

The Mechanism for Defending Unconstitutionality and its Role in Establishing the Principle of Legal Security

Submission date: 18/03/2024

Accepted date: 03/06/2024

SMAINI Besma*
University of Bordj Bou Arreridj
Laboratory of Cyber ustice
Besma.smaini@univ-bba.dz

BENDAOUH Hocine
University of Bordj Bou Arreridj
Laboratory of Cyber Justice
Bendaoud.hocine@univ-bba.dz

Abstract:

The role of the defense of unconstitutionality is highlighted in consecrating the principle of legal security, especially after its constitutionalization within the constitutional amendment of 2020, and the issuance of Organic Law No. 19/22, which specifies the procedures and methods of notification and referral followed before the Constitutional Court. This law grants litigants the power to resort to the judiciary to defend their rights and freedoms in order to achieve the principle of equality

through indirect communication with the Constitutional Court.

The implementation of this mechanism is a positive step for the Algerian constitutional judiciary in achieving justice and the principle of legal security by involving citizens in purging the legal system of legislation and regulations that affect it. Despite the lack of jurisprudence related to defending unconstitutionality, time will judge the extent of its contribution to consolidating the principle of legal security. This motivates judges to take upon themselves the responsibility of protecting the rights and freedoms guaranteed by the Constitution.

Keywords: Defending unconstitutionality; Legal security; Role; Establishing.

Introduction:

The connection between the idea of rights and freedoms and the constitution as the highest document in the state, and to constitutional justice as the most important pillar for ensuring its supremacy, makes constitutions sit at the top of the legal system in the state for two reasons. First of all, they are considered a basic reference for all laws. Secondly, they provide protection for rights and freedoms as an integral part of the legal system under the guise of legal legitimacy. Since the law is the protector as it's the only tool that regulates the behavior of people in society, this can't be achieved unless it's organized in a way

* - Corresponding author.

that ensures the stability of relationships and legal positions on the one hand, and generates a feeling of reassurance, security, and confidence in the souls of citizens on the other hand. The law and respect for rights and freedoms require the submission of all rulers and the ruled to the law in force in the state. Their embodiment requires the dedication of a set of principles, including the principle of legal security.

Accordingly, the importance of the issue emerges in that monitoring the constitutionality of laws is an important guarantee for protecting the rights and freedoms of individuals guaranteed by the Constitution, and the most important guarantee for achieving the principle of legal security. The argument of unconstitutionality is a means by which people can contest the constitutionality of laws or regulations and take part in the process of sorting through legislation to remove any provisions that break the legal security principle.

Therefore, if the principle of legal security pays great attention to achieving consistency and stability in legislation, rulings, and judicial decisions without causing shocks to litigants while respecting democracy, then the purpose of the article is to highlight the role of the post-constitutional push in consecrating it, especially after its constitution within the constitutional amendment of 2020. Paragraph 15 of the preamble of the amendment reads: "*The Constitution shall ensure the separation and balance of powers, the independence of the judiciary, legal protections, oversight of the work of public authorities, and legal security* "as well as Article 34/4, which reads: "*In order to guarantee legal security, the state, in implementing legislation relating to rights and freedoms, shall ensure the readability, accessibility and the stability of legal texts* ".

Hence, the topic of our research paper raises the following issue:

To what extent did the claim of unconstitutionality contribute to the consolidation of the principle of legal security?

From a methodological standpoint, the nature of the subject requires following both the descriptive approach to clarify the basic concepts and the role of the defense of unconstitutionality in achieving legal security, in addition to the analytical approach that enables us to analyze the various legal problems and the rules and texts regulating the subject of the study.

To answer this issue, we have divided our study into two chapters:

- Chapter I: The foundations of security and the guarantees for achieving it within the framework of the defense of unconstitutionality.

- Chapter II: The importance of defending unconstitutionality in protecting legal security and the difficulties of achieving it.

Chapter I: The Foundations of Security and the Guarantees for Achieving It within the Framework of the Defense of Unconstitutionality

Discussing the principle of legal security as a constitutional principle that seeks to reduce the lack of trust in the application of the law is extremely important, especially when it comes to arguing for unconstitutionality. In this context, the rights and freedoms of individuals guaranteed by the constitution are preserved, which leads us first to take note of the most important matters: the foundations on which it is based in the context of arguing for unconstitutionality, and then addressing the guarantees that contribute to achieving it.

