

**The Role of Constitutional Courts in Protecting Fundamental Rights
and Freedoms:
A Comprehensive Analysis of the Algerian Constitutional System Under
the 2020 Constitution**

Dr. Bakhdda DJelloul

Assistant Professor (Grade A),
Department of Constitutional Law
Ahmed Draïa University, Adrar
Faculty of Law and Political Sciences
bakhadda.djelloul@adrar-univ.edu.dz

Elazzaoui Ahmed

Assistant Professor (Grade A),
University of Tamanrasset
elazzaouiahmed11@gmail.com

Received: 10/04/2026 Accepted: 20/06/2026 Published: 05/10/2026

ABSTRACT

This comprehensive study examines the transformative role of constitutional courts in safeguarding fundamental rights and freedoms, with particular emphasis on Algeria's 2020 constitutional reforms and the establishment of genuine judicial constitutional review. The research addresses a critical lacuna in North African constitutional scholarship by providing an in-depth analysis of how the Algerian constitutional legislator restructured constitutional protection mechanisms, transitioning from political oversight (through the Constitutional Council) to independent judicial review through the newly constituted Constitutional Court. The paper is grounded in three theoretical frameworks: (1) constitutional supremacy doctrine, which posits that constitutional courts function as guardians of the constitution's hierarchical primacy; (2) the principle of legal certainty, which recognizes that formal rights guarantees are meaningless without stable, accessible, and predictable legal frameworks; and (3) institutional independence theory, which emphasizes that courts can protect rights effectively only when structurally and functionally independent from political branches. Through systematic analysis of the 2020 Algerian Constitution and Organic Law 22-19, supplemented by comparative jurisprudence from Morocco, Romania, Colombia, Indonesia, Jordan, Georgia, and the European Union, this study demonstrates that Algeria's introduction of the exception of unconstitutionality represents a sophisticated procedural mechanism enabling ordinary litigants to access constitutional review. This mechanism, while having important

limitations, provides a meaningful safeguard for the protection of rights. The research critically evaluates whether institutional design alone, however sophisticated, can guarantee effective rights protection. Drawing on empirical evidence from quantitative and qualitative studies, the paper concludes that while institutional architecture is necessary, effective protection depends on complementary factors: judicial independence in practice (not merely in law), implementation of constitutional decisions by other state branches, legal culture that values constitutional limits on power, and public awareness of available remedies. The article contributes to constitutional law scholarship by: (1) providing the first comprehensive English-language analysis of Algeria's 2020 constitutional reforms; (2) demonstrating how civil law jurisdictions adapt common law and mixed-system mechanisms to protect rights; (3) identifying structural and procedural strengths and vulnerabilities in the Algerian model; and (4) offering evidence-based recommendations for enhancing constitutional protection while maintaining democratic legitimacy.

Keywords: constitutional courts • fundamental rights • judicial independence • constitutional review • judicial supremacy • rule of law • Algerian constitutional law • exception of unconstitutionality • legal certainty • institutional independence • comparative constitutional law • rights protection mechanisms

. INTRODUCTION: THEORETICAL FOUNDATIONS AND RESEARCH PARAMETERS

The protection of fundamental human rights and freedoms constitutes the central normative commitment of contemporary constitutional democracy. Yet this commitment exists in perpetual tension with the institutional mechanisms designed to realize it. The question that animates constitutional design across jurisdictions is deceptively simple: How can state institutions—themselves repositories of coercive power—be structured to constrain that power and vindicate the rights it might violate? Algeria's 2020 constitutional reform responds to this question through a deliberate institutional reconfiguration. By transforming the Constitutional Council (a political body exercising supervisory jurisdiction) into a Constitutional Court (an independent judicial institution), Algeria implicitly adopted the thesis that judicial protection proves more reliable than political protection. This thesis, while intuitively appealing, requires empirical and theoretical examination. Does judicial review actually protect rights more effectively than political mechanisms? Under what conditions does it succeed or fail? What institutional preconditions make judicial protection meaningful rather than merely formal?

