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THE SUPERVISION OF THE CONSTITUTIONALITY OF LAWS: A FACTOR OF LEGAL STABILITY

Mohamed Boulahia*

Siham Abbassi**

Ameur Henni***

Mounir Benazzoug****

Abstract. The rule of law is established on the basis of a set of principles, the most important of which is legislative stability, through which the concept of legal security is embodied as a constitutionally-rooted idea of ambiguous and obscure meaning. To achieve this, multiple mechanisms must be present, the most prominent of which is the supervision of the constitutionality of laws. The latter originally emerged to realize a set of principles: the supremacy of the constitution, the gradation of legal rules, and the protection of rights and freedoms. However, it has thus become an important requirement for achieving

* Ph.D. Candidate,

Institute of Law, Department of Law, Governance Horizons Laboratory for Sustainable Local Development,
University Center of Barika; Algeria

E-mail: mohamed.boulahia@cu-barika.dz

<https://orcid.org/0009-0004-9441-8180>

** Ph.D,

Institute of Law, Department of Law, Governance Horizons Laboratory for Sustainable Local Development,
University Center of Barika; Algeria

E-mail: siham.abbassi@cu-barika.dz

<https://orcid.org/0009-0009-2088-1320>

*** Ph.D,

Faculty of Law and Political Science, Public Policy and Public Service Improvement Laboratory,
University of Msila; Algeria

E-mail: ameur.henni@univ-msila.dz

<https://orcid.org/0009-0008-5562-6592>

**** Ph.D,

Faculty of Law and Political Science, Department of Law, Laboratory of Rural Economic Development,
University Ibn Khaldoun, Tiaret; Algeria

E-mail: mounir.benazzoug@univ-tiaret.com

<https://orcid.org/0009-0005-5176-5155>

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legal security and a necessity for the latter, given its role in maintaining legal stability through its function of annulling or correcting legal provisions tainted with unconstitutionality. The modern state is founded on the respect for the fundamental rights and freedoms of individuals. To achieve this, the state must respect the law. The state's respect for law leads to its description as a rule-of-law state, the concept of which is built on imposing supervision on the constitutionality of laws, meaning oversight of state authorities so that they do not violate the law, thus ensuring the protection of fundamental rights and freedoms. Therefore, the supervision of the constitutionality of laws is one of the main pillars of the rule of law. However, a rule-of-law state cannot be conceived except under the existence of the legal security principle; the rule-of-law state is that through which the substance of legal security is achieved, regardless of the system's type or model.

Keywords: legal security, legislative stability, supervision of the constitutionality of laws, rule of law

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НАДЗОР ЗА КОНСТИТУЦИОННОСТЬЮ ЗАКОНОВ: ФАКТОР ПРАВОВОЙ СТАБИЛЬНОСТИ

Мохамед Булхия*

Сихам Аббаси**

Амёр Хенни***

Мунир Беназзуг****

Абстракт. Верховенство права строится на основе ряда принципов, важнейшим из которых является стабильность законодательства. Именно через нее реализуется понятие правовой безопасности- конституционно закрепленной идеи, имеющей многозначный и не всегда ясный смысл. Для ее достижения необходим комплекс механизмов, среди которых особое место занимает надзор за конституционностью законов. Первоначально он возник для реализации ряда принципов: верховенства

* Аспирант (Ph.D. Candidate),

Институт права, кафедра права, Лаборатория «Горизонты управления для устойчивого местного развития»,
Университетский центр Барика; Алжир

E-mail: mohamed.boulahia@cu-barika.dz

<https://orcid.org/0009-0004-9441-8180>

** Ph.D.,

Институт права, кафедра права, Лаборатория «Горизонты управления для устойчивого местного развития»,
Университетский центр Барика; Алжир

E-mail: siham.abbassi@cu-barika.dz

<https://orcid.org/0009-0009-2088-1320>

*** Ph.D.,

Факультет права и политических наук, Лаборатория «Государственная политика и совершенствование
общественных услуг»,

Университет Мсила; Алжир

E-mail: ameur.henni@univ-msila.dz

<https://orcid.org/0009-0008-5562-6592>

**** Ph.D.,

Факультет права и политических наук, кафедра права, Лаборатория сельского экономического развития,
Университет Ибн Халдуна, Тيارет; Алжир

