

## **The principle of legal security: between the methods of achieving it and overcoming the obstacles to its implementation- an analytical study**

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**Submission date: 01.01.2025. Accepted 02.08.2025. Publicaion 13.11.2025.**

### **Abstract:**

The establishment of rule of law is based on the principle of legal certainty, which is one of the fundamental pillars for ensuring stability and confidence in the legal system, as it is the founding element of the state's power and continuity, and the main source of individuals' confidence in the legal system and its institutions. This principle has been increasingly enshrined in Algerian constitutions, as in some comparative constitutions, through successive constitutional amendments beginning with the 1996 constitutional amendment and continuing through to the latest amendment in 2020. This enshrinement has taken various forms, ranging from implicit constitutionalization to explicit enshrinement.

This study aims to highlight the historical and conceptual development of legal certainty and analyse its constitutional enshrinement in Algeria, while examining the means of achieving it and the obstacles that prevent its effective implementation, with a view to achieving a legal system characterised by clarity, stability and predictability, thereby ensuring the protection of rights and freedoms and the sustainability of legal certainty in the state.

**Keywords:** security – legal Certainty – rule of law – legislative stability.

## **Introduction:**

The principle of legal certainty is one of the central concepts underpinning the modern rule of law, as it represents the framework that guarantees the stability of legal rules and ensures confidence in the legislative and judicial systems. It is not limited to the clarity of legal texts, but extends to their stability, predictability, and the ability of individuals to rely on them to organise their affairs with confidence and peace of mind. Therefore, undermining legal certainty leads to undermining legal positions, shaking confidence in state institutions, and reducing the effectiveness of the legal system as a whole.

Interest in legal certainty has increased in contemporary constitutional thought, especially after it became one of the implicit or explicit principles on which constitutional review is based in assessing legal texts and their conformity with the principles of justice and legitimacy. In the Algerian context, the principle has gradually emerged through successive constitutional reforms, beginning with the 1996 constitutional amendment, which for the first time recognised implicit references to legal certainty, to the latest constitutional amendment of 2020, which enshrined it more clearly and specifically within the framework of establishing the rule of law and guaranteeing rights and freedoms.

From this perspective, **this study is important** in researching and analysing the principle of legal certainty through its conceptual and constitutional roots, and explaining how it can be achieved and the obstacles to its realisation within the Algerian constitutional reality, given that the real effectiveness of the principle is not achieved simply by stipulating it, but rather by the availability of the conditions for its application and proper implementation. Accordingly, **the study poses the following question:** To what extent is the principle of legal certainty effective in the Algerian constitutional system, and how can it be achieved and what are the obstacles to its actual implementation? To answer this question, **an analytical approach** was adopted, through the analysis of relevant constitutional texts and the extrapolation of related jurisprudential opinions, as well as a comparative approach in comparison with some comparative constitutional experiences that have explicitly enshrined the principle. The nature of the study required it to be divided into:

### **Section I: The concept of legal Certainty**

### **Section II: Constitutional enshrinement of legal certainty and the importance of its constitutionalization**

### **Section III: Means and obstacles to achieving legal certainty**

## Section I: The concept of legal certainty

In this section, we will attempt to define the origin of legal certainty (first requirement) and the various definitions provided (second requirement).

### First Subsection: The origins of legal certainty

The principle of legal certainty is a relatively modern principle in constitutional thought, having emerged in the aftermath of the Second World War, in the wake of profound changes in European legal systems, particularly the German system, which was the first to enshrine it as a constitutional principle.

In 1949, the German legislature adopted this principle in the provisions of the Basic Law (Grundgesetz) as one of the essential manifestations of the principle of the rule of law (Rechtsstaat), which means subjecting public authority to oversight, ensuring the clarity of legal texts, and protecting individual rights from arbitrariness and legislative ambiguity. The principle received prominent judicial recognition in 1961 when the German Federal Constitutional Court adopted it as an established principle, considering that legal certainty manifests itself, for citizens, primarily in the protection of legitimate expectations in the stability of legal rules.

