

Challenges of Legal Security in the Constitutional System: The Problematic of the Balance between Legislative Change and the Stability of the Legal System

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Abstract---Legal security is one of the essential determinants of the validity of any constitution and its ability to ensure the conditions of the rule of law and the protection of fundamental rights and freedoms. This security consists in the legal system’s ability to provide behavioral predictability for citizens and economic and political actors, and to guarantee a reasonable stability of the legal rules that regulate public and private relations. However, the contemporary challenges represented by the pace of technological change, security risks, the economic crisis, and social unrest have generated increasing pressures on constitutional systems for rapid legal amendment or new legislation often at the expense of the stability of the legal order. This article examines the constitutional structure of the concept of legal security in the context of contemporary transformations, and analyzes the core issue represented by the balance between the state’s need for rapid legislative renewal in response to political, economic, and social developments, and the constitutional system’s concern to ensure the stability of the legal order and the predictability of legal rules to protect fundamental rights and freedoms. The research combines conceptual and critical analysis with institutional constitutional mechanisms, and concludes that constitutional legal security is not achieved merely by the stability of texts, but through the synergy of clear constitutional provisions, effective mechanisms of judicial oversight, strict controls on states of emergency and exceptional legislation, and the enhancement of legislative transparency and accountability.

Keywords---legal security, constitutional system, legislative change, legal order.

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Introduction

Legal security is considered one of the basic pillars for the stability of any constitutional system and the protection of public rights and freedoms. It grants legal rules the qualities of predictability and certainty that individuals and economic and political actors need to live their lives in legal safety. The twenty-first century, however, has witnessed an escalation in the pace of legislative, social, technological, and political changes, which has led to repeated clashes between the state's need for legislative flexibility to confront contemporary developments and the constitutional requirement of stability and regularity that ensures the protection of rights and the entrenchment of the rule of law.

The intensity of this tension increases in the context of comparative constitutional systems, where mechanisms for maintaining and defending legal security vary from explicit constitutional texts to different judicial and institutional practices. A faulty balance between rapid legislation and the stability of the legal order can lead to the loss of legal predictability and the exposure of fundamental rights to unjustified fluctuations, and can even weaken public confidence in constitutional institutions.

Accordingly, legal security is one of the essential pillars for ensuring the rule of law and building confidence in the constitutional system, as it represents the framework that guarantees the clarity, stability, and predictability of legal rules by those to whom they are addressed. Yet the accelerating political, social, and economic variables, and the successive legislative developments they impose, have put legal security to precise tests across various comparative constitutional systems. In light of rising calls to update legislation and adapt it to the exigencies of the age, the problematic balance emerges between the necessity of keeping pace with legislative change on the one hand, and the requirements of stabilizing the legal order and guaranteeing the protection of acquired rights and legal positions on the other.

Research into the challenges of contemporary legal security calls for identifying the limits of the legislature in exercising its function and ensuring that the dynamics of legislation do not become a factor that undermines the principle of legal stability, as one of the components of the constitutional rule-of-law state. The subject also raises fundamental questions about the role of constitutional courts in consolidating legal security and the mechanisms for achieving harmony between legislative flexibility and the stability of legal rules within modern constitutional systems.

From this starting point, this research assumes that legal security is not achieved through mere formal or numerical stability of legislative texts; rather, it is achieved through an integrated structure composed of clear constitutional provisions, effective oversight institutions, methodological rules of interpretation, mechanisms to regulate states of exception and emergency, and transparent legislative procedures.

In light of the above, this study poses the following central problem: **how can constitutions, through their institutional and judicial mechanisms, balance the requirements of urgent legislative change in response to developments, and the necessity of preserving the stability of the legal order and the predictability of legal rules to protect fundamental rights?**

We will attempt to answer this problematic through two main axes as follows:

Axis One: A conceptual approach to legal security and legislative change and their impact on the stability of the legal order.

Axis Two: The issues and challenges of legislative change and its impact on legal security.

Axis One: A Conceptual Approach to Legal Security and Legislative Change and Their Impact on the Stability of the Legal Order.

Legal security, in its constitutional dimension, represents the textual and institutional framework that provides sufficient predictability and stability of legal rules to protect rights, freedoms, and obligations, while granting organized flexibility to the public authority to respond to emergent developments. Legal

security performs two central functions: (1) entrenching the rule of law and restraining public authority by requiring the legality of governmental acts and setting temporal and procedural limits on interventions; and (2) protecting fundamental rights and legal predictability by providing legal rules that enable individuals and institutions to organize their conduct with confidence. Legal security is not limited to the stability of legal texts alone; it also includes clarity of drafting, rules of non-retroactivity especially in the criminal field and specific constitutional procedures for states of emergency and exceptions, coupled with parliamentary oversight and effective judicial review.

Constitutional legal security is therefore a methodological balance between the stability of rules and their flexibility; it seeks to preserve the predictability of law and safeguard fundamental rights and freedoms without depriving the state of necessary tools to respond to political, economic, and social developments that require legislative renewal and modernization.

First: Defining Legal Security and Legislative Change: “Between Complementarity and Contradiction”.

Legal security in the constitutional context can be defined as the set of textual, institutional, and procedural guarantees that enable individuals and entities to form stable legal expectations, on the one hand, and restrict state power within a framework of legality and respect for fundamental rights, on the other (Section One). This concept comprises interrelated elements centered on the predictability of legal rules, the stability of fundamental principles, clarity of texts, and an effective system of oversight and accountability (Section Two).

Section One: Defining Legal Security from a Constitutional Perspective.

Legal security, in the constitutional context, is one of the essential pillars for ensuring the stability of the legal system and the protection of rights and freedoms. It reflects the principle of confidence in legal rules through their clarity, stability, and predictability, enabling citizens and the administration to organize their conduct according to fixed, non-volatile texts. Legal security is connected to the constitution through the entrenchment of the principles of legality, separation of powers, and the guarantee that laws are not altered except through specified and public procedures, thereby preventing arbitrariness and achieving legal certainty as a necessary condition for the rule of law and the state of right. Within this context, it is possible to distinguish between (1) a doctrinal-legislative definition that focuses on the theoretical and conceptual side of legal security as presented in scholarly writings and legislative texts, emphasizing the elements of stability, clarity, and predictability of legal rules; and (2) a procedural-judicial definition that focuses on how legal security is practically embodied through judicial procedures, guarantees of fair trial, stability of jurisprudence, and the protection of rights through litigation mechanisms.