The transition from political to judicial constitutional review represents more than administrative reorganization. It reflects a fundamental reconceptualization of the relationship between courts and legislatures, between constitutional text and institutional

practice, and between formal legal guarantees and effective vindication of rights. This article undertakes a comprehensive examination of whether, and to what extent, the Algerian model succeeds in translating this theoretical commitment into operational protection.

The research is motivated by several observations. First, existing English-language scholarship on North African constitutional law remains sparse, particularly regarding recent reforms. Second, the mechanisms Algeria adopted (the exception of unconstitutionality, the Constitutional Court structure, the legal certainty principle) are not indigenous to civil law jurisprudence but rather reflect conscious borrowing from other jurisdictions. Understanding how and why these mechanisms were adopted, and whether they function effectively in the Algerian context, provides insight into constitutional transplantation and legal adaptation more broadly. Third, the Algerian reform occurs in a region experiencing renewed democratic contestation, making timely analysis of constitutional mechanisms particularly important.

1.1 Theoretical Framework: Constitutional Supremacy and Judicial Independence

This article employs three interdependent theoretical frameworks: Constitutional Supremacy Doctrine: This principle asserts that the constitution occupies the apex of the legal hierarchy, binding all state actors and subordinate legal instruments. Constitutional supremacy is not merely formal hierarchy but operational constraint: laws conflicting with constitutional norms must be invalidated or reinterpreted to conform. Importantly, supremacy requires an enforcement mechanism—typically a court or specialized constitutional body—capable of declaring legislation unconstitutional and preventing its application. The Algerian Constitutional Court functions as this enforcement mechanism.

Contemporary scholarship characterizes constitutional supremacy and judicial review as "vital mechanisms" for legal stability (Boulaia et al., 2025). Critically, this characterization is empirically contestable. Quantitative analysis reveals that the mere existence of judicial review correlates with few measurable improvements in rights protection once other variables are controlled (Volcansek & Lockhart, 2012). The quality and independence of courts, rather than formal review power alone, proves decisive. This finding suggests that constitutional supremacy is not self-executing; it requires institutional conditions enabling courts to actually exercise meaningful review. Judicial Independence Theory: Courts protect rights effectively only when they are independent—structurally insulated from executive and legislative interference, functionally able to decide cases according to law rather than political preference, and personally protected from retaliation for unpopular decisions. Independence operates across three dimensions:

- Personal independence: judges possess secure tenure, salary protection, and immunity from prosecution for judicial acts

- Institutional independence: the judiciary possesses budgetary autonomy, control over internal administration, and separation from other branches
- Procedural independence: fair hearing guarantees, reasoned judgment requirements, and appeal mechanisms ensure decisions rest on law not arbitrary will

The 2020 Algerian Constitution incorporates sophisticated provisions addressing all three dimensions. However, *de jure* independence (independence on paper) frequently diverges from *de facto* independence (independence in practice). Research emphasizes that "de jure guarantees do not automatically ensure *de facto* independence" (Awawda, 2024). Algeria's challenge is translating constitutional provisions into operational reality.

Legal Certainty Principle: This relatively modern constitutional principle recognizes that formal rights mean little if the legal framework protecting them is unstable, inaccessible, or unpredictable. Legal certainty encompasses three components: stability of law (relative continuity of norms), clarity and accessibility (understandable rules), and predictability (foreseeable legal consequences). The Algerian constitutional legislator explicitly elevated legal certainty as a principle governing rights-related legislation, mandating that the legislature ensure clarity, accessibility, stability, and predictability in laws affecting fundamental freedoms (Aoudia, 2024; Belachi, 2024). This principle reflects recognition that citizens cannot effectively exercise rights they do not understand, cannot access, or cannot rely upon. Frequent legislative amendment undermines legal certainty by creating normative instability; complex, opaque statutory language undermines it through inaccessibility; retrospective application undermines it through unpredictability. The Algerian constitution, therefore, constrains the legislature in ways many constitutions do not—requiring not merely that rights be declared but that the statutory framework protecting them satisfy standards of certainty.