First: The Foundations of Legal Security in Defending Unconstitutionality

A: Non-Retroactivity of Laws and Legal Certainty

The definition of the principle of non-retroactivity of laws is that the effect of legal rules does not extend to the past and that they are limited to ruling on the facts that occur starting from the day of their entry into force, except for what is excluded by a text⁽¹⁾. This principle is considered one of the state's legal requirements. As the principle of the immediate and direct impact of the law and its application to future events, it constitutes a protection against the disturbing impact of new legislation on people's actions that occurred in the past.

While the principle of legal certainty means confidence in the system, where citizens have the ability to predict their acquired rights guaranteed by the law, and this is what enables them to carry out their work with conviction, consistency and clarity in accordance with legal controls and restrictions, to achieve it; two main elements must be presented:

- The legitimacy of actions issued by the state and the quality of legislation, and with this basis⁽²⁾.

- The rule of law and its respect enables the individual to recognize the rules that must be followed to find solutions to his problem, and the presence of an impartial judicial authority would develop a sense of certainty in the hearts of individuals⁽³⁾.

B: Clarity of the Legal Rule, Its Lack of Contradiction, and Its Implementation

What is meant by the clarity of the legal rule is that its words are not ambiguous and that it is specified with sufficient precision to avoid confusion. This clarity is achieved through the quality of legislative drafting so that the law has an impact on everyone⁽⁴⁾. Legal security aims to protect individuals and public and private entities from amendments. Repeated legislation makes the law unpredictable and creates negative effects due to inconsistency, contradiction, and ambiguity⁽⁵⁾.

From another angle, laws must not be contradictory. It is a legal axiom that if one legislative text conflicts with another and it is not possible to reconcile them, the higher-ranking legislation must be applied to the lower-ranking. This requires carefully scrutinizing each piece of legislation to avoid running into the problem of contradictory provisions⁽⁶⁾.

As for knowledge of the law, legal security obligates the state to provide appropriate mechanisms to ensure that the law is available to everyone so that they can comply with it confidently⁽⁷⁾. "Publishing in the official gazette is considered a presumption of knowledge of the law"⁽⁸⁾.

C: Respect for Acquired Rights and Stability of Legislation

Respect for acquired rights requires that any state authority refrain from violating rights that individuals have legitimately derived. This is achieved through the rigid formulation of laws for ease of application and to avoid ambiguity in their interpretation⁽⁹⁾. If an acquired right has established all its pillars and elements, it cannot be violated, whether by a legal text or an administrative decision, except in special situations approved by law⁽¹⁰⁾.

As for the idea of the stability of legislation, it requires that the legislation be stable and effective for a long period of time to achieve stability in legal transactions. This stability avoids the impact of repeated amendments on the actions of individuals, as the law regulates social behavior that reflects the requirements of society⁽¹¹⁾.

D: The Idea of Project Forecasting

Under this concept, the legitimate expectations and hopes of individuals that they have arranged based on the applied legal rules are protected⁽¹²⁾. Sudden laws must not be issued that contradict the

legitimate expectations of the citizen⁽¹³⁾. Based on this, the constitutional judge is the true guarantor of protecting the principle of legitimate expectation in light of respect for the constitutional principles upon which systems are built. He aims to achieve two main purposes: first, to benefit the public by restricting the work of the executive and legislative authorities and canceling any action that violates the principle of legality; second, to protect the interests of individuals and their acquired rights, including their existing positions and legitimate expectations⁽¹⁴⁾.

E: Restricting the Retroactive Effect of a Ruling of Unconstitutionality

Restricting the retroactive effect of a ruling of unconstitutionality means determining the extent to which the judicial decision declaring a law unconstitutional affects the past. This effect is restricted to protect legal stability, as the ruling is effective from the date of the announcement, without retroactive effect on legal acts completed before that.