First: The Doctrinal and Legislative Dimension of Legal Security.

Legal security is considered “a set of textual, institutional, and procedural guarantees that ensure the predictability of the legal rule and its sufficient stability to protect rights and obligations.”¹ It also represents “the framework that secures a real balance between the freedom of the authority and the guarantees that protect individual freedoms from legal infringement.”²

In other words, legal security means “the ability of individuals and institutions to organize their conduct with confidence, based on clear and stable legal rules that protect fundamental rights and restrain authority.”³ It also represents “a state of the legal system characterized by rules accessible to the public, with access to legal texts, and with sufficient stability to enable social oversight.” It is “legal certainty, meaning that laws must be clear, published, stable, and applied equally to enable individuals to predict the legal consequences of their actions.”

¹ - Mohamed Saber, *Principles of Constitutional Law*, Dar al-Fikr al-‘Arabi, Cairo, 2015, p. 45.

² - Souad Rafiq, *Rights and Freedoms: A Constitutional Introduction*, Dar al-Bayan, Tunis, 2010, p. 87.

³ - Fatima Zahra Ben Ali, “Legal Security and Human Rights in Contemporary Legislation,” *Journal of Legal Studies*, no. 12, 2018, p. 23.

Accordingly, legal security is not merely a legislative goal but an interpretive standard exercised by judges when facing ambiguous texts; interpretation tends to preserve the predictability of legal rules and to avoid creating a sudden legislative burden for individuals. Legal security does not mean legal rigidity;⁴ rather, legislation must be flexible. Living constitutions require the ability to renew. The practical difference is that acceptable renewal is framed by constitutional texts and oversight mechanisms that ensure that any change does not affect core rights or lead to a loss of legal predictability; any transgression of these controls renders the legislative or executive authority excessive and generates a state of legal insecurity.⁵

It also represents a state of reassurance and confidence in the stability and clarity of legal rules, enabling individuals and institutions to know their rights and obligations and preventing sudden or retroactive changes in laws.⁶

“Legal security is the guarantee of stability and clarity of legal rules, allowing individuals to predict the results of their legal actions, and preventing infringement upon acquired legal positions except under strict controls.”

The Algerian Constitution, through the 2020 constitutional amendment in both the Preamble and Article (34) expressly enshrined the principle of legal security and its guarantee in the context of affirming the stability of legal rules, the protection of rights and legal positions, and the restriction of state powers by the contents of this principle.

Second: The Procedural and Judicial Dimension of Legal Security.

Legal security is a state in which judicial and procedural oversight mechanisms ensure that laws are applied in a predictable manner consistent with constitutional principles, preventing arbitrariness and sudden legal shifts. Legal security also expresses the balance between the administration’s ability to adapt to emergencies and the need for methodological procedures that prevent the permanent or arbitrary use of emergency powers. It also pertains to “the effectiveness of institutions in interpreting and applying laws in a way that preserves citizens’ predictability.”

Legal security in the constitutional system is embodied as “a dynamic balance between the stability of legal texts and their regulated flexibility; it entails the existence of rules of non-retroactivity, effective oversight mechanisms, and clear procedures for exceptional states. It is the ‘framework that regulates emergency powers to ensure that fundamental rights are not permanently infringed.’ Legal security is ‘one of the manifestations of the principle of legality that requires all interventions by the authority to be available, known, and predetermined.’”

From the perspective of legislative governance, legal security is measured by the transparency of the legislative process and the existence of ex-ante impact assessments of legislation, which help to avoid producing sudden rules that disrupt predictability. It is “a regulatory indicator that measures the availability of mechanisms of transparency, accountability, and legislative evaluation that support the predictability of the law.”

Legal security is “the guarantee that judicial procedures and procedural rules provide effective protection of rights, ensuring transparency, justice, and predictability in the course of litigation.” In other words, it is “the guarantee of individuals’ ability to rely on procedural rules to protect their rights, and that judicial procedures provide them with effective means of challenge and redress.”⁷

⁴ - Arab Organization Against Corruption, *Report on the Transparency of Laws* (2019), p. 46.

⁵ - Mohamed Abdelrahman, *Principles of International Law*, Dar al-Nahda, Cairo, 2017, p. 210.

⁶ - Nasser Al-Attar, *Principles of Interpreting Legal Texts*, Dar al-Fikr al-Qanuni, Amman, 2012, p. 98.

⁷ - Mahmoud Abdelwahab, *The Theory of Legal Security in Arab Jurisprudence*, Dar al-Nahda al-‘Arabiyya, Cairo, 2007, p. 17.

Legal security is achieved through court rules and procedures that ensure individuals' rights in the judicial system and provide a fair and predictable process for the resolution of disputes. The jurisdiction of supreme courts goes beyond monitoring the extent to which decisions conform to the law, to monitoring the extent to which they respect the principles of legal security that is, ensuring the stability of jurisprudence and the absence of contradictions in judgments.⁸

Section Two: Legislative Change: “Balancing Necessities and Challenges”.

Legal security is one of the pillars that ensure the stability and development of societies at the economic and social levels, as it reflects the confidence of individuals and institutions in the legal system and their ability to predict the legal consequences of their actions, enabling them to plan for the future with confidence.⁹ However, legal systems are not static; they are subject to continuous changes in response to social, economic, and technological developments (First). Despite its necessity, legislative change may pose major challenges to the principle of legal security, especially when it is rapid, unstudied, or lacking in clarity.¹⁰ The complex relationship between legislative change and legal security calls for views on how to achieve a balance between the need for legislative adaptation and the necessity of preserving legal security (Second).¹¹

First: Legislative Change: An Inevitable Necessity and Latent Challenges.