E-mail: mounir.benazoug@univ-tiaret.com

<https://orcid.org/0009-0005-5176-5155>

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конституции, иерархии правовых норм и защиты прав и свобод. Со временем данный институт превратился в важнейшее условие обеспечения правовой безопасности и в необходимость для нее, поскольку играет ключевую роль в поддержании правовой стабильности путем отмены или исправления положений законодательства, пораженных неконституционностью. Современное государство основывается на уважении к основным правам и свободам личности. Для этого государство должно соблюдать закон. Соблюдение закона государством позволяет характеризовать его как правовое государство. Данное понятие основывается на необходимости надзора за конституционностью законов, то есть контроля над органами государственной власти с целью недопущения нарушений закона и обеспечения защиты основных прав и свобод. Следовательно, надзор за конституционностью законов является одним из главных столпов правового государства. Однако правовое государство невозможно без принципа правовой безопасности: именно оно является тем основанием, через которое реализуется сущность правовой безопасности, независимо от типа или модели государственного устройства.

Ключевые слова: правовая безопасность, стабильность законодательства, надзор за конституционностью законов, верховенство права

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QANUNLARIN KONSTITUSİYAYA UYGUNLUĞUNA NƏZARƏT: HÜQUQİ SABİTLİYİN AMİLİ

Muhamməd Boulahia*

Siham Abbasi**

Aməur Hənni***

Münir Benazzouq****

Abstrakt. Hüququn aliliyi müəyyən prinsiplər əsasında qurulur ki, onların ən mühümü qanunvericiliyin sabitliyidir. Bu sabitlik vasitəsilə hüquqi təhlükəsizlik anlayışı- məna baxımından qeyri-müəyyən və çoxşaxəli konstitusion əsaslı bir ideya- reallaşır. Bu məqsədə nail olmaq üçün müxtəlif mexanizmlərin mövcudluğu vacibdir və onların arasında qanunların konstitusiyaya uyğunluğuna nəzarət xüsusi əhəmiyyət daşıyır. Həmin nəzarət əvvəlcə bir sıra prinsipləri həyata keçirmək məqsədilə meydana çıxmışdır:

* Hüquq üzrə fəlsəfə doktorantı,
Hüquq İnstitutu, Hüquq fakültəsi, Davamlı Yerli İnkişaf üçün İdarəetmə Üfüqləri Laboratoriyası,
Barika Universitet Mərkəzi; Əlcəzair
E-mail: mohamed.boulahia@cu-barika.dz
<https://orcid.org/0009-0004-9441-8180>

** Ph.D.,
Hüquq İnstitutu, Hüquq fakültəsi, Davamlı Yerli İnkişaf üçün İdarəetmə Üfüqləri Laboratoriyası,
Barika Universitet Mərkəzi; Əlcəzair
E-mail: siham.abbassi@cu-barika.dz
<https://orcid.org/0009-0009-2088-1320>

*** Ph.D.,
Hüquq və Siyasi Elmlər Fakültəsi, İctimai Siyasət və İctimai Xidmətlərin Təkmilləşdirilməsi Laboratoriyası,
Msila Universiteti; Əlcəzair
E-mail: ameur.henni@univ-msila.dz
<https://orcid.org/0009-0008-5562-6592>

**** Ph.D.,
Hüquq və Siyasi Elmlər Fakültəsi, Hüquq kafedrası, Kənd Təsərrüfatı İqtisadi İnkişafı Laboratoriyası,
İbn Xəldun Universiteti, Tiaret; Əlcəzair
E-mail: mounir.benazzoug@univ-tiaret.com
<https://orcid.org/0009-0005-5176-5155>

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konstitusiyanın aliliyi, hüquqi normaların iyerarxiyası və hüquq və azadlıqların qorunması. Lakin sonradan bu nəzarət hüquqi təhlükəsizliyə nail olmaq üçün mühüm bir şərtə çevrilmiş, hüquqi sabitliyi təmin edən, konstitusiyaya zidd qanunvericilik müddəalarının ləğv edilməsi və ya düzəldilməsi funksiyası ilə əhəmiyyət qazanmışdır. Müasir dövlət fərdlərin əsas hüquq və azadlıqlarına hörmət üzərində qurulur. Bunun üçün dövlət hüquqa riayət etməlidir. Dövlətin hüquqa hörmət etməsi onun hüququn aliliyi əsasında idarə olunan dövlət kimi xarakterizə olunmasına gətirib çıxarır. Bu konsepsiya isə qanunların konstitusiyaya uyğunluğuna nəzarəti, yəni dövlət hakimiyyətinin hüququ pozmamasını təmin edən nəzarət mexanizmlərini zəruri edir. Beləliklə, qanunların konstitusiyaya uyğunluğuna nəzarət hüququn aliliyinin əsas sütunlarından biridir. Bununla belə, hüququn aliliyi yalnız hüquqi təhlükəsizlik prinsipinin mövcudluğu şəraitində təsəvvür edilə bilər; çünki hüquqi təhlükəsizlik mahiyyətcə hüququn aliliyini təmin edən əsas elementdir və bu, dövlətin idarəçilik modelindən asılı olmayaraq dəyişməzdir.