However, a question was raised about the impact of judicial jurisprudence on the principle of legal security. Some call for rejecting the role of the judiciary as a creator of the legal rule, even to achieve justice, especially if it is entrusted to inexperienced hands, because this poses a threat to the stability of legal rules. Others believe that the instability of judicial jurisprudence is due to the judge's failure to appreciate the effects of his jurisprudence. As a result, the necessity of judicial jurisprudence does not require tying the hands of judges in their jurisprudence under the pretext of respecting the principle of legal security. This is what the French Court of Cassation ruled in its decision: "*No one can cling to an acquired right based on solid judicial jurisprudence*"⁽¹⁵⁾.

The absolute acknowledgment of the retroactive effect of a ruling of unconstitutionality would lead to the destabilization of the existing legal status and positions of the persons subject to the application of the unconstitutional legal text during its period of validity. Therefore, restrictions must be placed to maintain the balance between the existing positions and acquired rights on one hand and the interests of the individuals included in the ruling of unconstitutionality and the application of the principle of retroactive effect on the other hand, to achieve a kind of relative legal stability for them⁽¹⁶⁾.

Referring to the text of Article 198 of the Constitutional Amendment of 2020, we find that it was drafted in a general manner, which gives the impression that the constitutional founder took into account the three effects of the decision to declare a legislative or regulatory text unconstitutional: the immediate and direct effect, the deferred effect, and the retroactive effect. This enables the constitutional judge to strike a balance between the retroactive effect of a decision of unconstitutionality and the principle of legal security⁽¹⁷⁾.

Restricting the retroactive effect of constitutional provisions does not affect the stability of legislation but is necessitated by repeated amendments to laws. The constitutional judge must strive to ensure that there is compatibility between the retroactivity of constitutional provisions and the principle of legal security.

F: Ease of Access to the Judiciary “Ensuring the Right to Litigation”

Guaranteeing the right to litigation requires that individuals know their rights and duties, and they should be aware that there is a judiciary before which they can seek compliance in accordance with the law. To achieve legal security, it is not permissible to enact legislation that prohibits a group from resorting to their natural judge; otherwise, this will be considered a violation of the right to defense, as it is necessary to preserve the rights and freedoms of individuals⁽¹⁸⁾.

Excluding individuals from appealing directly before the constitutional judge is a regulatory issue intended to prevent the excessive use of this right. Despite this, organic law 22-19 has allowed every interested party to intervene directly before the concerned judicial authorities and the Constitutional Court in accordance with the provisions of Articles 22 and 39⁽¹⁹⁾.

J: The Generality and

Abstractness of the Legal Rule and Adherence to Legal Conditions in Raising the Defense of Unconstitutionality

The legal rule has the characteristics of generality and abstraction, which make it a rule that does not address a specific person or group but rather addresses every person who meets the conditions for its application. This ensures the realization of the principle of equality in legal positions and the stability of legislation in legal security.

The legal conditions must also be adhered to in order to raise the claim of unconstitutionality, including⁽²⁰⁾:

- The claim must depend on the legislative or regulatory ruling to which the outcome of the dispute is contested and must constitute a basis for follow-up.
- Its conformity with the constitution must not have been previously declared, except in the case of a change in circumstances.
- The aspect raised must be characterized by seriousness, including formality and procedural aspects, as stipulated in organic law 22-19.

Second: Guarantees to achieve the principle of legal security in the defense of non-existence Constitutionalism.

A: Respect the sovereignty of the Constitution and the rule of law

Respecting the sovereignty of the constitution requires the dominance of constitutional rules over the legal organization in the state. Constitutional legitimacy is the highest guarantee of the rule of law⁽²¹⁾, meaning that the law is the master and supreme in implementing the principle of legality. The will of the people, no matter how high it is in the ranks of power, is a governmental will subject to the rule of law⁽²²⁾. This submission is what gives the administration's actions the character of legitimacy in a legal state, unlike in a police state that lacks the rule of law. This is how the rule of law is achieved⁽²³⁾.