Legislative change is the process of amending, repealing, or adding new legal rules to the existing legal system. This process is inevitable for several reasons, including:

Social and economic development: Developments in social relations, demographic changes, and economic shifts (such as the emergence of digital economies) require amending existing laws or enacting new ones to regulate these relationships.¹²

Technological advancement: The emergence of new technologies (such as artificial intelligence) necessitates a legal framework to regulate their use and define responsibilities, as in legislation relating to data protection.¹³

International obligations: Treaties and international agreements concluded by the state may impose updates to certain national legislation to align with international standards.¹⁴

Political and administrative reforms: Changes in governmental structures or the desire to improve administrative performance lead to the redrafting of the laws governing the functioning of institutions.¹⁵

Despite these necessities, legislative change carries major challenges. Frequent or unexpected change may “destabilize legal positions and hinder the long-term planning of individuals and companies,” thereby reducing legal certainty.¹⁶

As a regulator for safe legislative change and renewal, legal security relies on several basic pillars:

Legal certainty: Refers to the clarity and specificity of legislative texts, such that they do not leave wide room for interpretation or jurisprudence that may lead to contradictory results.

Legislative stability: Means not excessively amending or repealing laws, as this negatively affects the confidence of individuals and institutions in the legal system.

Ease of access to justice: The simplicity, clarity, and reasonable costs of legal procedures contribute to strengthening legal security by ensuring that every individual can resort to the judiciary to obtain their rights.

⁸ - Mohamed Issa Mansour, *Administrative Law: General Principles and the Judicial System*, Dar al-Huda, Algeria, 2016, pp. 112–113.

⁹ - Samir Salama, “Judicial Review of the Constitutionality of Laws,” *Official Journal of the Judiciary*, 2017, p. 55.

¹⁰ - Abdelkader Jibril, *Constitutional Emergencies: A Comparative Study*, Dar al-Nahda al-Arabiyya, Cairo, 2016, p. 80.

¹¹ - Hisham Mohamed, *Constitutional Law and Executive Practices*, Dar al-Hikma, Casablanca, 2011, p. 60.

¹² - Ali Mustafa, *State, Law, and Constitution*, Dar al-Irfan, Beirut, 2014, p. 113.

¹³ - Latifa Al-Saidi, “Emergencies and Human Rights in Arab Legislation,” *Journal of Law and Justice*, no. 5 (2016), p. 39.

¹⁴ - Youssef Al-Tawil, “Legitimacy and Legality,” *Journal of Legal Thought*, special issue (2013), p. 12.

¹⁵ - Arab Center for Legal Research, *Governance and Transparency of Legislation*, report, Cairo, 2019, p. 18.

¹⁶ - Omar Ben Abed, *Principles of Legal Governance*, Moroccan Center for Legal Studies, Rabat, 2018, p. 22.

Effective enforcement of the law: The mere existence of the law is not sufficient; it must be capable of being enforced effectively and impartially by the concerned authorities.

Second: The Relationship Between Legislative Change and Legal Security: “Challenges of Balancing”

The relationship between legislative change and legal security forms a difficult equation: excessive legislative change threatens legal security, while legislative rigidity hinders societal development.¹⁷

Legislative change as a threat to legal security:

Loss of legal certainty when laws change frequently and unexpectedly, individuals and institutions lose the ability to predict the legal consequences of their actions. This negatively affects investments and long-term plans and increases legal risk. For example: a sudden change in tax or investment laws may deter investors from injecting new capital.¹⁸

Instability of legal positions frequent change shakes legal positions that were stable under previous law, creating new disputes and lengthening litigation.

Difficulty adapting to new laws legislative change requires time and effort for individuals and institutions to learn new laws and adapt their situations. Rapid change hinders this process and increases the likelihood of unintentional violations.¹⁹

Legislative change as a factor enhancing legal security:

Addressing gaps and shortcomings legislative amendments can address gaps that appear in the application of laws or remove contradictions between different texts, thereby enhancing legal certainty.²⁰

Adapting to developments modern legislation regulating new fields (such as e-commerce and artificial intelligence) helps to frame these areas and provide legal protection for the parties involved, thus enhancing legal security in sectors previously uncovered.

Improving access to justice legislative amendments may include reforms aimed at simplifying litigation procedures, reducing costs, or introducing alternative dispute resolution mechanisms, all of which enhance access to justice and contribute to legal security.²¹

Second: Criteria for Measuring the Principle of Legal Security.

Legal security rests on an integrated structure: clear and restrictive constitutional texts; effective oversight institutions; limited flexible rules that allow responsiveness to developments without undermining the principle of legality; and transparent accountability mechanisms. Through a comparative analysis of legislative, judicial, and regulatory mechanisms, it is possible to present a map based on constitutional standards to strengthen legal security in light of legislative change (Section One).²² It is also possible to adopt indicators to measure the extent to which legal security is realized: the stability of legislative frameworks, the degree of clarity of texts, the non-retroactivity of penal laws, the existence of effective judicial oversight, and the transparency of legislative and administrative procedures (Section Two).

Section One: Components of the Principle of Legal Security.

¹⁷ - Nawal Youssef, “Responsibility to Protect A Study in Light of International Law,” *Journal of Legal and Political Studies*, University of Constantine, no. 19, 2017, p. 193.

¹⁸ - Tarek Abdel-Meguid, *Stability of Legislation and Its Impact on the Investment Environment*, Arab Center for Legal Research, Cairo, 2018, p. 90.

¹⁹ - Ahmed Al-Sanouri, “Clarity of Legal Texts and Its Impact on Legal Certainty,” *Journal of Law and Economics*, no. 28, 2012, p. 70.

²⁰ - Abdel-Fattah Bayoumi Al-Anani, *Legal Security in Arab States: A Comparative Study*, Dar al-Nahda al-‘Arabiyya, 2008, p. 25.

²¹ - Fawaz Rashid Al-Rawi, “Principles of Legal Security and Their Applications in Iraqi Legislation,” *Journal of the College of Law for Legal and Political Sciences*, no. 16, 2015, p. 30.

²² - Nabil Zegour, *Access to Justice in Arab Legal Systems*, Dar al-Jami’a al-Jadida, Cairo, 2016, p. 120.

Legal security is not a single abstract concept, but rather a system of textual, institutional, procedural, and behavioral controls that allow the predictability of the legal rule, protect fundamental rights, and regulate the state's flexibility in responding to challenges. Constitutionally, these controls must be framed to be flexible to a regulated extent and supported by oversight and transparency. Within this context, we distinguish between the constitutional requirements related to establishing legal security (First), and a set of core elements of legal security that constitute its general rules (Second).

First: The Basic Structure of the Principle of Legal Security from a Constitutional Perspective.