Since then, there has been an organic relationship between the concepts of legitimate expectations (*la confiance légitime*) and legal certainty (*la sécurité juridique*), with the former becoming the practical embodiment of the latter. The principle quickly transcended the German national framework to find resonance in European jurisprudence, as it was recognised by the Court of Justice of the European Communities in 1962<sup>1</sup> in one of its famous decisions, considering that respect for legitimate expectations is one of the requirements of legal certainty. The European Court of Human Rights also enshrined it in 1981<sup>2</sup> as a fundamental principle of European law. , emphasised that one of its fundamental components is the predictability of the legal rule, while leaving the methods of its application to the discretion of Member States within their national laws.

In the same context, the principle gradually emerged in internal European legal systems. In France, the Council of State devoted its 1991 report to discussing the idea of legal certainty, but it was not recognized judicially until the KPMG case of 24 March 2006, which was considered a turning point in the Administrative Council's recognition of the principle as a legally binding value.

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<sup>1</sup> - Jouriya Wark, *Principles of Legal Certainty in Algerian Law and Procedures*, PhD thesis, specialising in public law, Saïd Aïden Faculty of Law, Algiers, 2018, p. 50.

<sup>2</sup> Mohamed Saleh Rawan, Rida Tamimi, *Requirements for Justice Reform: An Analytical View of Legal Amendments and Their Achievement of the Concepts of Reform and Security*, National Forum on Legal Certainty, held on 5 and 6 December 2012 at the Faculty of Law and Political Science, University of Ouargla.

In the United Kingdom, the British Supreme Court adopted the theory of legal certainty in 1987 in the context of protecting the legitimate expectations of individuals from sudden changes in public administration policies. This was evident in one of its rulings concerning the determination of the number of representatives in electoral districts. Although it ruled that the legislative determination was unconstitutional, it refrained from invalidating the elections<sup>3</sup> in order to avoid political turmoil, considering that the stability of legal positions is one of the requirements of legal certainty.

The principle is also enshrined in comparative constitutional texts. Article 282/4 of the amended 1976 Constitution of Portugal provides for the possibility of limiting the effects of a ruling of unconstitutionality when necessary to achieve legal certainty or protect the public interest. Similarly, Article 9/3 of the Spanish Constitution of 1978 expressly states that: "The Constitution guarantees the principle of legality, the hierarchy of legal rules, their publication, the non-retroactivity of penal rules that are unfavourable to individuals, as well as legal certainty and the responsibility of public authorities." This text is one of the first constitutional texts to enshrine legal certainty as an explicit constitutional principle, encompassing the various elements of the rule of law and protecting against any arbitrary or arbitrary action that may affect rights and freedoms<sup>4</sup>.

### **Second Subsection: Definition of legal certainty**

In order to define the concept of legal certainty, it is necessary to address the linguistic and terminological definition as follows:

#### **The First Branch : Linguistic definition :The term must be divided into the following:**

**First: Security in linguistic sense:** There are many concepts and meanings of security in language, but scholars agree that security generally means trust, reassurance and freedom from fear, based on the words of Allah in His Holy Book: "So let them worship the Lord of this House, who has fed them from hunger and secured them from fear"<sup>5</sup>.

In language dictionaries, security is also defined as a noun derived from the verb "to secure" ,meaning safety, security, and peace of mind, i.e., reassurance,

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3 - Ali Hanane, Legal Certainty for the Attractiveness of Foreign Investment in Algeria, Doctoral Thesis in Public Economic Law, Faculty of Law and Political Science, University of Ghardaia 2019-2020, p. 105.

4 - Allal Qashi, Abdelhalim Bouchekia, Foundations of Legal Certainty and its Precursors, Journal of Legal and Political Research, University of Lounissi Ali, Blida 02, Algeria, Vol. 06, No. 02, December 2021, p. 205.

5 - Surah Quraish, verse 04.

without fear or anxiety. Security means safety, tranquillity and the absence of fear. One says: "You are safe," meaning I have secured you; "the country is secure," meaning its people feel safe in it; "secure from evil," meaning safe from its harm; "secure so-and-so," meaning trust him, feel secure with him or make him your trustee<sup>6</sup>. It is also defined as: "a Secured is the one who feels secure and not afraid, and this is achieved when justice prevails."

**Second: Law in linguistic sense:** The word "law" is of Greek origin, taken from the Greek word "Kanin," which means a straight stick, i.e., order or principle and integrity in legal rules. The word has been adopted into several languages around the world, such as French (Droit) and English (Law). Security and stability can only be achieved in a society that has agreed to follow certain legal rules.