Açar sözlər: hüquqi təhlükəsizlik, qanunvericiliyin sabitliyi, qanunların konstitusiyaya uyğunluğuna nəzarət, hüququn aliliyi

1.Introduction

The rule of law is one of the concepts whose essence is rooted in the idea of legal security and is realized by it. The latter is manifested in a series of standards and contents, foremost among which is the convergence of the idea of legal security with the principle of legitimacy, meaning the subjection of rulers and the ruled to the law. Here, it is worth noting that subjecting individuals to the law is possible by means of legal rules, but how can the state (the public authorities, i.e., legislative and executive) be subjected to the same? By what means can this be achieved? Jurisprudence has developed the mechanism through which the state can be subjected to the law, namely the supervision of the constitutionality of laws, whereby all state authorities (legislative, executive, and judicial), directly or indirectly, are required to respect the law. Speaking of respect for law also implies respect for the gradation of legal rules, in which the lower rules must comply with the higher ones, with the constitution being at the apex of the legal-pyramid.

The constitution is considered the origin of any action the state may take; therefore, state institutions and their powers must be bound so as not to violate constitutional provisions. However, these may breach or infringe upon the rules that bind them and thus violate the constitution. Hence, there must be a mechanism to preserve the supremacy of the constitution, which is done by imposing- morally- the annulment or amendment of any legal provision that conflicts with the constitution. Thus, the supervision of the constitutionality of laws can be considered the mechanism for assessing the conformity of laws with the constitution, thereby preserving both the rule of law and legal security.

On this basis, the problem that can be posed in this field can be formulated as follows: **To what extent does the supervision of the constitutionality of laws contribute to achieving legal stability ("security"), given that its role is limited to examining the conformity of laws with the constitution?** This problem can be addressed through the following axes:

First: The conceptual framework of the study.

Second: The supervision of the constitutionality of laws as a requirement for achieving legal security.

Third: The supervision of the constitutionality of laws as a mechanism for achieving legal security.

This will be approached as follows:

2.First: The Conceptual Framework of the Study:

The principle of the supremacy of law is one of the pillars of the rule of law, indicating the hierarchical structure of legal rules, which is upheld through the operation of constitutional review. The principle of constitutional supremacy is the foundation of the legal order. However, adherence to or respect for this

principle does not mean a system is free from flaws, as every legal system presents gaps that the constitutional founder continuously strives to bridge. Within this framework emerges the concept of legal security, for in light of the defects that may afflict the law- necessitating its amendment or revision- legal instability arises as a demand to safeguard the fixity of legal situations and rights, the notion around which legal security revolves [Qassi, 2017-2018, pp.7-8].

Accordingly, this axis will address the concepts of legal stability and supervision of the constitutionality of laws in the following two points:

2.1.The Concept of Legal Stability

At the outset, it should be noted that constitutional laws are more stable and enduring than ordinary laws, since the procedures required for amending rigid constitutions are far stricter than those needed to amend ordinary laws [al-Behiri, 2009, p.188].

Moreover, the stability of the legal system in general- including the constitutional system- is a key element of social stability and legal security. Yet, the development of the legal system, including the constitutional framework, is a necessity to respond to the ongoing evolution of the world [al-Behiri, pp.263-264]. It follows that legal fixity should not be understood in its absolute sense, which would result in total legal rigidity, especially in the case of constitutional stability, as this would conflict with the principle of state sovereignty and the demands of change. Therefore, it is essential to accept the idea that legal and constitutional texts are not to be permanently frozen but may be amended as societal transformations require [Issam, 2012, p.29], provided such amendments preserve fundamental rights and the stability of legal situations to protect the legal security principle.

