

The role of constitutional adjudication in consolidating legal certainty in Algeria

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Abstract---Legal certainty is one of the principal foundations of a rule-of-law state. It seeks to preserve stable legal positions and protect vested rights. The legislature must therefore respect the supremacy of the Constitution. Any departure from constitutional rules is also a departure from legality. Constitutional review is among the most important mechanisms for safeguarding legality. Most constitutions that provide for judicial review of legislation therefore subject the competent body to procedural requirements when it issues constitutional or interpretative decisions. Constitutional judgments can strengthen legal certainty and prevent conflict with it, particularly when courts change established precedent.

Keywords---legal certainty, legal positions, vested rights, judicial precedent.

1. Introduction

Legal certainty has become a necessary and unavoidable requirement for building a rule-of-law state. It is also a core standard that reinforces this model of governance. The principle has attracted growing attention in recent years through legislation and judicial decisions. This attention persists despite the uncertainty that still surrounds its meaning, especially when it is applied in legislative and judicial practice.

Constitutional systems establish political and legal mechanisms to ensure that legislation is sound before it enters into force. They also regulate constitutional adjudication. These mechanisms protect the legality of statutes and may invalidate them or suspend their effects. Their role is no less important than that of the legislature. Lawmakers are often criticised for excessive legislation, inflated texts, unnecessary length, poor drafting, lack of clarity, and frequent change. Instability may be justified in the

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name of public order. It may also result from abandoning a settled rule or established precedent and adopting new legislation with retroactive effect.

Legal certainty is also an objective of law itself. It seeks to secure the legal order, preserve stable legal positions, and sustain confidence in legal relations. It should achieve these purposes without weakening the authority of law in the eyes of those to whom it applies.

This study also examines the role of the constitutional judge in giving effect to this principle. It aims to show how constitutional adjudication promotes legal stability. The judiciary offers constitutional and legal protection for rights and freedoms. It also protects established legal positions and vested rights. The central question is therefore the following: which judicial mechanisms has constitutional adjudication used to achieve legal certainty?

The study adopts analytical and comparative methods. It analyses constitutional and statutory provisions and relevant scholarly views, then compares their treatment across different legal systems. The discussion is divided into two main parts. The first explains the concept and legal value of legal certainty. The second examines constitutional adjudication and the guarantees it provides for the protection of legal certainty.

2. The Concept and Legal Value of Legal Certainty

Security is a fundamental element on which societies depend and through which they become stronger. It is also a measure of their prosperity. Every state therefore seeks to provide it. As Henri Mazeaud observed, **“More than justice, we need security in order to live.”**

The idea of security has expanded from a narrow meaning to a broader one that includes certainty within legal rules. It is therefore necessary to define legal certainty and to determine the legal value of this principle.

2.1. The Concept of Legal Certainty

Although the principle of legal certainty is widely invoked, its meaning remains difficult to delimit. It is often presented as a general framework that includes several related principles and rights. Its content is therefore the subject of continuing debate among legal scholars and practitioners. The following discussion clarifies the concept and the ideas that form part of it or derive from it. An introductory paragraph should be added to explain the content of this subsection and the points it addresses.

2.1.1. Definition of Legal Certainty

Legal certainty is difficult to define because it is a composite principle that brings together several legal principles. It may be understood as an objective of every legal system and as a basic requirement of a rule-of-law state. Legislatures have generally not defined it, so the task has fallen to scholars and courts. Several approaches have therefore emerged. T. Piazzon defines legal certainty as the optimal effectiveness of accessible and intelligible law. Such law enables legal subjects to predict, with reasonable confidence, the legal consequences of their actions. It also respects previously established legitimate expectations and thereby strengthens their fulfilment.¹

Some scholars describe legal certainty as an expression of the natural human right to security. On this view, it includes every guarantee that ensures the proper performance of obligations and removes uncertainty about the application of law. It therefore secures the individual's right to safety.

Others define it as one of the principal foundations of a rule-of-law state. It requires public authorities to preserve a reasonable degree of continuity in legal relations and a minimum level of stability in different legal positions. Its purpose is to foster confidence and reassurance among the parties to legal relations.²

Another approach relies on the idea of legitimate expectations. It defines legal certainty as each person's right to feel secure in relation to the law or a legal rule. It also includes the right to expect the rule to remain stable and not be altered suddenly.³

Other scholars focus on the objective of legal certainty. They define it as the achievement of relative continuity in legal relations and a minimum degree of stability in legal positions. This stability should reassure public and private legal persons. It should allow them to act with confidence under the rules in force and arrange their affairs accordingly. They should not face unexpected measures by public authorities that undermine this confidence.⁴

The clearest and most comprehensive judicial definition appears in the French Council of State's 2006 annual report. According to that report, legal certainty means that citizens must be able to determine what the law permits and prohibits without having to make unreasonable efforts. The rules adopted must therefore be clear and intelligible. They must also remain free from frequent and unforeseeable change.