**Legal certainty in linguistic sense:** refers to a situation in which individuals feel secure with regard to the law because of its stability and consistency. What gives individuals certainty with regard to the law is the stability of legal rules and the absence of disturbances that could undermine this security and threaten their legal status<sup>(7)</sup>.

### **Second Branch : Terminological definition**

There is no comprehensive and definitive definition of the concept of legal certainty, due to its multiple manifestations, different foundations and numerous dimensions, in addition to its connection to various legal, social and economic fields. The term "law" is used in legal terminology to refer to a set of binding rules that govern the relationships between individuals in society. This general concept has a deeper meaning, as it includes the rules issued by the legislative authority, known as legislation. However, legislation is not the only source of law in its general sense, but its importance is highlighted by the official sources of law, which has sometimes led to the term "law" being applied to legislation, resulting in confusion between law as a set of binding rules of conduct and legislation as one of its important official sources<sup>(8)</sup>.

**First: Legislative definition:** The term "legal certainty" is broad in terms of meaning and scope, and national or comparative legislation often does not include an

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<sup>6</sup> Ibrahim Rahmani, Foundations of Judicial Certainty in Islamic Law and Positive Law, Journal of Jurisprudence and Judiciary, Institute of Islamic Sciences, Martyr Hamad Lakhdar University, Algeria, Vol. 04, No. 01, 2018, p. 63

<sup>7</sup> - Abdelhay Yahya, The Principle of Legal Certainty and Its Applications in the Judiciary of the Council of State, Doctoral Thesis, Specialisation in Public Law, Faculty of Law and Political Science, Martyr Hamah Lakhdar University, El Oued, 2022-2023, pp. 18-19.

<sup>8</sup> - Ahmed Mohamed Al-Rifai, Introduction to Legal Sciences - Legal Theory, Nebhan University, 2008, p. 30.

explicit definition of it. This is because many countries do not recognise it as a constitutional principle, although some countries, such as France, have used the term "stability of the law" in their provisions without recognising it as an official constitutional principle. Consequently, the task of defining legal security has been left to jurisprudence and the judiciary.<sup>9</sup>

**Second: Jurisprudential definition:** Legal certainty is a relatively modern term compared to other legal terms. Jurists have defined it as a kind of relative stability in legal relations and legal positions, allowing parties to arrange their affairs in accordance with existing legal rules without being exposed to surprises or unexpected changes issued by a public authority, which could destabilise and undermine confidence in the legal system.<sup>10</sup> Jurisprudence especially European jurisprudence, has contributed to the development of the foundations of legal certainty. Among the most prominent jurisprudential definitions is the following:

One jurist defines it as: a principle linked to other principles, namely non-retroactivity, protection of acquired rights, legitimate expectations and legality. Legal security is a comprehensive principle that encompasses the aforementioned sub-principles.<sup>11</sup> Another defines it as: "Legal certainty is a principle that aims to protect the future and predict the future, and it requires that the law secure this prediction as much as possible".<sup>12</sup> It is also defined as: the central driver of social, economic, and legal desires.<sup>13</sup>, and also as: "the highest example of reliability through access to 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".<sup>14</sup> It is defined as

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<sup>9</sup> Houria Ourak, Principles of Legal Cerainty in Algerian Law and Procedures, doctoral thesis, specialising in public law, Saïd Hamdine Faculty of Law, Algiers, 2018, p. 46.

<sup>10</sup> - Saeed bin Ali, Radwan Ahmed Al-Haf, The Principle of Legal Certainty and the Elements of Legislative Quality, Journal of Legal and Economic Research, Issue 15, University of Sohar, Sultanate of Oman, 2022, p. 79.

- Abdelhak Lakhidari, The Principle of Legal Certainty and its Role in Protecting Human Rights, Al-Haqqa Journal, Faculty of Law and Political Science, University of Tebessa, Algeria, No. 06, January 2016, p. 224. 222

<sup>11</sup> DJALIL, Bralin. Administrative Law and the Principle of Legal Certainty. Doctoral thesis in Law and Political Science, 2015, p. 121.

<sup>12</sup> - François Tulles, Legal Certainty: An Ideal to Reconsider, in Interdisciplinary Journal of Legal Studies, France, 1990, Vol. 24, No. 1, pp. 25–27.

