

The judicial interpretation of legal texts and its role in enhancing legal security

Meriem Boukouba ¹

¹ Law and Real Estate Laboratory, University of Blida 2, Faculty of Law and Political Science, Chadli Bendjedid University – El Tarf, Algeria. Email: m.boukouba@univ-eltarf.dz

Abstract---Judicial interpretation is a preliminary step that precedes the application of the law. It is therefore impossible to apply a legal rule before interpreting and adapting it, especially if it has ambiguous meanings that are difficult to discern. The goal is to achieve justice among litigants by establishing the principle of legal security with all its elements, as stipulated in the last paragraph of Article 34 of the latest constitutional amendment in 2020 — ranging from the clarity of the rule to its non-contradiction and accessibility. Judges, particularly administrative judges, transcend any barriers that may mar legal texts through their interpretive authority. This authority is considered an integral part of judicial activism as it relies on discretionary powers to interpret texts and address gaps or ambiguities. Thus, it contributes to the stability of the law and legal statuses while aiding the development of legal rules. If these elements are undermined, they can be safeguarded through judicial interpretation, particularly following the constitutional amendment that established appellate administrative courts under Article 179. To align the legal system with the constitution, significant amendments affecting organic law related to the State Council, organic law concerning judicial organisation and judicial division law, as well as the law of civil and administrative procedures, were introduced in 2022. Consequently, the State Council will be able to focus on its original role. Therefore, within the framework of this study, we aim to analyse the extent to which judicial interpretation contributes to the realisation of the principle of legal security, as well as to the stability and clarity of transactions and legal rules.

Keywords---Administrative judge, judicial interpretation, legal security, judicial activism, legal adaptation.

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Introduction

It is reasonable to suggest that legal rules have several characteristics, such as rigidity and abstraction. Consequently, applying them to specific cases is fraught with difficulties, as one must grasp the true meaning of the legal text and uncover its content — especially if it has ambiguous connotations that make understanding the legislator's intent difficult. Therefore, the inadequacy of a legal text does not imply the inadequacy of the administrative judge, whose role goes beyond the mere application of the law. Through their authority in judicial interpretation, judges work to eliminate any deficiencies inherent in legal texts, thereby playing an integral role in judicial activism. Judges examine legal rules and adapt them to fulfil the principle of justice among litigants and individuals, as well as the imperative of establishing legal security in the state.

This principle has become one of the constitutional principles adopted by the constitutional founder in the recent 2020 amendment to the constitution, thus becoming a source of legitimacy in the state. This means that the administrative judge must pay close attention to the essential components of legal texts, such as legislative stability, accessibility and consistency, utilising their interpretive authority to activate and maintain legal security.

Following the adoption of appellate administrative courts¹ under Article 179 in the recent constitutional amendment, the legal system underwent significant changes in 2022. These changes impacted organic laws related to the State Council, judicial organisation and division, as well as laws governing civil and administrative procedures².

This study is significant as it addresses the dynamic and evolving role of the administrative judge, as well as its extensive association with topics such as the hierarchy of legal texts and the administrative judge's powers in interpretation lawsuits. Thus, this interpretive study focuses on judicial interpretation of legal texts. From this perspective, we ask: to what extent does judicial interpretation of legal texts contribute to establishing the principle of judicial security, thereby achieving justice for litigants?

To answer this question, we adopted a descriptive analytical approach and the following plan.

Chapter One: The Concept of Judicial Interpretation and Its Relation to Legal Security

Chapter Two: The Role of the Administrative Judiciary in Achieving Legal Security through the Interpretation of Legal Texts

Chapter One: The Concept of Judicial Interpretation and Its Relation to Legal Security

Judicial interpretation refers to the approach that judges take when ruling on ambiguous legal texts, in order to achieve justice and uphold the principle of legal security. Given the specific role of the administrative judge in this process, it is essential to address judicial interpretation in this section, clarifying its foundations within administrative jurisdiction by defining it and distinguishing it from similar terminology. The focus here is limited to legislation alone, excluding administrative actions and their legal implications.

Section One: Definition of Judicial Interpretation

Firstly, it should be noted that the Algerian legislator has not provided a definition of judicial interpretation. This is understandable, as it leaves room for scholarly debate, which can lead to various definitions by jurists. In light of this, this section will present a terminological definition of judicial interpretation, followed by doctrinal definitions and an examination of its relation to legal security.

¹- Executive Decree No. 22-435 dated 11 December 2022 defining the regional jurisdiction of the Administrative Courts of Appeal and Administrative Courts (Official Gazette No. 84 dated 14 December 2022).

²- Rais Amina, 'The Jurisdiction of the Administrative Courts of Appeal under Law No. 22-13 amending and supplementing Law No. 08-09 containing the Code of Civil and Administrative Procedures', *Herodotus Journal of the Human and Social Sciences*, Vol. 7, No. 4, 2023, pp. 511–524.

Section One: Terminological Definition of Judicial Interpretation

The term 'interpretation' generally refers to the interpretation of the sciences of the Holy Quran. Some define it as the science through which the Book of God, revealed to His Prophet Muhammad (peace be upon him), is understood and its meanings and rulings are extracted. In French, it is understood as clarifying the general meaning of a text³.

In Arabic, it derives from the root "فَسَّرَ", meaning to clarify or explain, and indicating the unveiling of the intended meaning behind a problematic word⁴.

Legal scholars have disagreed on a comprehensive definition of 'interpretation'. Some define it in terms of its purpose or function, stating that it involves clarifying the meaning of an ambiguous text, whether this ambiguity stems from a lack of clarity in the words used, contradictions in the language, or typographical errors. Others define it in terms of the desired outcome, stating that it involves determining the meaning of the legal rule and establishing its scope in order to apply it to real-world circumstances.