In reality, the idea of legal security in general, and within it the idea of legal stability or fixity, remains vague and hazy, as it encompasses multiple elements, covers different issues, and seeks core protective goals that are hard to attain [al-Behiri, p.264]. The principle was entrenched in Germany since 1961, when the German Federal Constitutional Court affirmed its constitutionality, and it has been recognized by the European Court of Justice in several decisions since 1992, as well as by the European Court of Human Rights as a judicial requirement for legal security since 1981 [Ghamija, 2008, p.3].

Thus, legal stability is a modern concept- a technical one; it is not a goal of law, but a value contributing to law's security function as public order. It has been defined variously, most notably as:

- The ideal state which the law should attain, by providing relatively consistent, stable, and accessible provisions, enabling individuals to form reasonable expectations.
- The individual's right for implemented rulings to be stable, i.e., the right not to have one's expectations retroactively undermined by changes in judiciary reasoning or laws.
- The necessity to respect the stability of circumstances where revisiting them would be undesirable.
- The ideal condition in which the law is reliable and physically accessible, understandable to legal persons, and compliant with the legitimate expectations they previously built, such that the law endeavors to fulfill those expectations to allow rational forecasting of actions and their outcomes by legal persons [Qassi, pp.82-89].
- The right of every person to the stability of legal rules, and to be protected from sudden amendments that could impact that stability.... Every guarantee and protective legal system aim to ensure- not by surprise- the proper execution of obligations and to avoid or minimize uncertainty in the law's application [Ghamija, p.6].
- Therefore, legal security- or stability- is a modern concept referring to the ideal state the law should attain, where the stability of legal statuses and situations is realized, enabling individuals to trust and comprehend the law, thereby allowing them to predict their actions.

2.2.The Concept of Supervision of the Constitutionality of Laws:

Since legislation follows the constitution in rank, the legislative authority must adopt laws in conformity with the text and spirit of the constitution; deviation amounts to a functional overreach and unconstitutionality, as the principle of constitutional supremacy would be pointless if legislative authorities could breach it. To affirm the supremacy of the constitution, states organize mechanisms to supervise the constitutionality of laws, ensuring conformity with constitutional provisions [al-Behiri, pp.256-266].

While individuals' respect for the constitution's rules does not generally raise issues- since these rules protect their rights and freedoms and infractions are incomprehensible from their side- it is problematic to guarantee that the three branches will abide by these constitutional rules. Therefore, it is necessary to establish safeguards for their respectful and sound application, and most legal systems ensure, through their constitutions, the mechanisms to enforce and observed such rules [Ounisi, p.250].

Thus, supervision of the constitutionality of laws is the effective legal means to ensure respect for constitutional boundaries [Ounisi, p.255]; it is the mechanism for upholding constitutional supremacy by a specialized body

whose final, binding decisions conclude the supervisory process [Ben Ahmed, Halfaya, 2018, p.72].

Supervisory authority may take a political form, where the body charged with constitutional review need not consist of judges or legal specialists, meaning its composition may be predominantly political rather than judicial. Alternatively, it may be judicial, where members must be judges or a mix of judges and legal professionals such as law professors and attorneys [Abd al-Fattah, 2017, p.129].

Thus, supervision of the constitutionality of laws is the mechanism by which a specialized body reviews the conformity or compatibility of a law (statute or regulation) with the constitution, regardless of the body's nature (political or judicial), the procedures of constitutional review (notification, referral, exception), or the outcomes of this review (annulment or amendment of laws that are noncompliant with the constitution).

3.Second: Supervision of the Constitutionality of Laws as a Requirement for Legal Stability:

To begin, it should be noted that the rule-of-law state is a constitutional state based on the sovereignty of the written constitution. Jurists have disagreed on the meaning of the rule-of-law state: does it mean the sovereignty of law over its institutions or merely that these institutions are subject to and do not violate the law? [Hassain, 2017, pp.163-166] Whatever the taken meaning, it is clear that the rule-of-law state, among its characteristics, achieves security and through it legal stability. The latter requires various mechanisms, the supervision of the constitutionality of laws being among the most significant. Therefore, supervision of the constitutionality of laws is a fundamental requirement for achieving legal stability and a necessity for it, based mainly on:

3.1.The Constitution as a Factor of Legal Stability

The principle of the supremacy of law has been the central concept around which constitutional law-formerly in Britain-revolved; it propelled absolute monarchy to recognize public liberties and rights [al-Shabatat, 2019, p.61]. Thus, the constitution is a factor for legal stability because it sets boundaries preventing political strife from degenerating into destructive chaos on the one hand and prevents the disintegration of the legal order into contradictory rules on the other [Issam, p.32]. The constitution's development and role have made it the main guarantor of public freedoms and human rights. Therefore, the constitution is a key factor in the formation of the rule-of-law state and the achievement of legal security because constitutional rules are the point of reference for any legal action and the main source of legitimacy for authorities empowered to legislate [al-Khoury Harb, 2017, p.10].