<sup>13</sup> - René Demonge, The Fundamental Notions of Private Law: A Critical Essay, Librairie Nouvelle de droit et de jurisprudence, France, 1991, p. 63.

<sup>14</sup> - Thomas Piazzon, Legal Certainty, *Doctorate and Notary*, Thesis Collection, Vol 35, Alpha Éditions– Défrenois – Tenso Edition, Paris, 2010, p. 62.

representing the quality of a particular legal system that guarantees citizens' understanding and confidence in the law at a given time, as it represents the translation of the necessary requirements of legal quality and predictability<sup>15</sup>.

Some jurists have reduced the principle of legal certainty to two categories:

- The formal aspect of legal certainty (the formality of the legal rule), which aims to eliminate randomness from legislative work.
- The substantive aspect of legal certainty (the substance of the legal rule), which requires that the legal solutions provided, whether judicial or legislative, be correct and logical, i.e. what is known as the requirement of "acceptability".

This classification differs from other classifications that divide legal certainty into four dimensions: subjective/objective and formal/substantive.<sup>16</sup>. Through these definitions, it is clear that jurisprudence has not reached a comprehensive definition of legal security, due to its multiple forms, different meanings, and numerous dimensions.<sup>17</sup>.

**Third: Judicial definition:** The judicial definition is one of the most clear and comprehensive definitions. The French Council of State provided a definition in its 2006 periodic report, stating :The principle of legal certainty requires that citizens be able to determine what is permitted and what is prohibited under the law in force, without having to make additional efforts. Laws must be clear and understandable, and not subject to excessive or unexpected changes."<sup>18</sup> This definition refers to two fundamental dimensions of legal certainty:

1. **The formal dimension:** the clarity of the law, enabling individuals to understand its requirements.
2. **The temporal dimension:** the stability of the law, allowing individuals to be confident about their rights and legal status. <sup>(19)</sup>

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15 - Ecri Capron, European Rule of Law and European Law? Legal Logic Collection, 2005, p. 231.

16 - Abdelhay Yahya, previous thesis, p. 22.

17 - Badawi Abdeljalil, Hanane Ali, The Concept of Legal Certainty and its Requirements, Journal of Public Service Studies, Faculty of Law and Political Science, University of Ghardaia, Algeria, Issue 8, June 2021, p. 05.

18 Bachir Cherif Shamsuddin, Laqabi Samiha, The Principle of Legal Certainty: Thoughts on Content and Legal Value, International Journal of Legal and Political Research, a biannual journal published by the University of El Oued, Algeria, Volume 3, Issue 3, December 2019 (pp. 76-86).

19 - Choul Ben Chahra, Belkheir Mohamed Ait Oudia, Legal Certainty as an attractive value for foreign investment, Journal of Public Service Studies, Faculty of Law and Political Science, University of Algiers, Volume 03, Issue 2, December 2018, p. 02.

In Algeria, the Court of Cassation has affirmed the legal value of legal certainty, considering it a safety valve and a fundamental criterion for maintaining litigants' confidence in the legal and judicial system, through the non-retroactivity and stability of laws and the preservation of acquired rights.<sup>20</sup>

## **Section II: The constitutional enshrinement of legal certainty and the importance of its constitutionalization**

The inclusion of the principle of legal security in the constitutional document is a pivotal step in consolidating the rule of law, as it provides a supreme guarantee of respect for legal rules and the stability of legal relations between individuals and the authorities. This enshrinement is particularly important, whether it is implicit through constitutional principles derived from the spirit of the texts, or explicit<sup>(21)</sup> through direct stipulation. Therefore, the process of enshrining the principle in Algerian constitutions can be addressed through two main requirements:

### **The first Subtopic: the implicit enshrinement of the principle of legal certainty in Algerian constitutions**

Although the explicit recognition of the principle of legal certainty in the Algerian constitution is recent, its contents were implicitly present in various previous constitutions, particularly through the principles of legal protection, constitutional review of laws, and non-retroactivity of legislation, which are essential elements that express the internalisation of the principle in the national constitutional structure.