2.1.2. Fundamental Principles of Legal Certainty

Legislation and international agreements are built on basic concepts such as legal certainty. This principle can be realised only when certain conditions are present. Those conditions are also fundamental principles that must be respected. The most important are the non-retroactivity of law, respect for vested rights, and legitimate expectations as an expression of legal certainty.

First: The Principle of Non-Retroactivity

Non-retroactivity is a constitutional principle. It means that legal rules do not extend to the past. They apply only to facts arising from the date on which they enter into force. This is the principle of immediate effect. Legal certainty therefore requires legal provisions not to operate retroactively except in exceptional circumstances.⁵ This protects public order while preserving the stability of social and legal relations. A rule may exceptionally be given retroactive effect, but it must not prejudice criminal or tax guarantees. French and Egyptian constitutional case law has confirmed this approach. Retroactivity must also not disturb a final judgment that has acquired *res judicata* effect.⁶

Legal certainty requires legislation to operate prospectively and exceptional retroactivity to remain limited. It prevents the destruction of legal positions and rights that became settled in the past. Because retroactive effect threatens the stability of legal positions, excessive reliance on it also violates legal certainty.⁷

Second: Respect for Vested Rights

Respect for vested rights is also a principle of constitutional value. Most constitutions protect such rights and treat their protection as a rule rooted in basic principles of justice. No state authority may interfere with a right that an individual has acquired under legislation.⁸

A vested right may be defined as a right created by a legal act that establishes a legal position. The concept is based on the need to stabilise legal positions and, as a result, the transactions connected with them.⁹

The general rule is that legislation must respect vested rights. Such rights should not be impaired without necessity or compensation. Constitutions have therefore affirmed that laws should not normally apply to the past, because retroactive application may prejudice vested rights. Respect for vested rights is a deeply rooted legal rule.

Third: Legitimate Expectations as an Expression of Legal Certainty

Legitimate expectations are often described as the spirit of legal certainty. Some writers define legal certainty through this idea. They describe an ideal legal rule as one that is intelligible and accessible and that allows its addressees to make a reasonable prediction of the legal consequences of their acts and conduct.¹⁰

Legitimate expectations are therefore one manifestation of legal certainty. The relationship between the two rests on stability in the legal order. Such stability allows individuals to act with confidence and preserves existing legal positions.

Scholars nevertheless disagree about the precise relationship between the concepts. Some regard legal certainty as broader than legitimate expectations. On this view, legitimate expectations are an objective, a form, or a necessary consequence of legal certainty. The European Union treats legal certainty as an expression of the rule of law.

Simon states that, if legal certainty is regarded as an objective principle, legitimate expectations are subjective. He views the protection of legitimate expectations as legal certainty considered from the individual's perspective. It can be compared to the guarantee of defence rights derived from the right of access to justice. Although the legislature may enact rules in the public interest, it remains constrained by the private interests of individuals.¹¹

The close connection between legal certainty and legitimate expectations does not make them a single principle. Legitimate expectations are among the most important requirements of legal certainty because they can determine whether it exists in practice. They form one part of the broader principle. Legal certainty provides the general framework, while legitimate expectations focus on the persons to whom the rules apply.¹²

2.2. Legal Certainty as a Foundation of the Rule-of-Law State

Legal certainty is one of the main objectives pursued by modern states in establishing the rule of law. The principle arose from society's need to protect stable legal positions. Legal systems nevertheless differ over whether it has constitutional status. The strength of any principle depends on the authority of its source. Some states regard legal certainty as a constitutional principle because it protects constitutional rights and freedoms and supports the rule of law. Others treat it as a constitutional objective that serves several constitutional principles, or merely as a general legal principle.¹³

2.2.1. The Constitutional Basis of Legal Certainty

Constitutions and national legal systems differ in the extent to which they expressly entrench legal certainty. Some constitutions contain an explicit provision, while others do not. The earliest foundations of the concept can be found in French legal scholarship. Early writers discussed the harmful effects of unstable legal rules and referred to legal predictability, even though they did not use the term "legal certainty."¹⁴

Some scholars trace the emergence of legal certainty to German constitutional adjudication. In a decision of 19 December 1961, the Constitutional Court stated that legal certainty is a necessary element of the rule-of-law principle. Citizens must be able to anticipate possible state intervention in a legally protected sphere and make suitable arrangements. They must also be able to rely on conduct that complies with the law in force.¹⁵