As for the term 'judicial', it comes from the root of 'قضاء', which implies the act of deciding. Judicial authority refers to the power exercised by judges⁵ to resolve disputes brought before them.

Section Two: Doctrinal Definition of Judicial Interpretation

When exploring the concept of interpretation, some define it more broadly, while others emphasise that it should be based on a specific legal standard within a narrower framework to achieve the desired objective. This section will focus on delineating and defining the concept of interpretation, whether in a general sense or in a specific context.

From this perspective, legal scholarship can be divided into two main areas:⁶

First: The traditional approach

This approach defines interpretation as the extraction of a legal ruling from legal rules and the clarification of their meanings for application to specific circumstances. Thus, the scope of interpretation is confined to a single legal rule or legislation, without considering other sources of law, such as Islamic law or customs. This is a narrow concept of interpretation.

Second: the realistic approach

This approach expands the concept of interpretation to encompass all legal rules, regardless of their source or level. It also includes all legal actions, including administrative decisions and contracts. According to this perspective, the realistic approach maintains that the judge's interpretive authority applies to all legal texts and actions, whether issued by administrative or judicial bodies through rulings and decisions. This grants them broad powers to resolve disputes brought before them.

Interpretation is categorised further based on the issuing authority of the text or legal action.

1. Original interpretation: This is the interpretation provided by the same authority that issued the text or legal action. It is often referred to as 'true interpretation'. It is the interpretation provided by the legislator concerning legislative texts, known as legislative interpretation. However, this is currently rare, as legislators seldom intervene to interpret specific legislation themselves, instead leaving this matter to the judiciary and legal scholars to clarify ambiguities surrounding certain legal texts.

The true or original interpretation is also linked to the interpretations provided by judges concerning their rulings and judicial decisions, as well as those from the public administration or any other authority regarding the texts and actions they issue⁷.

³- Muhammad Hussein Al-Dhahabi, *The Science of Interpretation*, Dar Al-Ma'arif for Printing and Publishing, Cairo, no date, p. 6.

⁴- Ibn Manzur, *Lisan Al-Arab*, Dar Al-Ma'arif for Printing and Publishing, Alexandria, no date, p. 3412.

⁵- Muhammad Sabri Al-Saadi, *Interpretation of Texts in Law and Islamic Sharia*, Diwan Al-Matbu'at Al-Jami'iyya, Algeria, 1984, p. 24.

⁶- Same reference, p. 24.

⁷- Paul Delnoy, *Éléments de méthodologie juridique*, Larcier Edition, Brussels, 2nd edition, 2006, p. 221.

2. Scientific interpretation is carried out by any entity other than the source of the action, such as doctrinal and judicial interpretation. Doctrinal interpretation is considered scientific when it involves interpretations provided by legal scholars through their writings and academic research, as well as commentaries on judicial rulings and decisions. Here, they explain and analyse their personal viewpoints to highlight the strengths and weaknesses for legislators and judges alike, revealing any ambiguities within the text or ruling⁸.

While legal scholarship holds a significant position in the field of interpretation and influences all branches of law, it does not possess binding power. This is because it cannot replace official authority, such as the judiciary, and its interpretations and explanations are not obligatory.

The issue of the binding nature of judicial interpretation for judicial bodies and other entities typically arises. The relevant principle is that of the relativity of judicial rulings and decisions, which implies that what is stated in the legal ruling is only binding for the parties involved, with exceptions considered. This will be addressed in the second chapter.

Section Three: Distinguishing Judicial Interpretation from Similar Concepts

In the field of law, judicial interpretation can overlap with several other legal concepts, such as legal qualification, judicial activism and interpretation lawsuits. Therefore, we will clarify judicial interpretation by distinguishing it from these concepts, thereby clarifying the scope of our study.

First: Judicial interpretation and legal qualification

In linguistic terms, 'qualification' is derived from the verb 'kāyfa', meaning to classify or categorise something in a way that aligns it with another unchanging element. In French, the term 'qualification' is the closest equivalent in a legal context, relating to facts. The legal qualification of facts is referred to as qualification juridique des faits⁹, meaning the process of attaching specific material events to a pre-existing legal category.

From a conceptual standpoint, legal qualification is a mental process and an intellectual effort that is indispensable for the judge. It involves associating a factual situation with a legal principle by classifying that factual occurrence into the appropriate legal category¹⁰. For example, if an administration issues a decision to impose a penalty on an employee for committing administrative violations, it is not enough for the administrative judge to verify the existence of the facts attributed to the employee; they must also review the legal description that the administration assigned to those facts. This means that the judge must determine whether those facts constitute a disciplinary offense or if they do not have this legal classification.

The process of legal qualification requires the administrative judge to perform a dual task. First, they establish a correlation between the text and the facts by specifying the general, abstract legal rule and giving it a more precise meaning. They then elevate the individual fact to the level of the general legal text, highlighting the characteristics that legally differentiate the fact and placing a specific occurrence within a legal framework¹¹.

Thus, we can see that qualification and interpretation are aligned processes, both being indispensable for the administrative judge when resolving disputes. Interpretation precedes qualification in providing the correct meaning to legal texts that correspond to material facts. Qualification, on the other hand, involves attaching material facts to the appropriate legal classification that aligns with them.

However, some legal scholars argue that there is an overlap between the two processes, as interpretation not only addresses the interpretation of the fact itself (i.e. its material existence) but also encompasses its legal qualification. As qualification is a matter of both facts and law, factual elements must be interpreted by abstracting them and elevating the individual occurrence to the general legal text.

⁸- Paul Delnoy, *Op. cit.*, p. 133.

⁹- Fathi Khaloufi, 'The Powers of the Administrative Judge in Interpretation', Dar Houma for Printing and Publishing, Algeria, 2017, p. 24.