The concept of legal security from a constitutional perspective constitutes an essential condition for the stability of the political system and the protection of rights and freedoms. Within this context, the problem lies in the tension between the stability of legal rules (to provide predictability) and the necessity for the state's flexibility to confront crises and social and political changes developments that may undermine legal security or infringe upon fundamental rights. This calls for analysis of the tools of the constitution (constitutional texts and principles, the oversight role of the constitutional court, emergency procedures, principles of codification and interpretation) that strengthen or weaken legal security, with a selective comparative approach to international experiences to derive practical constitutional recommendations.

The basic structure of legal security from a constitutional perspective is embodied in implementing and observing a set of core constitutional principles: the rule of law, separation of powers, the principle of legality, and constitutional review. This requires, on the one hand, observance of the structural dimension: clarity of constitutional texts and stability of fundamental principles, the hierarchy of legal norms, and the limited frequency of constitutional amendments; and adherence, on the other hand, to the procedural dimension: entrenchment of constitutional oversight mechanisms, guarantees of fair trial and the right to litigation, legislative transparency, and compliance with organizational requirements: clear and precise texts, definition of the powers of authorities, controls on emergency and exception, and the protection of rights in exceptional circumstances, through institutional mechanisms: the constitutional court, the council of state, administrative judiciary, and parliamentary oversight.

The rule-of-law principle: Legal security is the practical embodiment of the rule of law; stability of transactions and confidence in the legal system cannot be achieved unless legal rules are the supreme reference binding on all, rulers and ruled. Legal security presupposes clear, stable, and non-contradictory rules that enable individuals to predict the outcomes of their conduct within a disciplined legal framework. The rule of law, in turn, is the primary guarantee for that protection because it subjects the administration and public authorities to the provisions of the law, preventing any arbitrariness or abuse of power.²³

Separation of powers: Legal security is closely linked to separation of powers because the distribution of legislative, executive, and judicial functions limits overlaps that may lead to disturbances in the stability of legal rules. When each authority adheres to the limits of its competence, the stability of the legal system is ensured and arbitrariness by one authority against another is prevented. Judicial independence is a fundamental pillar for entrenching legal security because it enables the judiciary to exercise oversight over the respect of rights by the administration and legislation.²⁴

The principle of legality: This is the foundation of legal security; it is realized only when the actions of public authorities are subject to law. Legality requires that administrative and legislative decisions derive from existing legal texts, while legal security ensures the stability of those texts and the predictability of

²³ - Ali Selim, "The Principle of Legal Security Between Theory and Practice in Comparative Systems," *Journal of Legal and Political Studies*, University of Batna, no. 12, 2021, pp. 44–46.

²⁴ - Hassan Salhi, "Legal Security in Light of the Principle of Separation of Powers," *Algerian Journal of Legal and Political Sciences*, University of Algiers 1, 2020, pp. 97–101.

their results. Thus, legality represents the formal side of legal security, while the latter represents a substantive dimension aimed at achieving certainty and stability in application.²⁵

Legal security and constitutional review: Constitutional review is the most prominent institutional tool to guarantee legal security. Constitutional courts or councils ensure that laws conform to the constitution, preventing the enactment of contradictory or ambiguous legislation that undermines legal certainty. Constitutional case law also contributes to unifying legal interpretation and protecting rights and freedoms, thereby enhancing public trust in the legal system. The stability of constitutional texts and consistent interpretive approaches by the judiciary are pillars of legal security.²⁶

Second: General Rules of the Principle of Legal Security.

Legal security is the framework that balances the stability and predictability of legal rules on the one hand, and the state's flexibility to respond to developments through regulated constitutional and legal procedures on the other. It requires explicit texts, an oversight-capable institutional structure, mechanisms for societal participation and impact assessment of legislation, and the protection of fundamental rights with reduced arbitrariness, through principles that are measurable or examinable: stability of texts, clarity of rules, non-retroactivity, and judicial predictability.

Predictability of the legal rule: The ability of individuals to predict the legal consequences of their behavior based on clear and known rules; it requires publication of texts, clarity of legal language, stable interpretive rules, and a relative stability of fundamental legislation.

Clarity and explicitness of texts: Precise legislative and constitutional drafting that reduces judicial ambiguity and wide interpretation; it entails adherence to the principles of legislative drafting and technical requirements (definition of terms, clear implementing provisions).

The principle of non-retroactivity: Non-application of laws retroactively, especially in the criminal field, and the protection of legal transactions. It requires explicit constitutional or legislative texts that prohibit retroactivity, except narrowly and specifically.

Stability of fundamental principles / constitutional hierarchy: Protecting fundamental principles from frequent or random amendment that undermines the expectations of individuals and institutions, through "entrenchment" mechanisms that make amendments to basic constitutional clauses more difficult and through strict constitutional rules for revision and amendment.

Effective judicial oversight: The judiciary (constitutional, ordinary, and administrative) must be empowered to review the constitutionality of laws and decisions to ensure their consistency with principles. This highlights the vital role of constitutional courts and councils and the adoption of effective "plea of unconstitutionality" mechanisms (accessibility and relatively expeditious procedures).

Regulated emergency and exceptional powers: Providing legal tools that allow exceptional measures under temporal and substantive conditions and under oversight; with constitutional definition of emergency cases, rules of proclamation, periods and time limits, parliamentary and judicial oversight, and principles of non-infringement of core rights.

Legislative transparency and participation: Civil society and affected parties should be involved in the legislative process and procedures should be transparent through public consultations, publication of draft laws, and legislative and social impact assessment.

²⁵ - Mohamed Abdelhamid, "The Principle of Legality and Legal Security in Administrative Judiciary," *Journal of Legal and Economic Research*, no. 43, University of Mansoura, 2022, pp. 212–218.

²⁶ - Nadia Bouchareb, "Constitutional Review as a Guarantee of Legal Security in the Algerian Constitutional System," *Journal of Constitutional Law*, University of Constantine, 2021, pp. 115–120.

Section Two: Levels for Measuring the Principle of Legal Security.

Legal security is a fundamental pillar of societal and economic stability, as it guarantees that individuals and institutions can anticipate the consequences of applying laws. It is defined as “the stability of legal positions and their non-exposure to sudden and unjustified change, allowing individuals to organize their affairs with prior knowledge of the legal effects of their actions.” It includes several dimensions and levels, such as the clarity and stability of texts, the effectiveness of law enforcement, access to justice, and the independence of the judiciary. These can be classified into the following levels:

First: The institutional framework level.