1.2 Methodology and Comparative Approach

This study employs a mixed-methods approach combining doctrinal constitutional analysis with comparative jurisprudence and empirical findings from social science research. The primary sources are the 2020 Algerian Constitution, Organic Law 22-19 (establishing procedures before the Constitutional Court), and, where available, Constitutional Court jurisprudence. Secondary sources include: (1) Consensus research summaries synthesizing recent peer-reviewed scholarship on constitutional review, judicial independence, and rights protection across diverse jurisdictions; (2) comparative constitutional law literature examining similar mechanisms in Morocco, Romania, Colombia, Indonesia, Jordan, Georgia, and the European Union; and (3) quantitative and qualitative empirical research on whether courts actually protect rights and under what conditions.

The comparative approach serves multiple functions. First, it contextualizes the Algerian reform within global constitutional trends. The exception of unconstitutionality, far from being uniquely Algerian, appears in Morocco, Romania, Colombia, and elsewhere.

Understanding how these other jurisdictions implement and enforce this mechanism illuminates possibilities and pitfalls for Algeria. Second, comparative analysis reveals the choices inherent in institutional design. Why did Algeria adopt a 30-day decision period rather than 60 days? Why did it require objective admissibility criteria rather than relying on judicial discretion? Why did it introduce electoral representation in Constitutional Court composition? Comparison with jurisdictions making different choices clarifies the consequences of these decisions. Third, comparison permits assessment of whether the Algerian model represents progress on global norms. The 2020 reforms cannot be evaluated in isolation; their significance emerges through comparison with predecessor institutions and international practice. The article consciously avoids several pitfalls. First, it does not assume that formal institutional reform automatically produces substantive change. Just as independence "on paper" may not translate to independence "in practice," a constitutional amendment establishing a Constitutional Court does not necessarily mean constitutional review will function effectively. The article therefore critically examines both institutional design and conditions for effective operation. Second, the article avoids naive institutionalism—the assumption that institutional structure alone determines outcomes. Courts operate within broader political and social contexts that shape their effectiveness. An independent Constitutional Court in a society committed to constitutional government functions entirely differently from an equally independent court in an authoritarian state. The article, therefore, contextualizes the Algerian Constitutional Court within Algeria's broader political trajectory. Third, the article avoids romantic idealization of courts. While courts can protect rights, they face real constraints: limited resources, political opposition, implementation deficiencies, and the inherent difficulty of adjudicating complex social questions. An honest assessment must acknowledge both protective potential and genuine limitations.

. CONSTITUTIONAL SUPREMACY AND LEGAL SECURITY: THE NORMATIVE ARCHITECTURE OF RIGHTS PROTECTION

The 2020 Algerian Constitution establishes an explicit and emphatic commitment to constitutional supremacy. This commitment is remarkable not for its philosophical novelty—constitutional supremacy has been foundational to constitutionalism since the 18th century—but rather for its operational specificity. The constitutional text does not merely declare that "the constitution is supreme"; rather, it establishes concrete mechanisms for enforcing that supremacy and mandates that other legal actors respect constitutional constraints. The preamble to the 2020 Constitution contains four critical passages establishing this framework. Paragraph 11 states that "the Algerian people have struggled and continue to struggle in the pursuit of freedom and democracy... and are determined to build institutions based on the participation of all citizens and civil society... in order to achieve social justice, equality, and guarantee freedom for every individual within the framework of a democratic republic governed by law." This passage

articulates the foundational commitment: the constitution aims to constitute a government limited by law and dedicated to protecting individual freedom. Paragraph 14 provides the operational commitment: "The Constitution is supreme above all. It is the fundamental law guaranteeing individual and collective rights and freedoms, protects the principle of free choice of the people, confers legitimacy on the exercise of powers, and enshrines democratic rotation through periodic, free and fair elections." This passage does three things: (1) asserts constitutional supremacy in emphatic terms; (2) identifies the constitution's substantive purpose—guaranteeing rights and freedoms; and (3) specifies the mechanism through which supremacy operates—ensuring that those wielding power do so legitimately. What these passages establish is not merely formal hierarchy but functional constraint. Constitutional supremacy, in the Algerian formulation, means that even democratically enacted legislation may not violate constitutional rights, that executive action may not contravene constitutional norms, and that constitutional promises must be operationalized through effective protection mechanisms.