For these reasons, some believe that the supervision of the constitutionality of laws is more vital than the preparation and promulgation of the constitution itself, as it guards legal legitimacy and guarantees the rule of law [Shaawash, 2020, p.33; al-Behiri, p.188]. The existence of such supervision is a key step for the rule-of-law state, which rests on a legal system whose foundations and principles are drawn from the constitution [al-Imam, 2018, pp.10-16].

This supervision is the inevitable result of constitutional supremacy and the operative guarantee for the gradation of laws, which requires that the lower legal rules (in form and substance) be subordinate to the higher ones, the highest being the constitutional rule itself. It is among the most salient elements of the rule-of-law state, aiming to achieve the ends pursued by nations and societies and for which the world has witnessed historical revolutions and persistent conflict between rulers and the ruled- namely, subjecting the rulers to a law that embodies the will of the people in the form of a constitution [Ben Ahmed, Halfaya, p.72].

To summarize, the concept of legal stability closely approximates that of the rule-of-law state, given the link between stability and law. The rule-of-law state means that state authority can only be exercised according to the constitution and laws that conform to it for the purpose of human dignity, freedom, justice, and legal security [Qassi, p.144]. Hence, there can be no legal security in the absence of the supervision of the constitutionality of laws, the former being a fundamental guarantee and principal requirement for the latter.

3.2.The Aim of Supervision of the Constitutionality of Laws Is to Maintain Harmony in the Legal System

Supervision of the constitutionality of laws is designed to preserve constitutional harmony in the state's legal system [Issam, p.47]. Some argue that this supervision was adopted to concretize the concept of the rule-of-law state, necessitating a body tasked with constitutional review to uphold the supremacy of constitutional provisions [Harb, p.10]. Thus, all other legal rules must conform or be compatible with the constitution so that the legal order remains harmonious, devoid of contradictions or transgressions.

4.Third: Supervision of the Constitutionality of Laws as a Mechanism for Achieving Legal Stability

The body responsible for constitutional review exercises its authority by annulling any provision in violation of constitutional principles, thus interpreting the constitution and enforcing compliance, which, in turn, reinforces the rule of law and legal stability [Harb, p.5].

4.1.Annulment of Legal Rules That Contradict the Constitution

The principle of constitutional supremacy requires that enacted laws must not contradict the constitution in form or content; otherwise, they are tainted

by unconstitutionality and must be annulled. Constitutional review is not limited to merely identifying the nonconforming provision but may extend to its annulment and removal [Ben Ahmed, p.72]. When the competent constitutional review body activates the annulment mechanism, it aims to safeguard the gradation and quality of legal rules, especially when the legislator, in drafting laws, falls into defects violating constitutional provisions [Qassi, p.237].

The body tasked with reviewing constitutionality is only authorized to determine whether a law is constitutional; if it decides that a law is unconstitutional, its obligatory ruling is enforced as follows:

- The legislative authority must annul any provision ruled unconstitutional by the supervisory authority and amend effective laws in line with the ruling. It must also consider this decision in future lawmaking.
- The executive authority must refrain from implementing any provisions ruled unconstitutional by the relevant constitutional review body and, if the law in question is a decree, must annul it and amend other decrees accordingly and ensure compliance with the decision in future decrees as well.
- The judiciary must not base its judgments on provisions ruled unconstitutional by the supervisory body in any present or future cases [al-Majzoub, 2013, p.628].

4.2. Correction of Legal Rules That Contradict the Constitution: (Interpretive Reservations – Additive Interpretation)

By employing additive interpretation, the constitutional review body may avoid declaring a law unconstitutional by including new rulings or substituting certain provisions. François Favoreu was the first to identify this mechanism, meaning that additive interpretation aims to supplement the legislative text to render it constitutional [Noueiji, al-Shimi, 2017, p.43].

When the constitutional court rules on a referred law's constitutionality, it is natural for it to formulate a new legal rule to replace the annulled one; without such a rule, the referring judge cannot adjudicate the case. Thus, merely declaring a law unconstitutional is insufficient; the court must go further and establish a new legal rule from the constitution. Forfeiting this duty is not permissible [Issam, p.33].