Independence and integrity of the judiciary: Judicial independence is the cornerstone of legal security because it guarantees the application of the law fairly and equally without influence from other authorities. Emphasis is placed on “the necessity of separating the three powers and ensuring that no authority interferes with the work of the judiciary.”²⁷

Existence of oversight and accountability bodies: Independent oversight bodies and accountability institutions enhance transparency and reduce corruption, positively reflecting on legal security. They “strengthen the principle of the rule of law and ensure the protection of rights by overseeing the performance of authorities.”²⁸ This can be measured by the percentage of recommendations from oversight bodies that are actually implemented or the number of complaints filed against abuses by the judicial or executive authorities.

Second: The level of texts and legislation.

Clarity and stability of legal texts: Clarity of legislation and avoidance of ambiguity and contradiction are essential factors for achieving legal certainty. “Vague or contradictory law leads to instability of legal positions and hampers planning.”²⁹

Sustainability and updating of texts: Laws should be able to keep pace with social and economic developments while maintaining relative stability to avoid confusion. Emphasis is placed on “the need for periodic reviews of legislation to ensure its suitability for developments while preserving the essence of stability.” This can be measured by the number of annual legislative amendments and the number of cases challenged due to legislative ambiguity.

Third: The level of access to justice.

Ease of access to judicial procedures: Simplicity and reduced complexity facilitate individuals’ access to justice. “Simplification of litigation procedures and reduction of bureaucratic obstacles are indicators of the legal system’s effectiveness.”

Costs of litigation and alternatives: Litigation costs should be reasonable, and alternative dispute mechanisms such as mediation and arbitration should be provided to reduce pressure on courts. “High litigation costs may deprive broad segments of their right to resort to the judiciary.” Indicators include average time to resolve cases and the percentage of disputes resolved through mediation or arbitration compared to those before the courts.

Fourth: The level of effective law enforcement.

Capabilities for effective enforcement: Legal security largely depends on the capacity of executive bodies (police, public prosecution, administrative agencies) to enforce laws efficiently and fairly. “Law has no value without effective and just enforcement.”

Quality of enforcement services and administrative decisions: The quality and speed of implementing administrative and judicial decisions enhance trust in the legal system. “Delays or inconsistency in

²⁷ - Adel Amer Al-Aboudi, *Judicial Independence as a Guarantee for Achieving Legal Security*, Dar al-Fikr al-Jami'i, 2007, p. 150.

²⁸ - Mohamed Qanouni, “The Role of Oversight Bodies in Strengthening the Rule of Law,” *Journal of Rights and Human Sciences*, (5), 2010, p. 45.

²⁹ - Ahmed Al-Sanouri, “Clarity of Legal Texts and Its Impact on Legal Certainty,” *op. cit.*, p. 70.

enforcement undermine confidence in fairness and effectiveness.” Indicators include the average time to enforce final court judgments and the number of complaints concerning non-enforcement of administrative or judicial decisions.

Fifth: The level of protecting fundamental rights and freedoms.

Guaranteeing human rights and freedoms: Protection of individuals’ rights at all stages of legal procedures criminal or administrative is an essential indicator of legal security. “Legal systems that restrict freedoms without justification or squander rights are legally insecure.”

Mechanisms of protection against arbitrariness: Effective mechanisms must exist to protect individuals from arbitrary use of power or violations of their rights. “The existence of independent oversight bodies to which individuals can resort is an important guarantee for protecting rights.” Indicators include the number of complaints concerning human rights violations and the percentage of cases where courts find abuses by authorities.

Sixth: The level of public trust and satisfaction.

Public trust in the legal system: Public trust is a strong indicator of the effectiveness of legal security. “The trust of individuals is the foundation of the legitimacy and continuity of any legal system.”

Public satisfaction with legal services: This includes satisfaction with the quality of services provided by courts, the public prosecution, lawyers, and other legal bodies. “Regular opinion surveys measuring levels of trust and satisfaction provide important insights into system performance.” Indicators include survey results and participation rates in community workshops on legal issues.

Axis Two: The Issues and Challenges of Legislative Change and Its Impact on Legal Security.

Legal security is a fundamental requirement for the stability of any constitutional system, as it grants individuals predictability in the provisions of the law and frames state power within agreed limits. With escalating security, economic, social, and political challenges, the need arises to balance state flexibility and the protection of fundamental rights. Legal systems are not rigid entities; they are in continuous dynamics, evolving and changing in response to rapidly accelerating social, economic, and technological transformations. This “legislative change,” although an inevitable necessity to keep pace with the times and meet the society’s renewed needs, involves many issues and challenges that may threaten legal security and shake its stability.

Excessive amendment, sudden and unjustified change, or ambiguity in drafting new legislation are all factors that deprive individuals and institutions of legal certainty, disturb stable legal positions, and diminish confidence in the fairness and effectiveness of the system. Hence the urgent need to explore these issues and challenges and how to strike a precise balance between the necessity of legislative adaptation and the requirement of preserving legal security as an essential element of the rule of law and social stability.

First: The Challenge of Constitutionalizing Legal Security “A New Horizon to Confront Legislative Disorder”.

The principle of legal security is a fundamental pillar of the modern state. It is not a mere formal principle; it is the essence of the rule of law, ensuring individuals and institutions’ confidence in the legal system and their ability to predict the legal consequences of their actions. From this premise, the question of how to adapt this vital principle within constitutional jurisprudence is of utmost importance. We therefore shed light on its adaptive capacity to evolve and take root within the modern constitutional order, becoming an effective tool to confront contemporary legislative challenges (Section One).

Faced with increasing political, economic, and social challenges and massive, rapid technological changes, traditional mechanisms to regulate legislative change are no longer sufficient. The search for new horizons through the idea of the “constitutionalization of legal security” has become a strategic

response to provide a higher framework that elevates the values of certainty, stability, and clarity within the legislative system and becomes a criterion for evaluating and drafting laws.

The challenge of constitutionalizing legal security is an effort to build a constitutional barrier against legislative disorder, paving the way for a more robust, predictable, and trustworthy legal system, as a means to combat legislative chaos and ensure the stability of the legal order (Section Two).

Section One: The Preventive Function of Legal Security Against Legislative Disorder.