The European courts addressed the principle in 1962 and again in 1982. It was later adopted judicially in many European states, including Switzerland, the Netherlands, and Austria. The 1949 Basic Law of the Federal Republic of Germany refers to it implicitly by connecting it with the rule of law. The Portuguese Constitution of 1976 also implies it when regulating judgments of unconstitutionality, while the Spanish Constitution of 1978 expressly recognises it. France has not adopted a single settled position. The Constitution of 1958 does not expressly mention the principle, and the Constitutional Council's case law has varied. The French Council of State nevertheless issued its 2006 report under the title *Legal Certainty and the Complexity of Law*.

Before the 2020 constitutional amendment, the Algerian Constitution did not expressly recognise legal certainty, although several provisions reflected its components. The 2020 amendment introduced an explicit reference in the Preamble. It states that the Constitution guarantees the separation and balance of powers, the independence of justice, legal protection, supervision of public authorities, and legal and democratic certainty. Article 34(4) further provides that, to achieve legal certainty, the state must ensure the accessibility, clarity, and stability of legislation concerning rights and freedoms.¹⁶

2.2.2. The Impact of Legal Certainty on Judicial Certainty

Judicial certainty is closely connected with legal certainty. Legal certainty is a broad general principle that includes judicial certainty, while judicial certainty operates as a mechanism for its protection. Judicial certainty appears in the confidence and reassurance that litigants experience when dealing with judicial institutions.¹⁷

Judicial certainty reflects public confidence in courts and trust in the judgments they issue while applying the law and resolving disputes. The degree of confidence placed in the judiciary depends on the quality of its judgments, its independence, and the guarantees it provides, including access to justice. These factors collectively promote judicial certainty.¹⁸

The relationship between legal and judicial certainty has several dimensions. Judicial certainty requires an integrated legislative framework that meets the standards of legal certainty. It also protects individuals against abuses by others. At the same time, it protects public authorities from vexatious claims.

The judiciary is the primary source of judicial certainty, which judges provide through their duty to apply the law. Any departure from justice harms the public interest and weakens confidence in the courts. Such weakness may result from insufficient judicial independence, poor-quality judgments, delay in resolving disputes, or failure to enforce judgments against the administration. The ultimate purpose of judicial certainty is to guarantee the rule of law.¹⁹

The importance of the judiciary in protecting legal certainty appears in the mobilisation of all branches of the courts for that purpose. Legal certainty is often seen as a practical rather than a purely theoretical principle. Some writers therefore argue that it cannot exist without an effective judicial body that ensures the proper application of legal rules. Legal certainty and judicial certainty are consequently inseparable.²⁰

2.2.3. Legal Certainty as a Basis for Building the Rule-of-Law State

Only a state governed by law and committed to human rights and fundamental freedoms can protect society and maintain security in all areas of individual and collective life. This includes both legal and judicial certainty. A state cannot be governed by law unless all governing authorities are subject to binding legal rules. The original concept of the *Rechtsstaat* developed in Germany.²¹

Legal relations arise among individuals, but relations between individuals and public authority are equally important to security, stability, and respect for law. The essence of the rule of law lies in protecting individuals from arbitrary conduct by public authorities. This requires a clear definition of individual rights and effective review of measures affecting them. Legitimate expectations preserve public confidence against sudden or unexpected changes in rules issued by competent authorities. Such changes undermine reassurance and are therefore inconsistent with a basic requirement of the rule-of-law state.

Legal certainty, legitimate expectations, and transactional stability are therefore central concerns of modern states. They protect individuals and legal actors by preserving the stability of the legal framework within which they operate. Legal certainty is consequently a defining component of the modern rule-of-law state. It requires a reasonable degree of continuity in legal relations and stability in legal positions.²²

3. The Role of Constitutional Adjudication in Protecting Legal Certainty

Legal certainty is an objective pursued by constitutional lawmakers and constitutional adjudication in their effort to establish constitutional legality. Constitutional and statutory rules regulate the bodies responsible for reviewing the constitutionality of legislation. Legal certainty is closely linked to the temporal effects of judgments of unconstitutionality. This part therefore examines leading approaches in constitutional case law that seek to reconcile the effects of such judgments with legal certainty.

3.1. Effects of a Judgment of Unconstitutionality

Legal scholarship and legislation differ on the effects of a judgment declaring a statutory provision unconstitutional. The judgment may have immediate prospective effect, absolute retroactive effect, or

limited retroactive effect. This is a difficult question for states that rely on constitutional adjudication to secure the supremacy of the Constitution. The following discussion considers scholarly positions and the constitutional regulation adopted in selected comparative systems.