The 1989 Constitution<sup>(22)</sup> marked a turning point in the focus on issues related to legal security, as its preamble stated that "the Constitution guarantees the legal protection of individual and collective rights and freedoms," an expression that reflects the constitutional founder's desire to ensure legal security for citizens by linking this protection to the oversight of public authorities and respect for the principle of legality. This constitution also reactivated mechanisms for monitoring the constitutionality of laws (Articles 84 to 88), by strengthening the role of the Constitutional Council as a fundamental guarantee for the protection of rights and

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<sup>20</sup> Decision No. 000114 issued on 9 January 2012 by the Algerian Court of Disputes, Case of Team X v. Wali of Skikda Province, Supreme Court Journal, Issue 02, 2012, p. 472.

<sup>21</sup> - Afisan Warda, Ben Nasser and Haiba, Constitutionalization of the Principle of Legal Certainty: The Algerian Experience as a Model, Journal of Legal Studies, University of Lounis Ali Beida 02, Algeria, Vol. 08, No. 02, June 2022, p. 978.

<sup>22</sup> - Constitution of 1989, Presidential Decree No. 89/18 issued on 28 February 1989, concerning the publication of the amendment to the Constitution approved by referendum on 23 February 1989/J.R., No. 09, 1989. Official Gazette No. 45, dated 25 October 1989.

freedoms and enshrining the supremacy of the constitution over other legal rules, which is essentially an implicit enshrinement of legal certainty<sup>23</sup> .

In the 1996 constitutional amendment<sup>(24)</sup>, this trend was reinforced by introducing two categories of legislation: organic laws and ordinary laws, with the requirement that organic laws be submitted to the Constitutional Council (now the Constitutional Court) before being enacted, thereby strengthening respect for the Constitution<sup>25</sup> and preventing legislative arbitrariness. The amendment also affirmed the principle of non-retroactivity of laws and the need to respect acquired rights, which are fundamental pillars of legal certainty.

The 2016 constitutional amendment maintained the same approach, as its provisions included a number of requirements that embody elements of legal certainty, including: The independence of the judiciary (Article 15/01) The recognition of the right of individuals to challenge the constitutionality of laws (Article 188), which is a qualitative development that allows individuals to participate in protecting the supremacy of the Constitution and guaranteeing their rights. The criminalisation of abuse of power and administrative bias (Articles 24 and 25)<sup>26</sup>Legal certainty is also evident in judicial jurisprudence, as enshrined by the Court of Disputes in its decision of 9 January 2012 (No. 000114), which addressed the concept of legal certainty for the first time in Algeria<sup>27</sup>as an element of the stability of legal positions. Algerian civil law also stipulates in its second article the principle of non-retroactivity of laws<sup>28</sup> which is one of the most important applications of legal certainty in the legislative field.

### **The Second Subtopic: The Explicit entrenchment of the principle of legal certainty in Algerian constitutions**

The 2020 constitutional amendment is a milestone in the constitutional development of the principle of legal certainty in Algeria, as the latter has moved

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<sup>23</sup> Abdelhay Yahia, The Principle of Legal Certainty and its Applications in the Judiciary of the Council of State, Doctoral Thesis in Science, specialising in Rights and Freedoms, Faculty of Law and Political Science, Martyr Hamad Lakhdar University, El Oued, 2022/2023, pp. 52-50.

<sup>24</sup> - Constitutional amendment of 1996, Presidential Decree No. 96/438 issued on 7 December 1992 concerning the publication of the constitutional amendment approved by referendum on 23 February 1989, J.R., p. 76, 1996. Dated 08/12/1996

<sup>25</sup> - Abdelhay Yahya, op. cit., p. 50

<sup>26</sup> - Articles 24-25 of Law No. 06-01 dated 6 March 2016, containing the amended and supplemented Algerian constitutional amendment of 2016.

<sup>27</sup> - Court of Disputes, Decision No. 000114 dated 9 January 2012, Journal of the Supreme Court, Algeria, No. 02, 2012, p. 472.

<sup>28</sup> - Article 02 of Decree No. 65/58 dated 26 September 1975 containing the Algerian Civil Code, Official Gazette, Vol. 78, dated 30 September 1975, amended and supplemented.

from implicit recognition in previous constitutions to explicit recognition, becoming a constitutional principle in its own right, with a supreme status that requires all authorities to respect and implement it in their texts. Therefore, the explicit inclusion of the principle of legal certainty in the constitutional document is tantamount to a constitutional declaration of the state's commitment to respect legal legitimacy and stability and to guarantee the protection of individuals from any ambiguity or disruption in the legislative and regulatory system.