B: Oversight of the Constitutionality of Laws

The mechanism for monitoring the constitutionality of laws is a process through which the extent of a law's violation or conformity with the Constitution is verified, with the aim of ensuring that the laws issued by the executive and legislative authorities are in accordance with constitutional foundations⁽²⁴⁾. This takes two forms: either through the repeal of the law that violates the constitution if it is proven that the judge has the authority to declare the contested law unconstitutional, making the decision binding on everyone as it settles the dispute once and for all⁽²⁵⁾. The repeal can be either partial, removing only the unconstitutional provisions while leaving the constitutional ones intact, or total, repealing the entire law that violates the constitution⁽²⁶⁾.

The other form involves the technique of interpretative reservations, where the constitutional judge takes a third path by keeping the contested text but correcting it and giving it an interpretation consistent with the provisions of the constitution. This involves removing what contradicts the constitution while respecting the interpretation chosen by the judge for this ruling⁽²⁷⁾.



C: The Principle of Separation of Powers

If the main function of the law is to impose restrictions on the exercise of power, then this will not be achieved if the executive and legislative powers are combined in the same institution or if the same individual assumes both roles⁽²⁸⁾. Gathering power in one hand will lead to tyranny and the violation of the rights and freedoms of individuals, as well as a violation of legal security.

Chapter II: The Importance of Defending Unconstitutionality in Protecting Legal Security and the Difficulties of Achieving it.

Since the defense of unconstitutionality is the right granted by the Constitution to one of the parties to a lawsuit before a judicial body, in which they claim that the legislative or regulatory provision on which the outcome of the dispute depends violates their rights and freedoms guaranteed by the Constitution, its importance emerges from the fact that it is a constitutional principle that the entire state is rushing to uphold. However, this matter is relative because its implementation on the ground will constitute an important challenge in light of the obstacles and difficulties that prevent it from being achieved.

First: The Importance of Defending Unconstitutionality in Protecting Legal Security.

A: Guaranteeing the Supremacy of the Constitution

The constitutional rule, regardless of its type—be it flexible, rigid, written, or customary—sits at the top of the legal system in the state and is not surpassed by any other laws in terms of superiority and strength⁽²⁹⁾. The supremacy of the constitution prohibits its amendment for a specific period of time or forever, except by special procedures. This applies to rigid constitutions, excluding the rest of the constitutions⁽³⁰⁾.

Thus, consecrating the independence of the constitutional court as an institution guaranteeing respect for the Constitution, in terms of the subordination of lower legislation to higher legislation, is in itself a consecration of legal security, the achievement of which is one of the requirements for the supremacy of the constitution.

B: Protection of Basic Rights and Freedoms

In the legal analysis, freedom is a right, and a person cannot exercise this right unless he is confident in himself and his legal security. The social community believes that it has this right, as the legal system, with

its various legislations, is the primary guarantor of the security of rights and freedoms because they constitute two sides of the same coin⁽³¹⁾.

C: Achieving Legislative Justice and Purging the Legal System of Unconstitutional Laws

Achieving legislative justice, according to some jurists, involves the authority entrusted with the task of legislating legal rules in a way that ensures legal security for the society in which they are applied⁽³²⁾. Legislative policy aims to create a kind of stability in legal relationships and positions by having the legislator issue laws that are consistent with the spirit of the constitution and the principles of international law. This fosters confidence and reassurance among the parties to legal relations. Therefore, legislation must be moderate and controlled, without exaggeration in its texts and without retroactive effects, as legal security provides the appropriate environment for the stability of the legal rule⁽³³⁾.

Additionally, the role of the judiciary in protecting rights and freedoms will be further enhanced by the involvement of the legal defense community in this endeavor. Their primary mission, within the framework of embodying the slogan of justice and equality, is defending human rights and freedoms. This constitutes an essential pillar for purging the legal system of legislative and regulatory provisions that violate constitutionally enshrined rights and freedoms⁽³⁴⁾.

D: Ensuring the Stability of Legal Rule

Ensuring the stability of legal rules requires that the legal frameworks established by individuals be clear, effective, and not vulnerable to shocks and surprises⁽³⁵⁾.

The instability of legislation, due to repeated amendments to legal texts or its rapid development in various fields due to globalization, foreign institutions, and companies, has demonstrated parliament's inability to control this phenomenon and keep pace with it. It may be useful to emphasize that stability is meant in a relative sense, because the state's authority in legislation cannot be restricted, given the law's inherent ability to develop⁽³⁶⁾.