The contemporary world witnesses an accelerating pace of social, economic, and technological change, placing the legislature under increasing pressure to keep up through the enactment, amendment, and alteration of legislation. This legislative dynamism often described as “legislative disorder” marked by abundance, speed, and even contradiction casts a shadow over the pivotal principle of “legal security.” In the absence of certainty and stability, the confidence of individuals and institutions in the legal system declines, and legal positions are shaken, hindering planning and leading to societal and economic instability.

As for the constitutional development of legal security, the principle originated within private and administrative law but soon rose to the rank of constitutional principles. This elevation was not a mere theoretical luxury; it came as a result of the state’s growing intervention in individuals’ lives and the inflation of legislation, which necessitated setting constitutional limits and guarantees to protect individuals from legislative arbitrariness or volatility. This entrenchment has been reflected in many constitutions around the world, either through explicit provisions on justice, equality, and legal certainty, or through implicit derivations from the principles of the rule of law and the state of right and law.

The adaptive capacity of legal security within constitutional jurisprudence lies in its flexibility to absorb the challenges of a changing legislative order and to provide diverse preventive tools, including:

Regulating legislative amendments: Constitutions can restrict the legislature’s power to repeatedly amend or repeal laws retroactively by setting procedural or substantive conditions for amendment or even by immunizing some laws from amendment for specific periods. Within this context, constitutional courts play a decisive role in reviewing the constitutionality of legislative amendments to ensure they do not violate the principle of legal security, especially regarding the non-retroactivity of more restrictive laws.

The principle of clarity and legal certainty: Clarity and legal certainty are among the most important dimensions of legal security strengthened by constitutional jurisprudence. Constitutional courts often intervene to strike down vague or undefined laws that leave wide room for interpretation and judicial discretion, depriving individuals of the ability to know their rights and duties in advance.

Protection of acquired rights and stable legal positions: Legal security provides protection for legal positions and acquired rights and restricts the legislature from infringing upon them except for compelling necessity and under specified conditions, to ensure the stability of legal transactions and relationships.

Accordingly, legal security is a fundamental pillar for the stability of the legal system. Its preventive role is manifested in protecting society from the risks of legislative disorder characterized by contradictions, duplication, ambiguity, or sudden changes in legislative texts. As a guarantee of clarity, stability, and predictability, legal security serves as a preventive barrier that prevents legislation from slipping into chaos or internal contradiction that would deprive legal rules of their credibility and effectiveness. Legislative stability is a condition for the existence of the rule of law; frequent legislative change without objective justification weakens citizens’ trust in the legal system and deprives legislation of its guiding function.

In light of the above, several levels of legal security can be distinguished as follows:

A constitutional dimension: Related to the stability of constitutional principles, the rule of law, and the protection of fundamental rights.

A legislative/legal dimension: Related to the quality of the legislative rule (its clarity, non-retroactivity texts, enforceability).

An institutional dimension: Includes oversight mechanisms (constitutional judiciary, parliament) and administrative procedures.

A social/governance dimension: Legislative transparency, involvement of civil society, and the availability of judicial remedies.

Section Two: The Guiding and Instructive Function of Legal Security for the Benefit of the Legislature.

If the preventive function protects the legal system from disorder, the guiding function of legal security directs the legislature itself in drafting laws. Legal security does not bind individuals only; it is a constitutional and legal standard that guides the legislature to respect the principles of clarity, coherence, and continuity when enacting legislation. This principle forms a normative framework that restrains the legislature and compels it to avoid random or contradictory legislation. Respect for legal security obliges the legislature to observe the logical sequencing of texts and to avoid conflict between old and new laws.

The modern legislature is no longer absolute in its legislative authority; it is subject to higher constitutional principles, among them the principle of legal security, which directs it to issue laws that are applicable and comprehensible and not subject to conflicting interpretations. Adapting the principle of legal security within constitutional jurisprudence is a significant achievement reflecting the maturity of legal systems. Rather than being a marginal principle, legal security has become an original and constitutionally protected component capable of adapting to the complexities and disturbances of legislative change. This adaptive capacity represents a bulwark against legislative oscillation and provides a solid foundation for building a true rule-of-law state characterized by justice, certainty, and trust, through:

Normative drafting of legislation: Through its constitutionalization, legal security becomes a guiding criterion for the legislature when drafting laws. The legislature is obliged to consider the principles of clarity, stability, and non-retroactivity and to conduct an assessment of the legal impact of any new legislation on existing legal positions.

Enhancing transparency and participation: Modern constitutions strengthen transparency requirements in the legislative process and encourage public participation in drafting laws, enhancing the acceptability of legislation and reducing the likelihood of disorder or ambiguity.

Strengthening the role of the constitutional judiciary: Constitutionalizing legal security enables constitutional courts to expand their review to include examining the legislature's compliance with the principles of legal security not merely the compatibility of laws with fundamental rights and freedoms. This preventive and remedial role becomes an effective tool to regulate legislative change and ensure its consistency with higher constitutional principles.

Accordingly, despite the great adaptive capacity of legal security within the constitutional system, significant challenges remain: the speed of technological change and the complexity of emerging issues (such as big data and artificial intelligence) cast a shadow over constitutions' ability to provide ready answers to all such challenges. The future therefore requires further scholarly and constitutional judicial effort to develop new mechanisms that ensure the effectiveness of legal security not only as a constraint on the legislature but as a compass that guides the development of the law itself toward greater certainty and stability.

Second: Legal Security in Light of Legislative Liquidity “Challenges of Harmonization with Constitutional Stability”.

Legal security is the cornerstone in building the modern rule-of-law state; it is the principle that enhances the confidence of individuals and institutions in the legal system and enables them to predict the consequences of their actions. The current legal landscape, however, is characterized by unprecedented “legislative liquidity,” fueled by the rapidity of social, economic, and technological changes, pushing the legislature to enact and amend laws at an accelerated pace (Section Two). While this liquidity is necessary to keep pace with developments, it poses deep challenges to legal security, especially given the need to harmonize with constitutional stability and to respect acquired rights. It is therefore necessary to present a methodological vision for achieving a precise balance between the dynamism of legislation and the requirements of legal stability (Section Two).

Section One: Legislative Liquidity and Legal Security: “The Paradox of Adaptation and Stability”.