Constitutional scholarship has developed two principal approaches. The first treats the judgment as declaratory. It follows that the legislation is null and void from the outset, which gives the judgment retroactive effect. The second treats the judgment as constitutive. On this view, it produces immediate and prospective effects only.

3.1.1. Retroactive Effect of a Judgment of Unconstitutionality

Retroactive effect means that a law declared unconstitutional is treated as legally void from the date of its enactment rather than from the date of the judgment. The judgment therefore extends to all legal positions created under the law and to the situations, rights, and duties that arose while it was in force.²³ This approach regards the judgment as declaratory because it removes the challenged statutory provision without creating the defect of unconstitutionality. The judgment merely reveals a defect that existed from the provision's inception. The consequence is the invalidity of legal relations and positions founded on that provision because their legal basis was itself invalid.²⁴

A statutory provision that violates the Constitution is invalid from the moment it comes into existence. Its legal force is therefore removed with effect from the date of enactment. The Egyptian Supreme Constitutional Court adopted this position when it stated that judicial judgments are, as a rule, declaratory rather than constitutive. A judgment of unconstitutionality consequently has retroactive effect as a necessary result of its declaratory nature.

The United States Supreme Court followed a similar line of reasoning. It stated that the judgment reveals the true character of the legislative act before the Court. If the act conflicts with the Constitution, it was never law in the technical sense. The necessary conclusion is that a judgment of unconstitutionality operates retroactively.²⁵

The declaratory-effect approach also relies on equality before the law. It rejects a distinction between legal positions formed before the judgment and those formed afterwards. The explanatory memorandum to the Egyptian Supreme Constitutional Court Law stated that retroactivity was the general rule under the former third paragraph of Article 49. An exception applied to rights and legal positions that had become final through a judgment with *res judicata* effect or through expiry of a limitation period. Italy, Germany, Portugal, and Kuwait are among the states that adopted the declaratory-effect rule.

The broad application of retroactivity created serious practical difficulties, especially in tax matters. The third paragraph of Article 49 of the Egyptian Supreme Constitutional Court Law was therefore amended by presidential decree. The revised text provides that a legislative or regulatory provision declared unconstitutional may not be applied from the day after publication of the judgment unless the Court sets another date. A ruling concerning a tax provision always has direct effect, without prejudice to the claimant's benefit from the judgment.²⁶

3.1.2. Immediate Effect of a Judgment of Unconstitutionality

Immediate or prospective effect applies when the constitutional judge annuls a provision that conflicts with the Constitution and the decision operates from the moment the judgment is issued. It continues to govern the future but does not affect the past. The provision is therefore treated as defective for present and future purposes while remaining valid in relation to past events. This is the natural effect of a constitutive judgment.²⁷ Legal acts based on the provision before the judgment remain valid and effective.

This approach regards the judgment as constitutive and denies it retroactive effect. Its principal advantage is that it protects legal certainty. It preserves a reasonable degree of stability in legal positions and legal relations and therefore safeguards vested rights. Spain, Greece, Turkey, Romania, the Czech Republic, and Austria are among the states that have adopted the constitutive-effect rule.

The difference between retroactive and immediate effect is therefore clear. Retroactivity treats an unconstitutional law as if it had never existed from the date of enactment, thereby prioritising legality.

Immediate effect treats the law as inoperative only from the date of judgment and for the future, thereby protecting legal certainty.²⁸ Modern legal systems increasingly accept narrowly defined exceptions to retroactivity.

In France, when the Constitutional Council declares a rule unconstitutional during prior review, the law cannot be promulgated. This follows from Article 62(1) of the 1958 Constitution. After the 2008 reform introduced subsequent review through the priority question of constitutionality, France adopted immediate effect as the general rule under Articles 61(1) and 62(2).²⁹

The Algerian constitutional framers adopted a similar approach in the 2020 amendment. Article 198(3) clearly provides for the immediate loss of effect of unconstitutional legal rules: “If the Constitutional Court declares an ordinance or regulation unconstitutional, that text ceases to have effect from the date of the Court’s decision.”³⁰

3.1.3. Balancing Legal Certainty and the Retroactive Effect of Unconstitutionality Judgments

Balancing legal certainty with the retroactive effect of a judgment of unconstitutionality means reconciling two competing considerations. The first is the capacity of legal life to evolve and change. The second is the individual’s right to reasonable continuity and stability in legal positions and the rights arising from them. The balance therefore reconciles legality and the rule of law with legal certainty, individual rights, and protected legal positions.³¹