¹⁰- Hahah Abdel Ali, *Judicial Oversight of the Administration's Discretionary Authority*, 1st edition, Maktabat Al-Wafa Al-Qanuniyya, Alexandria, 2018, p. 136.

¹¹- Rabia Youssef Bougrat, *Judicial Oversight of the Administration's Discretionary Authority: A Comparative Study**, 1st edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2017, p. 102.

It is important to note that even the most precise legal definitions of facts retain a degree of generality and abstraction. Therefore, those engaged in qualification must strive to specify the text and provide it with a more precise meaning¹².

Second: Judicial Interpretation and Judicial Activism

In linguistic terms, 'which means to make an effort to discover', 'اجتهاد' is derived from the verb 'اجتهد' the truth of matters. In a legal context, it refers to the effort expended in seeking the intended meaning through reasoning. A legal scholar engaging in *ijtihad* may lead to what is known as jurisprudential activism, while a judge doing so in the context of a dispute before them may result in judicial activism.

In French, the term for '*ijtihad*' is 'jurisprudence', meaning the aggregate of rulings and decisions issued by judicial authorities.

Ijtihad is a cognitive process similar to interpretation; however, it is broader in scope. A judge's efforts may involve interpreting a legal text that lacks clear meaning, determining its scope, interpreting a legal action, qualifying a specific fact or finding a suitable legal solution to the dispute in question. Thus, judicial interpretation is considered part of judicial activism¹³.

It is worth noting that common judicial rulings mainly consist of decisions and judgements issued by the State Council and the Supreme Court.

Third: judicial interpretation and interpretation lawsuits

Interpretation lawsuits are defined as 'administrative judicial actions initiated and filed by those with legal standing and interest before the competent judicial authority, primarily within administrative judicial systems where an administrative judiciary is established'¹⁴. In the Algerian legal and judicial system, this typically includes the administrative chambers of the judicial councils and the administrative chamber of the Supreme Court. These actions aim to prompt the relevant judicial authority to interpret ambiguous administrative legal actions, thereby clarifying legal positions and individual rights and obligations.

It is important to note that this definition was formulated during a period of judicial monism under civil procedures, prior to the adoption of a dual system and the enactment of the law on civil and administrative procedures.

From this definition, we can see that the subject of an interpretation lawsuit is limited to clarifying ambiguous phrases in administrative decisions before administrative judicial authorities. Therefore, it does not concern the interpretation of laws or judicial rulings, which is the natural function of judges — judges cannot apply the law without first interpreting it.

The Supreme Council's administrative chamber previously acknowledged that the authority to interpret lies with judges: 'The judges presented with the dispute are authorised not only to interpret the law, but also to provide interpretations when the phrasing of the law is ambiguous or insufficient.'¹⁵ Therefore, an action brought by an interested party is not a prerequisite for the administrative judge to exercise their interpretive authority.

Section Two: The Concept of Legal Security

Legal security is considered a branch of security in the broad sense of the term (public security). Although the term appears clear and understandable, it has many different connotations and meanings. There are many definitions of it, whether from a linguistic perspective or through various doctrinal and judicial definitions. Thus, we will focus on the most significant of these.

Firstly, it is worth noting that we could not find any national or comparative legal definitions of the term 'legal security' in legislation. This absence is understandable, given that it is not among the roles

¹²- Hahah Abdel Ali, Previous Reference, p. 136.

¹³- Fatih Khaloufi, Previous Reference, p. 24.

¹⁴- Ammar Awwabdi, Judicial Interpretation in Administrative Law, Dar Houma, Algeria, 2002, p. 92.

¹⁵- Journal of the Council of State, No. 1, 2002, p. 52.

conferred upon the legislator. Furthermore, 'legal security' is a general legal principle that is not confined to a specific area, so the legislator leaves this matter to legal scholarship and judicial activism.

Subsection One: Linguistic Definition of Legal Security

Linguistically, the term 'legal security' consists of two parts. The term 'security' is derived from the root 'أمن', meaning to trust or feel safe. It indicates reliance on someone or something, signifying that one feels secure and confident. Security also describes a state of being free from fear¹⁶.

The term 'legal' derives from 'القانون', meaning 'the straight rod' or 'the collection of binding rules that regulate relationships among individuals'.

Based on this, we can assert that the linguistic connotation of 'legal security' is a sense of security and safety, and an absence of fear concerning the law.

Subsection Two: Doctrinal Definition of Legal Security

From the various doctrinal definitions, it is evident that there is no unified definition of the principle of legal security. Some define it as follows: "A guarantee for the legal system and individual rights. 'A legal protection system aimed at ensuring the good execution of obligations without surprises, or at least reducing uncertainty in the application of the law.'¹⁷

Additionally, some scholars characterise it as the spirit of the law, stating: "The quality of the legal system can affect citizens' understanding of, and trust in, the law, which ideally should be independent.¹⁸

It can also refer to 'the existence of relative stability in legal relationships and security of legal statuses, aimed at promoting security and confidence among the parties involved, whether private or public entities'. These parties should be able to organise their affairs according to existing legal norms when they undertake actions, without facing any surprises or actions from the three branches of government that could disrupt stability, trust and reassurance in the state and its laws¹⁹.