“Legislative liquidity” expresses a condition of continuous change in legal texts by amendment, repeal, or addition forming a core paradox with the concept of legal security based on certainty and stability. While legal security demands “stability of legal positions, clarity of texts, and the possibility of predicting their application,” legislative liquidity presents a different reality marked by erosion of legal certainty (First), challenges of harmonization with constitutional stability (Second), and thereby highlights respect for acquired rights as a safety valve for legal security (Third).

First: Erosion of Legal Certainty.

Successive and unexpected legislative changes lead to a blurring of the legal picture, hindering the ability of individuals and institutions to make informed decisions.³⁰ For example, successive amendments to investment or tax laws can deter investors from injecting new capital for fear of changing the fundamental rules of the investment and business climate. Manifestations of this erosion include:

Shaking legal positions: Frequent tampering with laws threatens the stability of legal positions that emerged and solidified under previous legislation, generating new disputes and lengthening litigation. This shaking hinders long-term planning and undermines confidence in the continuity of the legal system.³¹

Difficulty adapting to developments: Although liquidity aims at adaptation, its speed can hinder addressees of the law from absorbing new legislation and adjusting their situations, leading to unintentional violations or difficulties in applying the law.

Second: Challenges of Harmonization with Constitutional Stability.

The constitution is the supreme framework of the legal system, and relative stability is assumed of it as a guarantee for state stability and the protection of individuals’ rights and freedoms. Legislative liquidity poses major challenges to this constitutional stability through:

The challenge of constitutional review: Legislative inflation places a tremendous burden on the constitutional judiciary, which is required to review a large number of laws for constitutionality. This pressure can lead to delays in review or inconsistency in judgments, affecting the effectiveness of constitutional protection of legal security.

Interpretation of constitutional principles: Changing legislation may sometimes attempt to circumvent well-established constitutional principles, pushing the constitutional judiciary to continual jurisprudence to interpret general constitutional principles (such as equality, justice, and legal certainty) and adapt them to new contexts without infringing their essence. While necessary, this jurisprudence may raise questions about the limits of constitutional interpretation.

³⁰ - Mahmoud Al-Mukhtar, *Effectiveness of Law Enforcement in Achieving Social Justice*, Center for Arab Unity Studies, 2017, p. 180.

³¹ - Mahmoud Al-Mukhtar, *Effectiveness of Law Enforcement in Achieving Social Justice*, Center for Arab Unity Studies, 2017, p. 180.

Infringement of constitutionally acquired rights: The most prominent challenge facing legal security under legislative liquidity is infringing upon acquired rights that are constitutionally safeguarded. Many constitutions guarantee fundamental rights to individuals; legislative amendments that diminish these rights retroactively or with immediate effect, without clear constitutional justification, are a blatant violation of the principles of legal security.

Third: Respect for Acquired Rights: “The Safety Valve of Legal Security”.

The principle of respecting acquired rights is the basic safety valve to face legislative liquidity and protect legal security. It restricts the legislature from infringing upon legal effects established by previous laws or on legal positions stabilized under them. This is embodied through:

The principle of non-retroactivity: This is one of the most important manifestations of respect for acquired rights, preventing the application of new law to facts that occurred before its entry into force. Constitutional jurisprudence emphasizes the need to entrench this principle especially in criminal and tax matters to ensure the stability of individuals’ legal positions.³²

Limiting the immediate effect of new laws: Even when a law applies prospectively to existing legal positions, constitutional jurisprudence obliges the legislature to observe gradual application and to provide sufficient transitional periods for individuals and institutions to adapt their situations, avoiding the “legal shock” that undermines legal security.

The role of the judiciary in protecting acquired rights: Ordinary and constitutional judiciaries have a decisive role in applying the principle of non-retroactivity and protecting acquired rights. Judicial decisions that strike down legislation contrary to these principles entrench legal security and enhance confidence in the justice system.³³

Achieving legal security in the face of the challenges of legislative liquidity requires a balanced approach that does not reject necessary change but regulates and frames it with strict constitutional controls. Constitutional stability and respect for acquired rights are not obstacles to legislative development; they are the basic guarantees of its continuity and effectiveness. Today’s legislature must therefore act with great wisdom and foresight, conducting in-depth studies to assess legal impact before enacting any new legislation, enabling public participation, and committing to drafting clarity. At the same time, the constitutional judiciary must strengthen its role as a faithful guardian of constitutional principles so that legal security becomes not just a slogan but a tangible reality that enhances the rule of law and consolidates stability in modern societies.

Section Two: Mechanisms for Achieving a Balance Between Legislative Change and the Stability of the Legal Order.

Legal security is a fundamental support for the stability and prosperity of societies. It consolidates individuals’ and institutions’ trust in the legal system and enables them to predict legal consequences, thereby enhancing planning and supporting investment. The current era, however, witnesses an increasing phenomenon known as “legislative liquidity,” where the pace of enacting, amending, and repealing laws accelerates in response to successive developments in all areas of life (First). While necessary, this dynamism poses great challenges to legal security and threatens the stability of the legal order as a whole, making it necessary to analyze the problematic balance between the pressing need for legislative adaptation and the requirements of legal stability (Second).

First: Legislative Liquidity and Its Repercussions on Legal Security.

Legislative liquidity stems from several factors imposed on contemporary legal systems: unprecedented technological development (such as artificial intelligence and big data), profound social changes, economic globalization, and international obligations. These factors require continuous legislative

³² - El-Sayyid Ali El-Shahawi, *Mediation and Arbitration as Alternatives for Dispute Resolution*, Dar al-Matbou‘at al-Jami‘iyya, 2019, pp. 75 and 90.

³³ - Maha Abdelaziz, *Protection of Human Rights in Contemporary Criminal Law*, Dar al-Fikr al-‘Arabi, Beirut, 2014, p. 110.

intervention to frame developments and regulate emerging relationships; otherwise, the law may become incapable of performing its guiding and regulatory functions.

However, this adaptive necessity often produces negative repercussions on legal security:

Shaking legal certainty: Unexpected changes to legal rules cause individuals and institutions to lose the ability to predict the legal effects of their actions, creating a state of hesitation, confusion, and instability.

Instability of legal positions: Legal positions that formed and prospered under previous legislation become subject to fluctuations with each amendment, creating disputes and increasing burdens on the judicial system.

Difficulty in understanding and applying the law: Addressees of the law including judges and lawyers face increasing difficulty keeping up with the sheer volume of amendments, which may lead to errors in application or delays in litigation.