Constitutional review is a legal mechanism that safeguards legality and promotes the justice expected from law. Legality must nevertheless not overwhelm the need to preserve stable legal positions. A balance is therefore required between the basic rule that an act is valid only when it complies with law and the exceptional consideration of legal certainty. Legal systems have accordingly imposed limits on the retroactive effect of constitutional judgments. Balancing does not necessarily mean applying both principles in every case. It may require the court to prefer one principle over the other in light of the facts and consequences of the case.³²

Comparative constitutional courts have taken different positions on the effects of unconstitutionality judgments and their impact on vested rights. The United States Supreme Court has moved between the two approaches while generally favouring retroactivity. In several cases, however, it replaced retroactive effect with immediate effect. This flexibility seeks to balance constitutional supremacy with legal stability and the protection of vested rights.³³

Article 140 of the Austrian Constitution provides that an annulment takes effect from the date on which the judgment is published, unless the Court sets another date that may not be more than one year later. The annulled law continues to apply to events that occurred before the judgment. Article 106 of the Bahraini Constitution follows a broadly similar approach.³⁴

Although immediate effect already supports legal certainty, the Austrian and Bahraini constitutions provide an additional safeguard. They allow the court to postpone the effective date of annulment until a later date.

The Algerian constitutional framers also sought to balance legal certainty and legality. They gave the Constitutional Court’s decision annulling an unconstitutional text immediate effect while preserving rights and vested legal positions created under that text. Article 198 of the 2020 constitutional amendment states: “If the Constitutional Court declares an ordinance or regulation unconstitutional, that text ceases to have effect from the date of the Constitutional Court’s decision.”

The same article adds: “If the Constitutional Court declares a legislative or regulatory provision unconstitutional on the basis of Article 195 above, the provision ceases to have effect from the date specified in the Court’s decision.”³⁵

3.2. The Role of Constitutional Case Law in Achieving Legal Certainty

The constitutional judge has a measure of discretion when applying the principle of legal certainty. The judge may protect it through the temporal treatment of interpretative decisions and through the rules governing changes in judicial precedent.

3.2.1. Judicial Interpretation as a Means of Achieving Judicial Certainty

Legal scholarship and case law agree that a judge may interpret the rule being applied to the dispute. The power of interpretation is inherent in the judicial function. Constitutional judges have used it to reconcile their adjudicative duties with the requirements of legal certainty. Constitutional principles may conflict with one another, which gives the constitutional judge broad interpretative authority, especially when reviewing legislation. Constitutional principles should be interpreted in a way that prevents unnecessary conflict. Constitutional adjudication is therefore not a purely mechanical exercise. Courts interpret provisions flexibly in light of their purpose and derive general principles from them while considering practical consequences. Before issuing a judgment, the constitutional judge may assess its political, economic, and social effects. If the decision could cause serious harm, the judge may adopt a broader interpretation that avoids obstructing general government policy, even where that interpretation departs from the apparent wording of the text.^{36,37}

First: Non-Interference with Established Legal Positions

Interpretation should not alter legal positions that were validly created and fully formed before the interpretative decision. Otherwise, it would interfere with rights arising from those positions and deprive their holders of established entitlements. A person may, for example, have been appointed or promoted under a particular provision. If a later interpretation shows that the provision had previously been understood in a manner inconsistent with the legislature's true intention, the Supreme Constitutional Court may give its interpretation immediate effect in order to preserve stable legal positions.³⁸

The protection of settled legal positions is a general legal principle. It is not limited to interpretative decisions but also applies to judgments issued in constitutional proceedings.³⁹

Second: Interpretation as an Alternative to a Declaration of Unconstitutionality

A review body is important because it supports constitutional legality. Its particular importance lies in maintaining a secure and predictable legal order. Legislation is presumed constitutional, but that presumption is confirmed through review by a competent institution. Constitutional courts have reconciled their duty to annul unconstitutional provisions with interpretative methods that avoid a declaration of unconstitutionality. These conditional interpretations give the provision a constitutionally compliant meaning. Although judges possess interpretative authority, they may not use it without limits merely to avoid invalidation. The objective pursued must be sufficiently important, and legal certainty is one such objective.⁴⁰

The United States Supreme Court and American legal scholarship agree that legislation is presumed constitutional until the contrary is established. Doubt is resolved in favour of constitutionality. When a statute permits more than one interpretation, the court should adopt the interpretation that preserves this presumption. The Egyptian Supreme Constitutional Court has taken the same approach. Its first president explained that laws are presumed to have been enacted in conformity with the Constitution unless the conflict is clear, direct, and impossible to reconcile. When several interpretations are possible and one is constitutionally compliant, the court should adopt that interpretation.⁴¹