Therefore, legal security requires a minimum level of consistency and stability for legal relations, whether the relationship connects individuals to each other or to the state⁽³⁷⁾.

Second: Difficulties and Challenges of Achieving Legal Security in Arguing for Unconstitutionality.

A: The Lack of Quality of Legal Texts and the Inflation of Legislation

Achieving legal security requires quality in legislation, meaning that it is issued by the competent authority in accordance with formal, objective, and procedural controls to achieve legislative stability⁽³⁸⁾. Legal texts must be formulated in flexible, easy-to-understand terms to avoid different interpretations that may lead to deviations from their intended content. Algerian laws contain many defects as a result of literal translation from foreign languages into Arabic⁽³⁹⁾.

The difficulty of translation lies in the fact that each country has its own legal system, making it difficult to find appropriate translations for legal terms. This requires effort and precise knowledge of legal terminology⁽⁴⁰⁾.

Legislative inflation is also one of the difficulties that hinder achieving the principle of legal security in defending unconstitutionality. This term refers to the excessive number of legal texts in a single law or the increase of several laws on one issue, which leads to chaos in controlling the legal texts, especially in light of their repeated reviews⁽⁴¹⁾.

This is due to several reasons, including the ambiguity of the legal rule and its loss of credibility, the lack of stability and knowledge of the law, doubts about its justice, and the absence of good governance⁽⁴²⁾, among others. If legislative drafting is marred by errors, oversights, or deficiencies, it is due to the inflation of the legislative system, the intensity of legal production, and the speed of issuance of legal texts, which makes the legislative text unsafe⁽⁴³⁾.

B: Retroactivity of Laws and Instability of Legal Relations

The reactionary nature of a ruling of unconstitutionality may sometimes affect legal security in terms of the stability of legal relations that have been established in accordance with the applicable texts before ruling it unconstitutional. Therefore, there must be an attempt to find a balance between the effect of the decision being unconstitutional and the principle of legal security to protect the rights of individuals⁽⁴⁴⁾.

The condition that there is no constitutional precedent in arguing for unconstitutionality gives the judge the discretion to restrict the retroactive effect of his decision being unconstitutional or not, which

may be changed if circumstances change, taking into account legal security.

C: Violation of the Principle of Equality before the Law and Lack of Transparency

It is considered a violation of the principle of equality when the legislator enacts a law that is difficult for someone to understand or access. The exercise of an individual's rights and freedoms requires their knowledge of their duties and the rights they have⁽⁴⁵⁾. This principle is included in the declarations of human rights, which the constitutional legislator directs to guarantee in the constitutional document. There are texts that enshrine it, and this has been confirmed by constitutional jurisprudence, stating: "*There are freedoms and rights that are absolute in nature and therefore cannot be infringed upon or regulated, and if legislation is issued restricting them, this legislation will be invalid because it violates the provisions of the Constitution*"⁽⁴⁶⁾."

From another angle, transparency is one of the most important requirements for good governance, which is based on informing citizens about their local and national affairs and ensuring their right to obtain information⁽⁴⁷⁾. Without it, doubt is created in the hearts of citizens about their ability to access information easily, accompanied by manipulations that affect the credibility of their actions.

D: Length of Litigation Procedures

Article 195 of the Constitutional Amendment of 2020 establishes that the constitutional court issues its decision on the payment order within four months following the date of its notification. This period can be extended once for a maximum of four months based on a reasoned decision from the constitutional court, and the extension is notified to the notifying authorities⁽⁴⁸⁾. Additionally, the aforementioned organic law did not specify the deadline within which the judicial authorities must decide on submitting the claim of unconstitutionality, and the word "immediately" was deemed sufficient⁽⁴⁹⁾.

Prolonging the duration of litigation to claim unconstitutionality would disrupt the implementation of laws, diminish the value of the disputed right, and undermine the citizen's confidence in constitutional justice. Therefore, litigation procedures must be simplified to achieve speedy adjudication of constitutional cases, ensuring both judicial security and legal safety⁽⁵⁰⁾.