The preamble to the 2020 constitutional amendment clearly states that: "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 guarantee of legal and democratic security." This text is the first explicit recognition of the principle in Algerian constitutional history, which raises its legal value and makes it an integral part of the constitutional structure of the state.

This entrenchment suggests that the constitutional framers wanted to emphasise the link between legal certainty and democratic security as complementary elements in achieving state stability and the rule of law, highlighting the dual dimension of the principle: the legal dimension relating to the stability of legal rules, and the political dimension relating to confidence in the constitutional system and its institutions.

The explicit constitutional enshrinement<sup>29</sup> of the principle of legal certainty represents the culmination of a long evolution in the Algerian constitutional system and is a step forward in consolidating the rule of law and legal certainty for citizens. With this constitutional recognition, the principle has become a supreme rule and a reference for assessing the legitimacy of laws and the effectiveness of institutions in protecting rights and freedoms<sup>30</sup>.

### **Third Subsection: The importance of constitutionalising the principle of legal certainty**

The constitutionalization of the principle of legal certainty represents a qualitative shift in the development of constitutional thought, as it elevates this principle from a mere legal value or jurisprudential interpretation to a binding constitutional rule that supersedes other legal rules. The importance of its constitutionalization lies in several complementary aspects, which can be highlighted through the following points:

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<sup>29</sup> Presidential Decree No. 20-442 of 30 December 2020, corresponding to 15 Jumada I 1442 AH, relating to the promulgation of the constitutional amendment approved in the referendum of 1 November 2020, Official Gazette, No. 82, p. 03. On 30 September 2020.

<sup>30</sup> - Article 34 of the aforementioned constitutional amendment of 2020.

### **First: Legal certainty as a constitutional guarantee for achieving stability and confidence in the legal system**

The inclusion of the principle of legal certainty in the constitutional document enshrines a fundamental pillar of the rule of law, as it enables individuals to trust in legal rules and guarantees their stability, clarity and continuity. The law can only fulfil its function if citizens are able to know their rights and obligations. Under a stable legal system that does not change suddenly or arbitrarily, constitutionalization makes this principle a standard for assessing the legitimacy of laws and public policies, thereby achieving legal and social reassurance and preventing legislative improvisation, which is one of the main sources of legal turmoil.

### **Second: Constitutionalization as a mechanism for ensuring the supremacy of the constitution and constitutional review of laws**

When legal certainty is enshrined in the constitution, it becomes one of the principles subject to constitutional judicial review <sup>(31)</sup>, enabling citizens to challenge legislative or regulatory texts that affect their legal stability. In this context, the Algerian Constitutional Council (now the Constitutional Court following the 2020 amendment) is one of the most important guarantees for the implementation of the principle of legal security, whether through prior review of organic laws or subsequent review through the filing of unconstitutionality claims, a development that enhances the effectiveness of legal and constitutional protection of individual rights.

### **Third: Constitutionalization as a means of achieving harmony between the authorities and ensuring their proper functioning**

The principle of legal certainty contributes to achieving a balance between constitutional powers, as it obliges the legislative authority to draft legal texts with precision and clarity, prevents the executive authority from arbitrarily applying or interpreting them, and requires the judicial authority to adopt a consistent and predictable interpretation of the law. Thus, the constitutionalization of the principle becomes a practical tool for regulating the relationship between the authorities and ensuring that they are all subject to the law, thereby establishing the principle of legality and preventing the infringement of rights and freedoms through sudden or ambiguous decisions or laws.

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<sup>31</sup> - Khalaf, The Impact of Constitutionalising the Principle of Legal certainty on Attracting Investors to the Algerian Investment Market, Journal of Legal and Social Sciences, University of Mohamed Seddik Ben Yahia Djebel, Algeria, Vol. 06, No. 02, June 2021, p. 935.

### **Section III: Means and obstacles to achieving legal certainty**

Achieving legal certainty in the modern state is essential to ensuring the stability of the legal system and establishing trust between citizens and institutions. This can only be achieved by establishing clear constitutional, legislative and judicial foundations that enshrine and activate the principle, while creating a legal and institutional environment that protects its contents. However, practical application may face a number of obstacles and impediments that weaken the effectiveness of the principle and limit its real impact. This requires analysing the factors that contribute to achieving legal security on the one hand, and reviewing the most prominent factors that prevent its realisation on the other, as follows:

#### **The First Subsection: means of achieving legal certainty**

The principle of access to the law is one of the fundamental pillars of legal certainty in a state governed by the rule of law, as it is based on enabling individuals to know the legal rules that apply to them through clarity, availability and ease of access <sup>(32)</sup>. The more accessible the law is to everyone, the more it will be respected and complied with, thereby strengthening confidence in the legal system.