The Italian Constitutional Court has likewise used judicial interpretation to prefer a constitutionally compliant meaning. This reduces the harmful consequences of invalidation and protects legal certainty. The German Constitutional Court and the French Constitutional Council have followed the same approach.⁴²

3.2.2. Protecting Legal Certainty When Judicial Precedent Changes

A judicial reversal, or change in precedent, is defined as the abandonment of a settled legal principle in favour of a different principle or rule without any amendment to the applicable legal text.⁴³

A change in judicial precedent therefore means adopting a new interpretation of a provision that the constitutional courts had previously interpreted differently. Such a change can conflict with legal certainty because it displaces an established judicial rule. When a court interprets a provision in one way and later abandons that interpretation, persons who relied on the earlier precedent may suffer despite having acted in good faith and complied with it. Litigants therefore often find it difficult to accept that the meaning of precedent can change and that conduct considered correct yesterday may be treated as wrong tomorrow.⁴⁴

Judges are aware of these difficulties when they alter precedent. Although constitutional reversals may threaten legal certainty, the risk can be reduced. A change in constitutional precedent can be reconciled with legal certainty through two considerations.⁴⁵

First: Judicial Reversal Must Be Limited and Exceptional

The constitutional judge should not make excessive use of judicial reversal because frequent change destabilises legal positions. A reversal remains acceptable when it is confined to limited matters. The general rule should be continuity, because reversal is only a technical mechanism through which the constitutional judge may reaffirm constitutional legality.

Constitutional decisions should, as a whole, promote continuity and stability in legal positions. A change in constitutional precedent should not disturb positions that have already been created, settled, or acquired by an individual.⁴⁶

Second: The Legitimacy of a Change in Constitutional Precedent

A change in precedent often conflicts with legal certainty. It must therefore remain acceptable and legally justified. It cannot be legitimate if it impairs or threatens a fundamental freedom. A reversal is legitimate only when it strengthens the protection of fundamental freedoms or at least improves their effectiveness.⁴⁷

Judicial reversals ordinarily have retroactive consequences, which may threaten legal certainty. Constitutional courts should therefore reconcile reversal with the problem of retroactivity by giving the new precedent prospective effect. This avoids the obstacle created by retroactive application. The French scholar Mouly was the first to advocate prospective effect for changes in constitutional precedent. The technique became associated with advance warnings. It is used extensively by American judges and more selectively by English judges.⁴⁸

4. Conclusion

The express recognition of legal certainty in several constitutional systems, including Algeria after the 2020 constitutional amendment, establishes a sound and effective legal order. It protects rights and freedoms and strengthens the foundations of the rule of law. Legal certainty is also a central objective of constitutional adjudication. It must be considered when constitutional provisions are drafted and when the constitutionality of legislation is reviewed. In particular, judgments of unconstitutionality must protect vested rights through careful control of their temporal effects. Interpretative decisions and changes in judicial precedent must be handled with the same concern.

The study reaches the following findings and recommendations:

- Legal certainty binds both legislators and judges, whether or not it is expressly stated in the constitutional text. Legislators must not surprise individuals or undermine their legitimate expectations.
- The legislature should avoid haste when enacting or amending statutory rules.

- Legal certainty requires the state to ensure that those subject to the law can know and access it. This obligation has constitutional value and follows from equality before the law. It has become especially important as the volume of legislation has increased.
- A judgment of unconstitutionality has serious consequences for the affected statutory provision. The legislature should therefore define more clearly when retroactive effect applies and when immediate effect is permissible.
- Although the annulment of laws may be necessary to establish constitutional legality, it should not come at the expense of the individual's right to legal certainty. Judges should reconcile their constitutional jurisdiction with this principle through careful interpretation.
- The Algerian Constitutional Court should expressly use the term "legal certainty" in its decisions and identify its components, elements, and requirements. This would help build a stronger legal culture around the principle.