2.1 The Supervision of Constitutionality as Foundational Necessity

Contemporary constitutional scholarship, informed by decades of comparative experience, recognizes that constitutional supremacy is inoperable without effective mechanisms for supervising the constitutionality of laws. This supervision function addresses a fundamental constitutional problem: legislatures, while democratically accountable, are not perfect guardians of constitutional limits. Legislatures may enact laws that, however well-intentioned, violate constitutional rights. Sometimes these violations result from genuine error—legislators misunderstand constitutional constraints. Sometimes they result from democratic majorities prioritizing competing values over individual rights. Sometimes they result from special interest capture, where concentrated interests lobby legislatures to restrict rights benefiting dispersed populations. Constitutional supervision addresses this problem through institutional checks: a court or specialized constitutional body reviews legislation against constitutional standards and invalidates norms that fail to conform. This supervisory function operates preventively in some systems (courts reviewing legislation before enactment) but more commonly operates correctively (courts striking down legislation that has taken effect). The empirical evidence on whether constitutional supervision actually protects rights is more complex than advocates suggest. Boulahia and colleagues (2025) assert that "there can be no legal security without effective control of constitutionality." However, Volcansek & Lockhart's quantitative EU study (2012) found that "judicial independence has a strong positive effect on human rights support, while the mere existence of judicial review shows no statistically significant effect once other factors are controlled." This suggests that the supervision function matters only when courts actually exercise it independently. A court nominally possessing review power but deferentially declining to exercise it provides little protection. The Algerian case is instructive. The prior

Constitutional Council nominally possessed constitutional review authority, but as a political body (composed partially of political appointees and exercising supervisory functions primarily through abstract review of legislation before enactment), it was structurally prevented from engaging in the sustained, concrete protection that independent courts can provide. The 2020 reform addresses this by: (1) establishing genuine institutional independence for the Constitutional Court; (2) creating mechanisms (the exception of unconstitutionality) for concrete case-based review; and (3) mandating that the Court address actual rights violations that arise in the course of ordinary litigation.

However, institutional design alone does not guarantee effective supervision. Algeria's success depends on whether:

- The Constitutional Court actually exercises review power rather than deferring to legislative judgments
- Other courts refer cases raising constitutional questions rather than declining to recognize such questions as justiciable
- The Constitutional Court's decisions are implemented by ordinary courts, executive authorities, and the legislature
- The broader legal culture comes to view constitutional litigation as a legitimate mechanism for vindicating rights

These conditions are not automatic consequences of constitutional amendment. They require sustained practice, professional commitment, and societal acceptance.

2.2 Legal Certainty: Stability, Clarity, and Predictability as Preconditions for Rights Enjoyment

A distinctive feature of the 2020 Algerian Constitution is its explicit elevation of legal certainty as a constitutional principle governing rights-related legislation. This principle recognizes a truth that formal declarations of rights frequently overlook: citizens cannot effectively exercise rights they do not understand, cannot access, or cannot rely upon. Legal certainty manifests across three dimensions. Stability requires that legal norms persist with reasonable continuity. Citizens form expectations and make life plans based on existing law; frequent legislative amendment disrupts these expectations and undermine rights enjoyment. Clarity requires that legal norms be intelligible. Legislation so complex or ambiguous that ordinary citizens cannot understand what the law requires or permits, or that courts reach contradictory interpretations, fails to provide genuine protection. Predictability requires that legal consequences be foreseeable. Retrospective application of new legal rules, particularly regarding rights, violates predictability because citizens could not have anticipated the legal status change affecting their conduct.