#### **The First Branch: Physical access to legal certainty**

Physical access refers to the ability to actually access legal rules and clearly and easily locate their source, whether through official publication or other legal media. This access is achieved by enabling individuals to obtain the physical supports and media

containing legal provisions, such as the official gazette, regulatory decisions, and judicial precedents <sup>(33)</sup>.

Publication in the official gazette is the main legal means of achieving this type of access, as it is the fundamental guarantee that the addressees are aware of the texts. The law cannot be invoked until it has been published in accordance with the procedures stipulated by law. This type of access is sometimes referred to as "formal access," which fulfills the requirement of publicity in the legal rule and enshrines the principle of no excuse for ignorance of the law.

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32 - Ben Ayub Jahid, The Rule of Law between Legal Certainty and the Requirements of Judicial Governance, Doctoral Thesis, Specialisation in Law, Faculty of Law and Political Science, Abdelrahman Mira University, Bejaia, 2021-2022, p. 62.

33 - Hanan Tahari, Mechanisms for Achieving Legal Certainty and the Obstacles to it, Journal of Legal and Political Studies, Ammar Thalji University, Laghouat, Vol. 08, No. 01, January 2022, p. 173.

## **The Second Branch: Intellectual Access to Legal certainty**

**First: the Clarity of laws:** Legal rules are supposed to be clear, precise, and specific in meaning so as not to be ambiguous or open to interpretation <sup>(34)</sup> ,as legislative ambiguity leads to confusion in legal transactions and opens the door to conflicting interpretations, which is contrary to the principle of legal certainty. Legal texts must therefore be simple in expression and precise in their use of terminology, enabling citizens, judges and administrators alike to understand and apply the rule without ambiguity.

**Second: The Readability legal texts:** Well-drafted legal texts require that laws be written in clear and straightforward language that takes into account the cognitive level of the reader, avoiding ambiguous styles or long sentences that complicate understanding. Terms should also be defined precisely to avoid interpretation, which is , as emphasised by the European Court of Justice <sup>35</sup> which stressed the need for legal texts to be "clear, understandable and unambiguously applicable". Elements that facilitate legal reading include:

- Clearly defining the subject matter of the legislative text.
- Organising texts and dividing them into interconnected articles and paragraphs.
- Highlighting key words at the beginning of provisions.
- Simplifying the language while maintaining legal accuracy.

## **The Second Subsection: obstacles to achieving legal certainty**

Despite efforts to establish the principle of legal certainty, in practice there are several obstacles that prevent its effective achievement. These obstacles can be classified into three main categories:

### **The Firs Branch: Obstacles related to the judiciary**

The judiciary is the primary guarantor of legal certainty through the unification of judicial jurisprudence and the protection of rights and freedoms. However, the instability of judicial jurisprudence and conflicting rulings on similar issues undermine the principle of equality before the law and create legal uncertainty. Furthermore, the slow pace of adjudication and the poor dissemination of judicial rulings reduce their usefulness in stabilising legal transactions. Therefore, enhancing legal certainty requires improving the performance of the judiciary, standardising jurisprudence, and publishing judicial precedents in a systematic and regular manner.

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34 - Al-Azhar Laabidi, Abdelhay Yahya, Clarity of the Legal Rule as a Principle of Legal Certainty, International Journal of Legal and Political Research, University of El Oued, Algeria, Vol. 06, No. 03, December 2022, p. 458.

35 - Orak Houria, Previous thesis, p. 77.

## **The Second Branch: Legislative inflation**

Legislative inflation is one of the most prominent factors weakening legal certainty, as the multiplicity, repetition, and constant amendment of texts lead to ambiguity in the legal system and make it difficult to know which rule applies in each case. To address this, legislative work must be rationalised by:

- Assessing the impact of legal texts before and after their enactment.
- Strengthening coordination between the legislative and executive authorities.
- Ensuring consistency between legal rules and avoiding conflicts between them.
- Limiting sudden amendments that affect established legal positions.
- Accelerating the issuance of regulatory texts accompanying laws to avoid disrupting their application<sup>(36)</sup>.