E: Frequent References to Regulatory Texts without issuing them and Repeated Exceptions

For the law to be effective, the executive authority must issue a regulatory text explaining how to apply it without violating it. This regulatory text is the lowest level of the law⁽⁵¹⁾. The large number of references to regulatory texts without issuing them leads to delays in implementing the law, which harms the interests of citizens. Additionally, the large number of exceptions, when applied without a legitimate reason and outside of the cases stipulated by law, harms the credibility and security of the law and removes it from the guise of generality and abstraction⁽⁵²⁾.

Conclusion:

The need for legal security is one of the inevitable necessities, which makes governments strive to develop legislation that supports the legal arsenal in a way that strengthens legal security to create satisfaction and confidence in the souls of those who are addressed by it. Since the defense of unconstitutionality is the most important mechanism through which the citizen is involved in purging the legal system of unconstitutional legislation, this will inevitably contribute to the existence of sound legal rules that the individual can apply safely.

Results:

- The constitutionalization of the principle of legal security makes it a binding rule for everyone. Therefore, when enacting laws related to rights and freedoms, the legislator must formulate them clearly to avoid frequent amendments.
- The novelty of the principle of legal security, its multiple concepts, and the difficulty of fully understanding it make its application challenging, requiring everyone's concerted effort to achieve it.
- The most important foundation upon which the principle of legal security is based is the stability of legislation and legal positions and respect for acquired rights. Stability is a relative matter because laws are constantly being renewed, and the process of repealing and amending them is inevitable.
- The absence of legal security puts the citizen in a position of evading the application of legal rules. The lack of experience of the Algerian legislator in drafting laws will make it difficult to implement them effectively.

- Prolonging the litigation period is burdensome for the litigant, costly in time and effort, and sometimes presents implementation difficulties.

Recommendations:

- The claim of unconstitutionality must be decided within reasonable time frames, while litigation procedures are simplified to achieve judicial efficiency and speed in issuing regulatory laws that are consistent with their enforcement.

- Legal translation must be accurate based on the intent of the legislator in enacting the law.

- Judges should not be forced to implement a law they believe is unconstitutional, even if the parties do not raise the issue. A judge cannot apply an unconstitutional law simply because the concerned party did not file the request.

- Spreading a culture of legal security among citizens is essential to encourage their participation in building a state of law and justice.

- The constitutional judge must decide with a reassured heart, free from any pressure, so that individuals do not feel insecure about the rulings issued. Legitimate trust is associated with the independence of the constitutional judge when issuing rulings.

- Amending organic law 22-19 should include specifying the deadlines for ruling on unconstitutionality, the obligation for the constitutional court to provide reasons for its decisions, and setting a deadline for notifying them. Additionally, it should clarify the effects of the ruling of unconstitutionality on the acquired rights of individuals when a legislative or regulatory provision is deemed unconstitutional.

Referrals and References:

(1)- عامر زغير محسين: الموازنة بين فكرة الأمن القانوني ومبدأ رجعية أثر الحكم بعدم الدستورية، مركز دراسات الكوفة، العدد 18، 2010، ص ص 4-5.

(2)- محمد زنون: الأمن القانوني للملزم بأداء الضريبة، أطروحة لنيل شهادة دكتوراه القانون العام، جامعة القاضي عياض مراكش، 2019/2018، ص ص 80-81.

(3)- سيادة القانون دليل السياسيين ترجمة عزة قناوي: معهد راؤول ويلينبرغ لحقوق الإنسان والقانون الإنساني ومعهد لاهاي لتدويل القانون العام، 2021، ص 21.

(4)- عبد الحفي يحي، الأزهر لعبيدي: وضوح القاعدة القانونية كبداً من مبادئ الأمن القانوني، المجلة الدولية للبحوث القانونية والسياسية، المجلد 06، العدد 03، ديسمبر 2022، ص 458.

