified definition of legal security within the following definition: A principle that ensures the relative stability of the legal position and achieves reassurance for the parties to legal relations through the ability to understand legal rules.
- Constitutionalizing judicial security: by stipulating it within the constitutional texts and within future constitutional amendments, to give constitutional value to judicial security as well as legal security.

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