5. References:

- ¹ Bouzaïdi, Sabrina (2016). Competition Law: Legal Uncertainty or a New Conception of Legal Certainty? Master's thesis, Faculty of Law, University of 8 May 1945, Guelma, Algeria, p. 5.
- ² Hassan, Ahmed Ibrahim (2000). The Purpose of Law: A Study in the Philosophy of Law. University Publications House, Egypt, p. 137.
- ³ Bayaia, Kamel, and Ouali, Abdelatif (2020). Legal Certainty in Algerian Legislation. Journal of Legal and Political Research, Mohamed Boudiaf University of M'Sila, Algeria, p. 330.
- ⁴ El-Houari, Amer, and Hedfi, El-Aid (2021). The Constitutional Entrenchment of Legal Certainty as a Guarantee for Establishing the Modern Rule-of-Law State in Algeria. Madarat Siyasiyya, 5(1), p. 137.
- ⁵ Mehni, Warda, and Sidhoum, Houria (2021). Challenges in Entrenching Legal Certainty and the Requirements for Its Achievement in the Process of Building a State of Rights and Law: An Analytical Study. Proceedings of the National Conference on Legal Certainty as a Normative Concept of the Rule-of-Law State, Faculty of Law, Mohamed Lamine Debaghine University of Sétif, Algeria, p. 87.
- ⁶ Belhamzi, Fahima (2018). Legal Certainty of Constitutional Rights and Freedoms. Doctoral dissertation in public law, Faculty of Law, Abdelhamid Ibn Badis University of Mostaganem, Algeria, p. 32.
- ⁷ Shorsh, Omar, and Hamoush, Omar Abdullah (2019). The Role of Legislative Justice in Achieving Legal Certainty: An Analytical Study. Academic Journal of Legal and Political Research, 3(2), Ammar Telidji University of Laghouat, Algeria, p. 341.
- ⁸ Mehni, Warda, and Ben Sidhoum, Houria, previously cited, p. 87.
- ⁹ Boukemache, Mohamed, and Kallash, Kholoud (July 2017). The Principle of Legal Certainty and the Extent of Its Entrenchment in Administrative Adjudication. Journal of Research and Studies, 14(24), University of El Oued, Algeria.
- ¹⁰ Bouab, Ben Amer, and Hennan, Ali (March 2020). The Right to Legitimate Expectations (Legitimate Trust) as a Pillar of Legal Certainty. Journal of Legal Studies, 7(1), Moulay Tahar University of Saida, Algeria, p. 65.
- ¹¹ Al-Ukaili, Ali Majid, and Al-Dhahiri, Lama Ali (2020). The Idea of Legitimate Expectations: A Study in Constitutional and Administrative Adjudication. Arab Centre for Publishing and Distribution, Cairo, Egypt, pp. 23–25.
- ¹² Bouzaïd, Sabrina (2018). Legal Certainty in Competition Law. Al-Wafaa Legal Library, Alexandria, Egypt, p. 60.
- ¹³ Al-Ukaili, Ali Majid (2019). Legal Certainty between Constitutional Text and Practical Reality. Arab Centre for Publishing and Distribution, Cairo, Egypt, p. 209.
- ¹⁴ Shorsh, Hassan Omar, and Khamoush, Omar Abdullah (2017). The Effect of Constitutional Judgments on the Principle of Legal Certainty. Journal of Law, Faculty of Law, Al-Mustansiriyah University, Iraq, no. 31, p. 11.