Subsection Three: Judicial Definition of Legal Security

According to rulings issued by the French Council of State, administrative jurisdiction considers that the purpose of the law is to dictate commands, prohibitions and penalties while ensuring legal statuses remain stable. The Council of State has stated that 'the principle of legal security requires that a citizen should be able to determine what is permitted and what is prohibited under existing law without needing to exert unreasonable efforts on their part. To achieve this, laws must be clear and comprehensible and should not be subject to excessive and unexpected changes over time.²⁰'

Similarly, Algerian administrative courts have acknowledged this principle in a ruling issued by the Court of Conflicts, although no specific definition was provided. The ruling stated: 'The rule outlined in Article 2 of the Civil and Administrative Procedures Law stipulates that its provisions apply immediately upon enactment, except in cases involving timelines that began under the previous legislation. This rule has other exceptions not included in Article 2 and falls under the principle of the non-retroactivity of laws, particularly when retroactivity threatens stability and legal security, or infringes upon litigants' acquired rights and legal statuses, consequently causing them to lose trust in the legal and judicial system...²¹

¹⁶- Ibn Manzur, *Lisan Al-Arab*, Dar Al-Ma'arif, Cairo, 1955, p. 140.

¹⁷- Kamel Boubaya and Abdel Latif Wali, 'Legal Security in Algerian Criminal Legislation', *Journal of Legal and Political Research*, Vol. 3, No. 2, 2021, p. 330.

¹⁸- Iftisan, W. and Ben Nasser, W., 'Constitutionalising the Principle of Legal Security: The Algerian Experience as a Model', *Journal of Legal and Political Research*, Vol. 8, No. 2, 2022, p. 973.

¹⁹- Kamel Boubayaa and Abdel Latif Wali, 'Previous reference', p. 331.

²⁰- Muhammad Ben Al-Akhdar, 'Legal Security in the Face of Economic Control in Algeria', *Journal of Research in Human and Social Sciences*, Vol. 12, No. 3, 2020, p. 259.

²¹- Omar Hamdi Basha, *Principles of the Judiciary under the New Code of Civil and Administrative Procedures*, Dar Houma for Publishing and Distribution, Algeria, 2015, pp. 439 and following.

Subsection Four: The Connection Between the Idea of Legal Security and Judicial Interpretation

The general rule is that the greater the reliance of a legal system on interpretation, the more it negatively affects legal security in the state. A country's legal framework serves as a safeguard that ensures progress, prosperity and stability, and the stability of legal relationships guarantees legal status. Conversely, instability and turmoil in legislation or dysfunction within the legal system can create chaos, incite unrest and disrupt individuals' normal lives. As the scholar Bernard stated: 'Stability, guarantees, protection and certainty — these are the assurances we seek from the law. Legal security is simultaneously protection against retroactive effects, clarity, precision, coherence, and knowledge.'²²

Consequently, a relationship exists between legal texts, the process of interpretation, and the concept of legal security. The absence, multiplicity or ambiguity of legal texts can negatively affect individual rights and freedoms. This results in an increased number of interpretations of legal texts, thus undermining the principle of legislative security and impacting overall legal security.

An increase in opportunities for judicial interpretation can adversely affect the true intent of the legislator, distancing it further. This leads to a proliferation of varied judicial interpretations and meanings assigned to legal texts.

The deterioration of the legal system — whether through legislative inflation, instability, inconsistent legal texts or poor drafting — combined with difficulties in accessing legal texts and their sources, contributes to expansive interpretation by the administrative judge. This gives administrative judges broad powers at the expense of the true intention of the text's source, necessitating the reduction and limitation of such occurrences.

Subsection Five: Legal Security as a Constitutional Principle

Constitutional principles are defined as a set of general principles enshrined in the text of a constitutional document. Representing universally accepted natural rights, they provide a common foundation for various rights and constitutional principles, such as the principles of non-retroactivity, equality and the rule of law. These principles all contribute to the concept of legal security²³, which is based on the idea that human rights are inherent in all individuals, regardless of their nationality, gender or race. This implies that everyone is equal in their enjoyment of these rights and in ensuring their protection.

The Algerian Constitution, particularly following its 2020 amendment, reinforces this notion through Article 34, which establishes legal security as a constitutional guarantee for fundamental rights and public freedoms. It states: 'The constitutional provisions related to fundamental rights and public freedoms, along with their guarantees, are binding on all authorities and public bodies. Rights and freedoms may only be restricted by law for the purpose of preserving public order and security, protecting national constants, and safeguarding other rights and freedoms enshrined in the Constitution. In all circumstances, these restrictions cannot infringe upon the essence of rights and freedoms.'

To achieve legal security, the state must ensure accessibility, clarity, and stability in the provisions related to rights and freedoms.'

The constitutional founder did not merely acknowledge rights and freedoms but also imposed protection during their establishment and recognition, taking into account legal security in all its elements, as stated in the final paragraph of the same article. These elements serve as the foundations and pillars of legal security, insisting that legal rules should be clear, free from ambiguity, and should minimize references to regulations while avoiding contradictions and ensuring the stability of legal norms.

By enshrining the principle of legal security and its elements in the Constitution—whether through its preamble or various other articles—the administrative judge, in particular, should rely on it in resolving disputes brought before them and should address any actions that contravene these principles. Consequently, if the core elements of legal security are threatened, they can be upheld through judicial

²². Ifisan Warida and Ben Nasser Wahiba, *Previous Reference*, p. 973.

²³. Articles 37, 78 and 82 of the Constitution of the People's Democratic Republic of Algeria (1996, amended in 2020).

interpretation and judicial activism to maintain the stability of legal security and legal statuses. The written nature of this principle endows it with considerable strength, value, and importance among the sources of legitimacy in the state.

Moreover, the principle of legal security is regarded as one of the general principles of law. It comprises essential legal rules that the administration must consider when making administrative decisions. Although these principles are unwritten, they possess mandatory force akin to statutes, deriving their legitimacy and binding power from the interpretations of administrative courts, particularly the State Council, which acts as a direct source²⁴.

In this context, the first article of the Algerian Civil Code states: 'The law applies to all matters addressed within its provisions, either literally or contextually. If there is no legislative text, the judge shall rule according to the principles of Islamic law; if there is none, then according to custom; and if there is still no text, then according to natural law principles and justice.'²⁵ While general principles of law primarily serve as interpretative or supplementary sources, they provide the basis on which judges make rulings based on their interpretations when no legislative or regulatory texts are available.