- (5)- غيلاس أمينة، محي الدين عواطف: الصياغة التشريعية الجيدة للقاعدة القانونية والأمن القانوني، مجلة الحقوق والحريات، المجلد 10، العدد 02، ص 805.
- (6)- هانم أحمد محمود سالم: ضمانات تحقيق الأمن القانوني ودور المحكمة الدستورية العليا في كفالاته " دراسة فقهية قضائية مقارنة"، دكتوراه في القانون العام"، تخصص القانون الإداري والإدارة العامة"، كلية الحقوق الدراسات العليا والبحوث، جامعة المنوفية، ص 49.
- (7)- لعروسي أحمد، بن شهرة العربي: دور القاضي الدستوري في تحقيق العدالة التشريعية، مجلة الدراسات الحقوقية، العدد 09، ص 104.
- (8)- دليل إعداد النصوص القانونية: الأمانة العامة للحكومة، الجمهورية الجزائرية الديمقراطية الشعبية، رئاسة الجمهورية، طبعة نوفمبر 2023، ص 45.
- (9)- لخزاري عبد المجيد، بن جدو فاطمة: الأمن القانوني والأمن القضائي: علاقة تكامل، مجلة الشهاب، المجلد 04، العدد 02، 2018/06/30، ص 390.
- (10)- حامي عادل: مبادئ الأمن القانوني في قضاء مجلس الدولة الجزائري والمقارن، أطروحة مقدمة لنيل شهادة دكتوراه الطور الثالث (د.م.د) في الحقوق، تخصص القانون الإداري، كلية الحقوق والعلوم السياسية جامعة غرداية، 2023/2022، ص 202.
- (11)- مشري جمال / المعيني محمد: دور المحكمة الدستورية في تعزيز دعائم الأمن القانوني، مجلة الفكر القانوني، المجلد 06، العدد 02، 2022، ص 430.
- (12)- أحمد عبد الحسيب السنتريسي: العدالة التشريعية في ضوء فكرة التوقع المشروع، مجلة الحقوق للبحوث القانونية والاقتصادية بكلية الحقوق، جامعة الإسكندرية، عدد خاص ديسمبر 2012، ص 780.
- (13)- هشام مسعودي: آراء الفكر القانوني حول مصطلح الأمن القانوني: دراسة في الإشكالية والمفهوم، مجلة الاجتهاد القضائي، المجلد 12، العدد 02، جامعة محمد خيضر بسكرة، أكتوبر 2020، ص 609.
- (14)- حامي عادل: مرجع سابق، ص 221.
- (15)- عبد الرحمان اللمتوني: الاجتهاد القضائي والأمن القانوني، مجلة الملحق القضائي، العدد 43، ماي 2002، ص 16.
- (16)- وردة محني، حورية بن سيدهم: معضلات تكريس مبدأ الأمن القانوني ومتطلبات تحقيقه في سياق مسار بناء دولة الحق والقانون، ج 1، ص 88.
- (17)- جدي مراد: متطلبات الأمن القانوني ودور المحكمة الدستورية في حمايته، مجلة الحقوق والعلوم السياسية، جامعة خنشلة، المجلد 10، العدد 1، 2023م، ص 1171.
- (18)- هانم أحمد محمود سالم: مرجع سابق، ص 56-57.
- (19) - See: Articles 22 and 39 of organic law No 22-19 dated 26 dhuelhidja 1443, corresponding to july 25, 2022, specifying the procedures and methods of notification and referral to be followed before the constitutional court, No5.
- (20)- See: article 15 et seq, organic Law, ibid.
- (21)- أحمد فتحي سرور: الحماية الدستورية للحقوق والحريات، دار الشروق، 2000، ص 29.