## **The Third Branch: Obstacles related to the form and content of legal texts**

The form of legal texts plays a pivotal role in the effective application of the law, as their formulation in clear language and sound legal style facilitates their rapid and accurate understanding and assimilation by those responsible for applying the law. However, there are several obstacles related to the form and content of texts, the most notable of which are:

**1- Inaccurate language in legislative texts:** The linguistic formulation of legal texts affects their clarity and comprehensibility. The language must be precise and direct, using clear legal terminology and avoiding verbal complexity or unnecessary interpretations. Unexplained legislative references should also be avoided, and words should be used in their normal and simple meaning to facilitate understanding of the legal rule.

**2- Flawed legislative and legal drafting:** Legal drafting refers to the ability to express a particular idea in a precise legal manner, while legislative drafting is part of legal drafting and expresses the intentions of the legislator prior to the issuance of the text. The need to improve legislative drafting becomes apparent when there is a flaw in the legal drafting, whether in terms of accuracy or clarity, which affects the enforceability and application of the text. The shortcomings of drafting are evident in the contradictions, ambiguities and conflicts between legal texts, which negatively affect the quality of the law.<sup>(37)</sup>.

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36 - Iradni Nawal, The Impact of Legislative Inflation on Legal certainty, Journal of Scientific Research, Mersli Abdallah University Centre, Faculty of Law and Political Science, Issue 13, December 2018, p. 124.

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**3- Difficulty in unifying legal texts:** Good legislative drafting contributes to the harmonisation of legal texts in accordance with the principle of the legislative hierarchy, starting with the constitution and ending with secondary legislation, with the aim of reducing contradictions and achieving integration and consistency. However, in many cases, there is a lack of consistency between the legal texts in Arabic and French, which creates confusion for those responsible for the legal rule and those who work under it.<sup>38</sup>

**Conclusion:** In conclusion, we can say that legal certainty is one of the fundamental pillars of the rule of law. It is not an end in itself, but rather a necessity imposed by societal developments and legal changes. Legal certainty is based on the quality and stability of the law, reflects the effectiveness of any legal system, and requires clear and stable legal texts to ensure that they are not subject to frequent changes. It establishes several fundamental principles, such as the non-retroactivity of laws and respect for acquired rights, while pointing to a number of obstacles that may hinder its application.

**Based on the study, the following conclusions were reached:**

1. There is no comprehensive and unified definition of legal certainty, but rather a set of principles that achieve legal certainty.
2. Legal certainty is based on several pillars, including: generality, abstraction, the signature of the legal rule, its clarity, and the non-retroactivity of the law.
3. Legal certainty is of international importance and is a human right, which has been affirmed by the judiciary and enshrined in some constitutions.
4. The general constitutionalization of legal certainty constitutes a constitutional guarantee for the protection of this principle, and it was included in the 2020 constitutional amendment in the preamble and Article 34.
5. Legal certainty is threatened by multiple factors, including weak legal drafting, obstacles related to the judiciary, and failure to address the content of the law appropriately.
6. Access to the law, both intellectually and materially, requires improving the form of legal texts to make them more consistent, clear, accurate, and accessible.

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<sup>38</sup> Salama Abdel Zahra Al-Fetlawi, Amna Fares Hamad, General Standards for Legislative Drafting, Al-Muhaqqiq Journal, Al-Hali for Legal Sciences, Issue 04, 2018, p. 97.

**Based on the study, the following recommendations can be made:**

1. Modernise and adapt the legal system in line with the principle of legal certainty and enforce its application.
2. Balancing the development of the law and the protection of the stability of transactions by taking gradual measures that achieve legal certainty and stability of legal positions.
3. Limit the proliferation of legislation to avoid legislative inflation, which hinders legal certainty.
4. Drafting legal rules in clear and simple terms, free from complexity and different interpretations of the same text, to avoid misapplication and misuse of the law.
5. Providing electronic and printed legal databases that make it easy for all citizens and professionals to access legal texts, decrees and amendments, and updating them periodically.
6. Establish a legislative review committee tasked with examining texts before publication to ensure their compliance with the basic principles of legal certainty and to address any potential ambiguities or conflicts, thereby facilitating judicial application and enhancing legal certainty.

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