Thus, the principle of legal security is recognised as both a constitutional and general legal principle in the Algerian legal framework, thereby closing the gap that previously existed regarding fundamental components essential to establishing the rule of law.

Chapter Two: The Role of the Administrative Judiciary in Achieving Legal Security Through the Interpretation of Legal Texts

The interpretive authority held by administrative judges is widely acknowledged to be both powerful and extensive. This stems from the unique judicial character of administrative law, as well as the general and abstract nature of the legal texts that characterise it.

However, this authority cannot be absolute or unlimited. Such absoluteness would contradict the principles of fairness and justice, as well as the nature of judicial work itself. In order to regulate the exercise of this authority, it is crucial to grasp the reasons for interpretation, or the motivations behind judicial interpretation of legal texts. These reasons serve as justifications for the activation of the administrative judge's legislative role and their impact on the achievement of justice and legal security. We will then address ways to limit this role.

Subsection One: Reasons for Judicial Interpretation and Their Impact on Achieving Legal Security and Realising Justice

The reasons for interpretation refer to the motivations that allow the administrative judge to interpret legal texts in order to understand their meaning and determine their scope. These motivations typically arise from flaws in the legal texts themselves, as well as the particular nature of administrative disputes. Would you like me to elaborate further on the reasons for judicial interpretation or any specific aspect of this topic?

Subsection One: Ambiguity and Deficiency in Legislation

Ambiguity and deficiency in legislation are closely related to the extent of intellectual access to the law through the concept of legal rules and the understanding of their meanings. We see that the ambiguity and deficiencies present in legal texts, which hinder intellectual access to these texts, stem from three fundamental reasons. These can be summarized from several angles, with the most important being:

1. Deficiencies in legislative drafting: This relates to the need for legal rules to be clear and easily readable. It is essential to use straightforward language so that citizens can understand the content of legal provisions and avoid misinterpreting them. An abundance of interpretations and clarifications can cause judges to assume a legislative role, which is beyond their remit.

²⁴ Muhammad Ahmad Rif'at Abdel Wahab, *The General Principles of Law as a Source of Legitimacy in Administrative Law*, Legal Library of the University Press, Lebanon, 1992, p. 15.

²⁵ Article 1 of Order No. 75/58, dated 26 September 1975, contains the amended Civil Code (Official Gazette No. 78, dated 30 September 1975).

2. Nature of the language used: The use of ambiguous and complex language can generate disputes, confusion and instability in transactions, contradicting the principles of legal stability and acquired rights. Therefore, it is crucial to employ clear formulations that achieve the desired objectives of legal ideas and legislative rulings without causing ambiguity. Additionally, accurate translations of imported terms are important for clarity²⁶.

3. Judicial interpretation role: Unlike ordinary judges, administrative judges actively interpret texts to suit the disputes presented before them. This constitutes a form of judicial activism. Sometimes, they play an even more proactive role in creating legal rules, especially in the absence of legislative texts. When faced with ambiguity or deficiencies in legislative texts, judges must search for and interpret principles of natural law and rules of justice to resolve disputes²⁷. This contributes to the development of theories and principles of administrative law by relying on methods of interpretation, analogy and other tools of judicial activism. Legal security is considered a key component of these general principles, and administrative judges may invoke them to safeguard individuals' fundamental rights and freedoms when clear legislative guidance is lacking. This reaffirms the status of administrative law as a traditional source of legal legitimacy within the state.

Subsection Two: Legal Vacuums or Gaps

From a legal standpoint, the Algerian legislator has clearly acknowledged the phenomenon of legal gaps in Article 1, Paragraph 2 of the Civil Code, while also providing judges with solutions to rely on in cases where such gaps exist. Consequently, the administrative judge is particularly obligated to engage in judicial activism, as they are responsible for exploring and interpreting the principles of natural law and the rules of justice — known as interpretative sources of law (*Sources interprétatives*) — to resolve disputes. This necessity also compels the administrative judge to interpret legal texts²⁸.

Subsection Three: The necessity of resolving disputes

The administrative judge must find a fair legal solution, regardless of the nature or extent of the defect affecting the legal rule. This applies even if the legislator has not provided specific solutions due to a deficiency or vacuum in the law. Under no circumstances may the judge refuse to issue a ruling. This is emphasised by Article 10 of Organic Law No. 04/11, which states, 'The judge must resolve the cases presented to them in a timely manner.'²⁹

This obligation is also set out in the Penal Code, which requires judges to rule on disputes brought before them and imposes penalties under Article 136. 'Any judge or administrative officer who, for any reason, refuses to adjudicate matters they are obliged to decide on, after having been requested to do so, and who persists in their refusal even after being warned or ordered by their superiors to do so, may be prosecuted.'³⁰

These two texts make it clear that the Algerian legislator has imposed an obligation on both ordinary and administrative judges to resolve disputes, regardless of the absence of legislative texts. No justification can excuse them from this duty, and they can be held accountable as perpetrators of the crime of denial of justice. This highlights the positive role of the administrative judge, achieved through judicial activism and interpretation.

Subsection Four: Inequality Between Parties in Administrative Litigation

The administrative judge plays a significant role in managing the procedural aspects of administrative disputes, which revolve around general procedural rules. This responsibility begins with the initiation of the administrative lawsuit and continues until a judgment is issued. This responsibility is linked to the investigative nature of administrative disputes.

²⁶- For more details, see: Fathi Khaloufi, Previous Reference, pp. 45 and following.

²⁷- Article 1, Order No. 75/85 containing the Civil Code.