However, this corrective role of constitutional review, namely the modification of unconstitutional rules, is open to criticism regarding the separation of powers, since legislative authority is primarily vested in the legislature, with the executive only exceptionally involved, and should not extend to the constitutional review body. Hence, when such bodies engage in

additive interpretation, they intervene in legislative functions, seeming to contravene the constitution.

However, despite this criticism, correcting legal provisions that violate the constitution is, in reality, one of the core responsibilities of the bodies tasked with overseeing the constitutionality of laws, including the Constitutional Court- formerly the Constitutional Council- in Algeria. The Constitutional Council has raised objections to several articles in numerous organic laws, it reviewed for constitutionality, including, but not limited to, its review of the constitutionality of the organic law relating to the payment of unconstitutionality, where it raised reservations about several articles in several chapters, including: [Chapter 01: General Provisions, Chapter 02: Conditions and Procedures for the Payment of unconstitutionality, Chapter 03: Provisions applicable before the Supreme Court and the Council of State, Chapter 04: Procedures before the Constitutional Council ...], where we find that the Constitutional Council has reserved the title of Chapter II of the organic law and proposed a new wording for it. The Constitutional Council also rewrote Articles 11, 11, 18, 19, 22, and 26, in addition to some constitutional reservations and changing the numbering of Articles 08, 09, 14, 21, and 22.

In fact, this can be justified based on what Professor François Luchaire has confirmed, namely that "the interpretative decisions resorted to by the Constitutional Council- the body responsible for reviewing the constitutionality of laws- through which it balances respect for the will of the legislator on the one hand, and respect for the provisions of the constitutional group and the guarantee of constitutional rights and freedoms on the other... In doing so, it respects the will of the legislator not to repeal its legislation while ensuring that the legislator respects the provisions of the constitution and rights and freedoms..." [Nougui, p.44] On the one hand, the proliferation of legal texts that prompt the activation of constitutional review of laws due to their unconstitutionality or incompatibility with the constitutional bloc may cause the bodies responsible for constitutional review of laws to appear repeatedly as bodies opposed to the work of parliament, which may give rise to conflicts between them and the latter. To avoid this, the technique of interpretative reservations has been adopted, whereby the legal text subject to review is retained but reservations are expressed on some of its provisions. In order for this text to be in conformity with the constitution, it is corrected by interpreting what is constitutionally flawed in it [Qasi, p.240]. This avoids previous criticisms while achieving legal certainty at the same time.

5. Conclusion

In conclusion, supervision of the constitutionality of laws is a vital mechanism for achieving legal stability. While originally instituted to preserve

the constitutional supremacy principle, realize the hierarchy of legal rules, and protect rights and freedoms, it thereby also maintains legal stability, realized when the constitution is the supreme law of the legal system and when the conformity of all rules with the constitution is necessary for hierarchical integrity.

From this study, we may draw the following key findings:

- The principle of constitutional supremacy is the foundation of modern legal systems and the chief requirement for legal- especially stable-security.
- Legal stability is a modern concept; it remains vague and lacking constitutional definition, even though it is of constitutional origin and is increasingly seen as a state necessity. **Thus, a clear constitutional provision may dispel confusion and secure its respect.**
- Constitutional review was originally established to safeguard constitutional supremacy, the gradation of legal rules, and the protection of rights and freedoms; through these functions, it supports legal stability, even if only in part. Legal stability is a feature of the rule-of-law state; such a state cannot be conceived without the elements of legal security, the most prominent of which is legal stability, or, at a minimum, it must strive to achieve them through mechanisms, the foremost being constitutional review. **Thus, the definition of constitutional review should be expanded to include its purpose of realizing legal stability.**
- Legal stability does not mean legal rigidity; it is not to be taken absolutely, nor is it a constitutional or legal goal in itself. Rather, it is a value for achieving one of the most important forms of state security and stability- legal stability- secured through mechanisms on which the rule-of-law state is based, including constitutional review. **Accordingly, our definition of constitutional review must also recognize it as one of the most important manifestations of the rule-of-law state.**
- Supervision of the constitutionality of laws is a fundamental requirement for legal stability because the constitution itself is a factor of legal stability (as it is essential in developing the rule-of-law state, with constitutional rules serving as reference for legal action and legitimacy for state powers) on one hand, and as it preserves harmony within the legal order on the other. **Therefore, if legal security is to be constitutionalized, its main mechanisms, primarily constitutional review, must be specified.**

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