- (22)- محمد علي سويلم: القضاء الدستوري دراسة مقارنة، المصرية للنشر والتوزيع، 2020/1441، ص 71.
- (23)- حامي عادل: مرجع سابق، ص 211.
- (24)- مولاي ابراهيم عبد الحكيم، الراعي العبد: المحكمة الدستورية في ظل التعديل الدستوري لسنة 2020، مجلة الاجتهاد للدراسات القانونية والاقتصادية، المجلد 10، العدد 03، 2021، ص 823.
- (25)- زينة عبد الأمير عبد الحسن، محمد صباح علي: دور القضاء الدستوري في حماية الحقوق والحريات، المجلة العراقية الأكاديمية للعلوم، ص 262.
- (26)- مشري جمال / المعيني محمد: مرجع سابق، 434.
- (27)- رداوي مراد: التحفظات التفسيرية وتطبيقاتها في الاجتهاد الجزائري، مجلة الأستاذ الباحث للدراسات القانونية، المجلد 07، العدد 02، ديسمبر 2022، ص 905.
- (28)- سيادة القانون دليل للسياسيين: مرجع سابق، ص 14.
- (29)- يحيى الجمل: القضاء الدستوري في مصر، دار النهضة العربية، 2000، ص 19.
- (30)- محمد علي سويلم: مرجع سابق، ص 52.
- (31)- سامي عبد الحليم سعيد: المحكمة الدستورية في السودان الاختصاصات والإجراءات وفقا لقانون المحكمة الدستورية لسنة 1998م وقانونها لسنة 2005م، شركة مطابع السودان للعملة المحدودة، الخرطوم 2008، ص 139.
- (32)- لعروسي أحمد / بن شهرة العربي: مرجع سابق، ص 96.
- (33)- خالد أوزار، دور السياسة التشريعية في تحقيق الأمن القانوني وبناء الدولة العصرية، على الرابط الآتي: <https://maroclaw.com>، تاريخ وساعة التصفح: (2024/02/03، 10: 1).
- (34)- الرشيد طيبي، دور الهيئات القضائية في تفعيل آلية الدفع بعدم الدستورية، موقع المحكمة العليا، الجزائر على الرابط الآتي: <https://coursupreme.dz>، تاريخ وساعة التصفح: (2024/02/01، 16: 21).
- (35)- محمد سالم كريم: الأمن القانوني معيار للمراجعة التشريعية، مجلة واسط للعلوم الإنسانية، المجلد 17، العدد 47، 2021، ص 762.
- (36)- لمين شريط: عن بعض شروط صناعة التشريع، وقائع الندوة حول "الصناعة التشريعية في ظل مقتضيات الحكم الراشد"، مجلة الوسيط، وزارة العلاقات مع البرلمان، العدد 05، السداسي الأول من سنة 2008، ص 21.
- (37)- حامي عادل: مرجع سابق، ص 178.
- (38)- حامي عادل: مرجع نفسه، ص 60.
- (39)- بدوي عبد الجليل، هنان علي: مفهوم مبدأ الأمن القانوني، مجلة دراسات في الوظيفة العامة، العدد 8، جوان 2021، ص 10.
- (40)- صعوبات الترجمة القانونية 2023، على الرابط الآتي: <https://alsalimtranslation.com>، تاريخ وساعة التصفح: (2024/02/06، 16: 18).
- (41)- إيرادين نوال: تأثير تضخم التشريع على الأمن القانوني، دفاتر البحوث القانونية، العدد 13، ديسمبر 2018، ص 107.
- (42)- لمين شريط: مرجع سابق، ص 17.

- (43)- غيلاس أمينة، محي الدين عواطف: مرجع سابق، ص 805.
- (44)- جدي مراد: مرجع سابق، ص 1172.
- (45)- لعروسي أحمد/ بن شهرة العري: مرجع سابق، ص 108.
- (46)- زينة عبد الأمير عبد الحسن، محمد صباح علي: مرجع سابق، ص 268.
- (47)- مهداوي عبد القادر، بن السيمو محمد المهدي: مبدأ الشفافية في مستجدات التشريع بالجزائر، دفاتر السياسة والقانون، العدد 19، المجلد 10، جوان 2018، ص 372.
- (48)- See: Article 195² From the constitutional amendment of the year 2020 issued by Presidential Decree 20-442 dated December 30, 2020, O.J., No. 82, issued on December 30, 2020 of the aforementioned organic law. 20Article : See (49)
- (50)- انظر: طارق عبد العال، إطالة أمد التقاضي، على الرابط الآتي: <https://masr360.net>، تاريخ وساعة التصفح: (2024/02/06، 46: 20).
- (51)- انظر: علي الحسنوي: النص التشريعي النص التنظيمي، على الرابط الآتي: <https://mail.almerja.com>، تاريخ وساعة التصفح: (2024/02/06، 53: 18).
- (52)- دليل إعداد النصوص القانونية: مرجع سابق، ص 7-8.