²⁸- Wahiba Benhennai, 'The Role of the Administrative Judge in the Creation of Legal Norms', *The Journal of El-Ryssala for Studies and Research in Humanities*, Vol. 10, No. 1, 2025, pp. 109–121.

²⁹- Organic Law No. 04/11, dated 6 September 2004, containing the Basic Law for the Judiciary.

³⁰- Wahiba Benhennai, 'Previous Reference', pp. 109–121.

However, these disputes present certain peculiarities due to their nature. The parties involved often find themselves in an imbalanced and unequal relationship, primarily due to the privileges enjoyed by administrative authorities, which can infringe upon individuals' legal rights and freedoms. The administrative judge must therefore intervene to protect the weaker party in the dispute and achieve balance between both sides, as they serve as a guardian of individual rights and fundamental freedoms. Therefore, the judge intervenes in cases of inadequacy, deficiency or ambiguity that do not favour the weaker party.

From the above, we can see that the administrative judge's motivation to resort to interpretation and judicial activism primarily lies in the judicial nature of administrative law. Most of its rulings are not codified and are derived from the decisions of the administrative judiciary, as exemplified by the French Council of State. This reinforces the principle that judicial activism is unnecessary when a legal text exists.

Subsection Five: Conflict Between Legal Texts

Conflicts arise when two legal texts apply to the same fact and require rulings that contradict each other. These conflicts may manifest in several ways. For instance:

1. Conflict within a single legal provision: This occurs when different clauses of the same legal text are inconsistent with each other.
2. Conflict between legal texts of equal authority: This refers to conflicts between legal provisions that occupy the same level in the state's legal hierarchy, such as the conflict between a general and a specific provision. In such cases, the rule of 'the specific restricts the general' applies.
3. Conflict between legal texts of different hierarchical levels: This takes place between a higher-order text and a lower-order one. Here, the higher-ranking text takes precedence over the lower-ranking text.

Subsection Two: Regulations for the Practice of Judicial Interpretation and Their Impact on Realising the Principle of Justice

The interpretive authority held by the administrative judge is widely accepted to be significant and extensive. However, the judicial origin of administrative law, along with its inherent particularities (i.e. its uncoded nature), necessitates judicial interpretation. Nevertheless, this authority cannot be considered absolute or unlimited. An expansive interpretation could grant the administrative judge broader powers that could override the legislator's true intention, thereby posing a clear threat to the principle of legal security.

Furthermore, such an absolute approach conflicts with the principles of fairness and justice, as well as the nature of the judicial role itself. Therefore, it is essential to establish regulatory limits that contribute to the realisation of these principles.

Subsection One: The Interpretive Function and the Principle of Separation of Powers

The separation of powers is a constitutional doctrine currently adopted by most constitutions worldwide. In terms of interpretation, it ensures that there is no overlap in responsibilities among the authorities, thereby directly relating to the powers of the administrative judge. The role of each authority is clearly defined, with the judiciary confined to resolving disputes rather than creating legal texts³¹.

Some scholars argue that where there is a legal text, judicial activism is unnecessary. However, in the absence of such texts, interpretation draws on the spirit of legal provisions, as judicial rulings often establish principles that unify and correct judicial practice³².

Based on this understanding, the other two branches (the legislative and executive) are prohibited from engaging in legislative roles, such as enacting or modifying laws, except in cases specified by law. These cases include regulatory areas under executive authority and orders issued by the President of the Republic. However, it appears that the administrative judge has violated the principle of separation of powers by assuming a legislative role when interpreting legal texts in certain instances, whether due to

³¹- Article 142, Algerian Constitution, 1996 (amended in 2020).

³²- Article 1, Order No. 75/58, containing the Civil Code.

the nature of administrative disputes, the necessity to resolve them, or shortcomings and ambiguities in legislation. These circumstances justify the administrative judge's essential role.

They can justify their legislative role by invoking the principle of denial of justice, which obliges them to interpret legal texts or employ analogy. They are compelled to engage in judicial activism and, when necessary, to rule in accordance with principles of natural law and rules of justice. This is because interpretation is a tool of judicial activism, and judicial activism is a source of legitimacy.

However, the importance of judicial activism — specifically judicial interpretation — as a source of law varies, and it can rival legislation, particularly in countries that follow a common law system, such as the United States and England. The French experience has played a vital role in establishing uncodified principles and rules. In Algeria, however, the principle asserts that interpretation is unnecessary when a text exists, and judges must apply legislative provisions at different levels, only resorting to judicial activism as an exception³³.

Subsection Two: Instability of Judicial Interpretation (Reversal of Established Judicial Activism)

Through their legislative role, the administrative judge has demonstrated courage and boldness by taking on powers in the realm of judicial activism and interpretation, and by establishing principles and rules that are absent from legal texts. These principles are widely regarded as crucial for the stability of legal statuses, and for achieving justice and legal security within the state.

However, while judicial activism serves as an additional source of law, it can threaten legal security because legal interpretation is essentially a judicial function. Any alteration or reversal of this interpretative stance is detrimental as it undermines the confidence that arises from stable judicial practice concerning legal matters over a specific period. Such reversals can compromise one of the fundamental elements of legal security: the principle of stability. In all cases, this instability affects the principle of legitimate trust and assurance in judicial rulings. However, reversing established judicial activism may positively impact the parties involved in a case and its outcome.

The key issue surrounding this matter is the reversal of judicial activism affecting stable legal statuses. This is particularly evident in the case of the Council of State's reversal of its stance on the oversight of disciplinary decisions issued by the Supreme Judicial Council, as evidenced by Decision No. 016886, passed by the collective chambers on 7 June 2005. The first decision rejected the appeal for annulment, while the second affirmed the acceptance of appeals against the Council's disciplinary decisions³⁴. This decision is significant because it represents an unpublished shift in judicial activism, meaning that a lack of awareness of its true implications could have severe consequences for the judges concerned.