- ¹⁵ Badawi, Abdeljalil, and Hennan, Ali (June 2021). The Concept of Legal Certainty and Its Requirements. *Journal of Studies in Constitutional Adjudication*, Arab Centre for Publishing and Distribution, Cairo, Egypt, p. 6.
- ¹⁶ See the Preamble and Article 34 of the Algerian Constitution, as amended by Presidential Decree No. 20-442 of 30 December 2020, approved on 1 November 2020, *Official Gazette of the People's Democratic Republic of Algeria*, no. 82, 30 December 2020.
- ¹⁷ Attia, Mahmoud Hamdi Abbas (2013). The Role of the Chamber for Unifying Legal Principles at the Council of State in Safeguarding Legal Certainty. Egypt, p. 16.
- ¹⁸ Ghmija, Abdelmajid (28 March 2008). The Principle of Legal Certainty and the Need for Judicial Certainty. Paper presented at the Thirteenth Conference of the African Group of the International Association of Judges, Casablanca, Morocco, p. 17.
- ¹⁹ Salem, Hanem Ahmed Mahmoud (2021). Guarantees for Achieving Legal Certainty and the Role of the Supreme Constitutional Court in Safeguarding It: A Comparative Doctrinal and Judicial Study. Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, p. 16.
- ²⁰ Al-Samet, Fouad (2016). The Role of the Legal Rule in Providing Legal Certainty. *Mediterranean Journal of Legal and Judicial Studies*, no. 2, Morocco, p. 280.
- ²¹ Dajjal, Salah (2010). Protection of Freedoms and the Rule-of-Law State. Doctoral dissertation in public law, Faculty of Law, University of Algiers 1, pp. 36–37.
- ²² Ourak, Houria (2018). Principles and Procedures of Legal Certainty in Algerian Law. Doctoral dissertation in public law, Faculty of Law, University of Algiers 1, p. 12.
- ²³ Muhaisen, Amer Zghair (2010). Balancing Legal Certainty and the Retroactive Effect of Judgments of Unconstitutionality. *Journal of the Kufa Studies Centre*, no. 18, Iraq, p. 5.
- ²⁴ Salman, Abdelaziz Mohamed (2000). Systems of Constitutional Review: A Comparative Study of Legal Systems and Egyptian Law. Saad Samak Legal and Economic Publications, Cairo, Egypt, p. 137.
- ²⁵ Al-Baz, Bashir Ali (2001). The Effect of a Judgment of Unconstitutionality. New University House, Alexandria, Egypt, p. 30.
- ²⁶ Al-Obaidi, Issam Saeed Eid (March 2020). The Temporal Operation of Constitutional Judgments: A Comparative Study. *Kuwait International Law School Journal*, 8(1), serial no. 29, Kuwait, p. 259.
- ²⁷ Al-Obaidi, Issam Saeed Abdel, previously cited, p. 267.
- ²⁸ Shorsh, Hassan Omar, and Amin, Latif Mustafa (2020). Balancing the Effect of a Judgment of Unconstitutionality and Vested Rights. *Journal of Legal and Economic Research*, 3(1), Aflou University Centre, Algeria, p. 417.
- ²⁹ See Articles 61(1) and 62(1) of the French Constitution of 1958.
- ³⁰ See Article 198(3) of the Algerian Constitution, previously cited.
- ³¹ Muhaisen, Amer Zghair, previously cited, p. 7.
- ³² Salem, Hanem Ahmed Mahmoud, previously cited, p. 98.
- ³³ Shorsh, Hassan Omar, and Amin, Latif Mustafa, previously cited, p. 423.
- ³⁴ Al-Shaer, Ramzi (2003). Constitutional Adjudication in the Kingdom of Bahrain. Bahrain, p. 429.
- ³⁵ See Article 198 of the Algerian Constitution, previously cited.
- ³⁶ Al-Assar, Yousri (December 2017). A Renewed Debate on the Role of Constitutional Adjudication in Interpreting Constitutional and Legal Rules and Deriving Principles from Them. *Kuwait International Law School Journal*, 5(4), serial no. 20, Kuwait, p. 363.
- ³⁷ Abdel Latif, Mahmoud Farid (2018). Interpretation of Legal Texts in Supreme Court Adjudication: Theory and Practice, A Comparative Study. Arab Studies Centre for Publishing and Distribution, Egypt, p. 506.
- ³⁸ Badr, Ahmed Salama, and Badr, Bilal Ahmed Salama (2019). The Role of the Constitutional Court in Interpreting Legal Texts, 2nd ed. Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 90.
- ³⁹ Fikri, Fathi (2011). The Supreme Constitutional Court's Original Jurisdiction over Requests for Interpretation, expanded and revised ed. Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 243.

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- ⁴⁰ Sorour, Fathi (2000). *Constitutional Protection of Rights and Freedoms*, 2nd ed. Dar Al-Shorouk, Cairo, Egypt, pp. 332–333.
- ⁴¹ Abdel Sabour, Walid Mohamed (2020). *Constitutional Interpretation: A Comparative Study*. Egyptian Publishing and Distribution, Egypt, p. 492.
- ⁴² Salem, Mahmoud Karim (December 2017). The Role of Constitutional Adjudication in Achieving Legal Certainty. *Al-Qadisiyah Journal of Law and Political Science*, 8(2), Al-Qadisiyah University, Iraq, p. 333.
- ⁴³ Shorsh, Hassan Omar, and Khamoush, Omar Abdullah, *Studies in Constitutional Adjudication*, previously cited, p. 91.
- ⁴⁴ Hishour, Ahmed (2021). Judicial Precedent and the Requirements of Legal Certainty. *Journal of Comparative Legal Studies*, 7(1), Hassiba Ben Bouali University of Chlef, Algeria, p. 2490.
- ⁴⁵ Shorsh, Hassan Omar, and Khamoush, Omar Abdullah, previously cited, p. 92.
- ⁴⁶ Al-Ukaili, Ali Majid, and Al-Dhahiri, Lama Ali (2019). The Effect of Changes in Constitutional Precedent on Legal Certainty. *Academic Journal of Legal and Political Research*, 3(1), Ammar Telidji University of Laghouat, Algeria, p. 32.
- ⁴⁷ Al-Ukaili, Ali Majid, and Al-Dhahiri, Lama Ali, previously cited, p. 32.
- ⁴⁸ Shorsh, Hassan Omar, and Khamoush, Omar Abdullah, *Studies in Constitutional Adjudication*, previously cited, p. 94.