Achieving a balance between legislative change and the stability of the legal order in light of current liquidity is a profound constitutional challenge upon which the effectiveness and credibility of the legal system depend. Neglecting this balance may lead to the disintegration of the legal structure and the decline of confidence in justice, thereby weakening the rule of law. Thus, adopting integrated mechanisms at the legislative and judicial levels including ex-ante studies, transparency, gradual application, clarity of drafting, activation of the role of the constitutional judiciary, and protection of acquired rights becomes imperative. In this way, we can build a legal order that is both flexible and stable, capable of adapting to the challenges of the age while remaining firm and steady, providing societies with a safe environment conducive to development and prosperity, and thereby embodying legal security as both a noble goal and an effective means.³⁴

Second: Mechanisms for Achieving Balance: “Toward a Flexible and Stable Legal Order”.

Achieving a balance between legislative change and the stability of the legal order does not mean rigidity; rather, it requires adopting strategic mechanisms that enable the law to adapt to developments without compromising the essence of legal security, as follows:

At the legislative and political level:

Ex-ante studies to assess legal impact: Before enacting any new law or amending an existing one, in-depth studies must be conducted to assess potential impacts on individuals and institutions, on the economy, and on the legal order as a whole. These “Regulation Impact Assessment” studies contribute to more rational and informed legislative decisions and reduce the likelihood of hasty amendments.

Public participation and transparency: Involving social and economic actors and experts in the drafting process and presenting bills for public discussion enhances legislative quality and legitimacy, reducing the need for later amendments. Transparency in the legislative process also strengthens public confidence.

Gradual application and transitional periods: Providing sufficient transitional periods for the application of new legislation is necessary to allow addressees of the law to adjust their situations. Such gradualism reduces “legal shock” and preserves the stability of legal transactions.

Clarity and simplification of legislative drafting: Clear and precise legislative drafting that avoids ambiguity and contradiction strengthens legal certainty. The legislature should use precise and simplified legal language to facilitate understanding and application.

Structural and partial legislation: The legislature can adopt “framework legislation” that sets general principles and leaves details to subordinate legislation (such as implementing regulations), thereby providing greater flexibility to adapt to developments without constantly amending the primary law.

³⁴ - Khaled El-Amrani, *Public Trust in the Judiciary and Its Role in Building the Modern State*, Fikr wa Naqd Publications, 2021, p. 40.

At the constitutional and judicial level:

Constitutionalizing the principle of legal security: Elevating legal security to a constitutional level either explicitly or implicitly through other constitutional principles (such as equality and the rule of law) provides higher protection against legislative liquidity. This constitutional entrenchment obliges the legislature to comply with legal-security controls and enables the constitutional judiciary to exercise oversight effectively. Strengthening the role of the constitutional judiciary: The constitutional judiciary is the faithful guardian of constitutional principles, including legal security. Through constitutional review, it can strike down legislation that violates the principles of certainty and non-retroactivity or that threatens acquired rights in an unconstitutional manner.

Activating non-retroactivity and protecting acquired rights: The principle of non-retroactivity is the cornerstone of protecting legal security. The judiciary at all levels must strictly enforce this principle, especially in matters touching stable legal positions and acquired rights, except in cases of extreme and constitutionally justified necessity. Balanced judicial jurisprudence: Through balanced jurisprudence, the judiciary can fill legislative gaps and unify legal doctrines, thereby enhancing legal certainty without overstepping the boundaries of legislative authority.

Conclusion

This study on “Challenges of Legal Security in the Constitutional System: The Problematic of the Balance between Legislative Change and the Stability of the Legal Order” yields a composite analytical vision highlighting the structural tension between the necessity of legislative modernization and the requirements of legal stability, as two complementary constitutional functions that must not be sacrificed one for the other. Legal security, as a core constitutional principle, is not reduced to the mere existence of legal rules; it is embodied in the individual’s and society’s ability to predict the content and applications of those rules and to trust in their continuity, without exposing them to sudden or random legislative fluctuations that deprive law of its regulatory function.

The conceptual approach to legal security and legislative change shows that the relationship between the two is not one of fundamental contradiction but a dynamic interaction subject to strict constitutional controls. The modern constitution does not oppose legislative change and renewal; rather, it organizes and directs them as tools of reform and progress. This delicate balance collapses when legislative change turns into unregulated legislative liquidity lacking strategic vision and neglecting the principles of coherence and consistency within the legal order, creating a state of legal disorder that threatens the essence of legal security and weakens citizens’ confidence in the legislative institution.³⁵

Highlighting the practical problems legal security faces under this liquidity such as frequent and contradictory legislation and the rapid issuance of laws without sufficient study of their impacts, and even without respect for the requisite constitutional procedures, in addition to the absence of effective constitutional mechanisms for oversight of legislative quality and the lack of clear legislative policy directly undermines the stability of the legal order. Hence emerges the greater challenge: the “constitutionalization of legal security,” i.e., elevating it from the rank of a general principle to that of a guaranteed constitutional right, obliging the legislature to respect its requirements when enacting or amending laws and granting the constitutional judge effective oversight authority to prevent any transgression that undermines this principle.

The call to constitutionalize legal security is not a call to freeze legislation; rather, it is a call to organize and frame it within constitutional principles that guarantee its rationality and coherence with the rest of the legal system. Legitimate legislative change is that which respects gradualism, considers its effects on acquired rights, observes the principle of non-retroactivity, and upholds transparency and participation.

³⁵ - Imam Mohamed Kamal, *Constitutional Guarantees of Legal Security*, Dar al-Nahda al-‘Arabiyya, Cairo, 2016, p. 112.

This cannot be achieved except within a constitutional framework that elevates legal security to a value binding upon the legislature itself.

We can only affirm that the stability of the legal order is not an intellectual luxury; it is an existential condition for the rule of law, the effectiveness of institutions, and citizens' trust in the state. One of the most prominent lessons learned from modern constitutional experiences is that the real strength of the legal system is not measured by the abundance of laws, but by their ability to ensure security, stability, and justice. The desired balance between change and stability is achieved only by the presence of a conscious political will, sound constitutional controls, and a legal culture that respects the legislative timeline and does not rush it. Without this, legal security remains a distant dream and legislative change remains a sword hanging over the necks of rights and freedoms.

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