Furthermore, this issue also relates to the broad interpretation of new judicial activism by one of the Council of State's chambers, which applied it to a dispute concerning the promotion of judges. This created an unjustified similarity with the decisions of the Supreme Judicial Council in its disciplinary capacity³⁵.

Consequently, judicial activism in Algeria is characterised by oscillation and conflict in its rulings. It is also related to instances where the administrative judge excludes one legal text and substitutes it with another that governs the same issue, due to conflict and inconsistency between them. Regardless of the position of each text in the state's legal hierarchy, the judge does not create a new legal rule, but may offer an interpretation that differs from the legislator's intention³⁶.

Subsection Three: The Interpretive Function and the Authority of the Interpreted Text

Judicial interpretation plays a significant role in clarifying ambiguities in legal texts before they are applied, particularly when these texts have deficiencies, are vague, or have any other general flaws that

³³- Journal of the Council of State, No. 9, 2009, p. 6.

³⁴- Ramadan Ghenai, 'The Retreat of the Council of State in the Oversight of Disciplinary Decisions Issued by the Disciplinary Council', Journal of the Council of State, No. 10, 2012, pp. 172 and following.

³⁵- See also: M. Mohamed Bennaceur, 'The Supreme Council of the Judiciary in its Disciplinary Formation', Review of the Council of State, No. 11, 2013, p. 5 and following.

³⁶- Fathi Khaloufi, Previous Reference, pp. 215 and following.

could affect them. It is important to consider how legal texts are interpreted, the binding nature of these interpretations for judges and others when applying them to similar cases, and the extent to which they can deviate from previous applications.

Article 228 of the Algerian Civil Code outlines the principle of the authority of resolved matters, which establishes the truth of the resolution of disputes. This principle provides judicial protection for decisions made, with the aim of ensuring security and peace of mind for those involved. Therefore, the principle of the authority of the interpreted text consists of the solutions established by the judiciary in resolving disputes brought before it. Unifying interpretation in this way is vital for maintaining transaction stability and realising the principle of legal security in the state (the principle of stability in interpretation). The Supreme Court and the Council of State oversee the unification of judicial activism among various administrative and ordinary judicial bodies.

However, the issue of the authority of interpretations from bodies such as the Constitutional Court, other than the Supreme Court and the Council of State, arises. The Constitutional Court is the only entity authorised to interpret constitutional texts, which directly influence the application of laws. Such interpretations carry authority against all judicial and administrative entities.

The principle of unifying judicial activism, including interpretation, is emphasised in the Organic Law concerning the Council of State No. 98/01, which provides a constitutional foundation for judicial interpretation³⁷. This ensures that the Council of State serves as an evaluative body for administrative judicial bodies. Unifying interpretation leads to stable judicial outcomes (judicial security) and uniformity among different judicial entities across the country, thus safeguarding legal security within the state.

However, the authority of the interpreted text is subject to an exception known as the principle of the relativity of judicial rulings. This general principle states that the authority of a ruling, or its interpretation of a legal text, is only valid with regard to the parties involved in the dispute for which the ruling was issued. This means that the effects of judicial decisions and administrative rulings do not extend beyond the original parties to the case in which the ruling was made. The judicial position on such cases, whether relating to interpretation or qualification, does not necessarily apply to similar cases³⁸.

This is a natural consequence, as judges are required to resolve disputes based on the relevant legal texts or legislation, and interpretation and judicial activism come afterward. Furthermore, individuals not involved in the dispute for which a judicial interpretation was rendered are not obligated to adhere to that interpretation. It is also applicable to judges, who are not bound by judicial interpretations from other cases, even if those cases are subject-matter similar.

However, when the principle of the authority of the interpreted text is applied, such interpretations become binding for all judicial bodies within the same legal hierarchy, provided the interpretation is issued by the Council of State as the supreme judicial authority. According to Article 178 of the Algerian Constitution and Article 9 of the Law on the Competences of the Council of State, the Council of State is responsible for unifying judicial interpretation as a tool of judicial activism. Consequently, this interpretation becomes a source of law applicable in resolving disputes, as stated in Article 1 of the aforementioned Civil Code.

It is widely recognised that when the Council of State issues a judicial ruling in the form of collective chamber sessions, this denotes the importance of the subject matter of the judicial interpretation. Despite the existence of regulations governing the Council of State, these do not stipulate the obligatory nature of judicial activism for all administrative courts. This raises questions about the extent to which judicial activism or interpretation possesses the authority of the interpreted text.

Furthermore, one of the core pillars of legal security is accessibility to legal provisions, ensuring that laws are binding on all from the date of their publication in the official journal. The same applies to judicial interpretations, which must be published so that others are aware of them, including administrative judges, who are obliged to adhere to the interpretations issued by the Council of State³⁹.

³⁷- Article 179, Algerian Constitution, 1996 (amended in 2020).

³⁸- For more details, see: Fatih Khaloufi, pp. 220 and following.

³⁹- F. Khaloufi, Previous Reference, p. 225.

Thus, as noted, judicial interpretation becomes a binding legal rule for administrative judges and even judges of the Council of State, prompting them to reference this interpretation in their decisions in order to maintain its stability and achieve the principle of legal security within the state.

Conclusion:

The importance of the administrative judge's interpretative powers is clear, as they encompass both theoretical and practical aspects. When the law fails to address certain issues, the administrative judge can address this through their interpretative authority. This authority is closely linked to various topics, ranging from legal texts to legal actions, decisions and judicial rulings. This has led us to restrict the scope of interpretation to legal texts alone.

Administrative judges, notably through the Council of State, can contribute to the codification and evolution of administrative law principles. Furthermore, this authority is fundamental to establishing the rule of law, ensuring justice for individuals and realising legal security within the state. This principle is considered both a constitutional principle in Algeria and a general legal principle due to its significant role in mitigating the negative effects of legal texts, particularly when they are interpreted.

Administrative judges must respect this principle by maintaining stability in their interpretations and considering it when interpreting legal texts. This ensures adherence to the constitutional tenet of the separation of powers. Their interpretations should be limited and bound by clear, stable legal rules. Additionally, the administrative judge must ensure that the legal conditions for their interpretations grant them the authority of the interpreted text, thereby making their interpretations binding on all.

Based on the discussions in this study, we offer the following key recommendations:

1. Training and development: Enhance training programmes for administrative judges to deepen their understanding of legal interpretation and its implications. This will ensure they are well-equipped to make sound judicial decisions.

2. Clear legislative framework: Legislators should strive to draft clear and precise legal texts to minimise ambiguity and the need for extensive judicial interpretation, thus reducing legal uncertainty.

3. Judicial consistency: Foster consistency in judicial interpretations by establishing guidelines for administrative judges to help standardise interpretations across different cases and enhance legal security.

4. Promote public awareness of the principles of legal security and the importance of judicial interpretation to foster trust in the judicial system.

5. Feedback mechanisms: Create platforms for providing feedback on judicial interpretations, allowing adjustments to be made based on real-world implications and improving the overall quality of judicial decision-making.

Embracing these recommendations will enable the judiciary to uphold the principles of justice and legal security, thereby strengthening the role of the administrative judge in the Algerian legal system.

First: Recommendations for legislators

1. Ensure quality in legal texts: pay careful attention to the quality of legal texts by focusing on the art of drafting, in order to minimise the potential for excessive judicial interpretation that may distort the text's original meaning.

2. Avoid excessive amendments: Steer clear of frequent amendments and numerous references to regulations. Legislators should adopt a forward-thinking approach and use their legislative imagination when drafting laws to prevent conflicting judicial interpretations.

3. Revise and update legal texts, especially those related to administrative law, to ensure they align with the needs of the modern state and reduce interpretative activism.

Second: Recommendations for the Judiciary

1. Promote unity in judicial activism within the Council of State to avoid conflicting decisions that undermine legal security.

2. Maintain a balanced approach between literal and teleological interpretation to achieve legislative stability.
3. Publish judicial interpretations as an integral part of judicial activism to facilitate access and keep judges and litigants informed.
4. Enhance the interpretive and activist role of the Council of State. Activate the Council's interpretive and activist character, particularly following the 2020 constitutional amendment that established appellate administrative courts. This will empower the Council as the authority responsible for unifying judicial activism and addressing legislative gaps and deficiencies.

List of sources and references:

I. Official texts:

Basic legislation:

- Constitution of the People's Democratic Republic of Algeria (1996, amended in 2020).
- Organic Laws:
- Organic Law No. 04/11 of 6 September 2004 concerning the Basic Law for the Judiciary.

Laws:

- Order No. 75/58, dated 26 September 1975, concerning the Civil Code (amended).

Regulatory Decrees:

- Executive Decree No. 22-435, dated 11 December 2022, defining the territorial jurisdiction of the Administrative Courts of Appeal and the Administrative Courts.

II. Scholarly works:

Books:

- Awwabdi, Ammar: *Judicial Interpretation in Administrative Law*. Algiers: Dar Houma, 2002.
- Basha, Omar Hamdi. *Principles of the Judiciary under the New Code of Civil and Administrative Procedures*. Algiers: Dar Houma, 2015.
- Bougrat, Rabia Youssef. *Judicial Oversight of the Administration's Discretionary Authority: A Comparative Study*. Amman: Dar al-Thaqafa, 2017.
- Khaloufi, Fatih. *The Powers of the Administrative Judge in Interpretation*. Algiers: Dar Houma, 2017.
- Hahah, Abdel-Aali. *Judicial Oversight of the Administration's Discretionary Authority*. Alexandria: Maktabat al-Wafa, 2018.
- Al-Dhahabi, Muhammad Hussein. *The Science of Interpretation*. Cairo: Dar al-Ma'arif, no date.
- Al-Saadi, Muhammad Sabri. *Interpretation of Texts in Law and Islamic Sharia*. Algiers: Diwan al-Matbu'at al-Jami'iyya, 1984.
- Abdel Wahab, Muhammad Ahmad RiFat. *The General Principles of Law as a Source of Legitimacy in Administrative Law*. Lebanon: Al-Maktaba Al-Qanuniyya, 1992.

III. Judicial Journals:

- Journal of the Council of State, No. 1, 2002.
- Journal of the Council of State, No. 9, 2009.
- Journal of the Council of State, No. 10, 2012.

IV. Articles:

- Ben al-Akhdar, Muhammad: 'Legal Security in the Face of Economic Control in Algeria.' *Journal of Research in Human and Social Sciences*, Vol. 12, No. 3, 2020.

- Buba'aya, Kamal and Wali, Abdel Latif, 'Legal Security in Algerian Criminal Legislation', Journal of Research in Human and Social Sciences, Vol. 12, No. 3, 2020. 'Legal security in Algerian criminal legislation.' Journal of Legal and Political Research, Vol. 3, No. 2, 2021.
- Ghenai, Ramadan. 'The Retreat of the Council of State in the Area of Oversight of Disciplinary Decisions.' Journal of the Council of State, No. 10, 2012.
- Iftisan, W., & Ben Nasser, W. 'Constitutionalising the Principle of Legal Security: The Algerian Experience as a Model'. Journal of Legal and Political Research, Vol. 8, No. 2, 2022.

V. Dictionaries and lexicons:

Ibn Manzur: The Tongue of the Arabs. Alexandria: Dar al-Ma'arif, no da