International scholarship emphasizes that "stability of legislation on rights, combined with clarity and accessibility, underpins citizens' trust and effective enjoyment of rights

and freedoms" (Aoudia, 2024; Belachi, 2024; Shabunovich, 2021). The Algerian constitutional legislator appears to have internalized this lesson. The Constitution mandates that legislation affecting rights must be clear, accessible, and relatively stable. This is not merely an aspirational principle; it functions as an enforceable constraint on legislative power. The practical consequences are significant. A legislature cannot legitimately enact vague legislation affecting fundamental rights, reasoning that the Constitutional Court will clarify meaning through interpretation. Rather, the legislature must draft clearly from the outset. A legislature cannot frequently amend rights-related legislation, creating a shifting statutory landscape that citizens cannot navigate reliably. Rather, once a statute protecting a right is enacted, it should persist unless genuinely defective experience demonstrates that amendment is necessary. As one government official noted regarding investment legislation, the law should not be amended for at least 10 years—a principle implicitly extending to all rights-related statutes. This commitment to legal certainty distinguishes Algeria from jurisdictions treating rights-related legislation as ordinary subject matter, revise-able at legislative whim. The commitment reflects sophisticated constitutional thinking: recognizing that freedom requires not merely the absence of state interference but positive conditions (legal clarity, stable expectations) enabling meaningful exercise of rights. However, legal certainty faces tension with democratic accountability and adaptive governance. As circumstances change and new understandings of rights emerge, must legislatures refrain from amending rights-related statutes? How long must a defective statute persist before legislative correction is permissible? These questions suggest that legal certainty, like all constitutional principles, requires balancing with competing values. The Algerian framework does not provide algorithmic answers to these questions; rather, it establishes that legal certainty is a value the Constitutional Court must consider when evaluating legislative amendments to rights-related statutes. A concrete example illustrates the principle's force. Suppose the legislature enacts a statute regulating freedom of expression, establishing clear standards for what speech is protected and what is prohibited. Five years later, the legislature, responding to perceived new security threats, enacts substantially different legislation restricting the scope of protected speech. A litigant prosecuted under the new law might argue that it violates legal certainty because: (1) citizens organized their speech under the prior statute's understanding of protected speech; (2) the new statute is unclear regarding certain categories of speech; and (3) retrospective application violates predictability. The Constitutional Court would need to balance the legislature's legitimate interest in adapting to changed circumstances against the principle of legal certainty. This balancing is not mechanical; it requires judgment. But the principle establishes that legal certainty is a value the Court must consider—distinguishing Algeria's approach from systems treating rights-related statutes as ordinary legislation subject to frequent revision.

3. THE EXCEPTION OF UNCONSTITUTIONALITY: MECHANISM, PROCEDURE, AND COMPARATIVE ANALYSIS

The exception of unconstitutionality (*difa'a ad-doustouriyya*) represents the centerpiece of Algeria's 2020 constitutional reform regarding rights protection. This mechanism, codified in Articles 185–198 of the Constitution and elaborated in Organic Law 22-19, fundamentally alters the relationship between ordinary courts and constitutional adjudication. Rather than requiring parties dissatisfied with lower court decisions to appeal through ordinary channels and hope constitutional issues receive attention at the appellate level, the exception permits immediate, focused constitutional scrutiny of the legislative norm itself. Understanding this mechanism requires careful analysis of its nature, operative procedures, and comparative positioning. The mechanism is not entirely novel to Algeria; it reflects conscious adaptation of the French *question prioritaire de constitutionnalité* (QPC), itself a recent innovation (introduced in 2008). However, adaptation to the Algerian context involved significant modifications reflecting different constitutional traditions, institutional structures, and political circumstances.

3.1 Nature and Function: Incidental Constitutional Review Through Concrete Cases

The exception of unconstitutionality operates as an incidental (non-principal) constitutional challenge arising within ordinary litigation. A party—plaintiff, defendant, interested third party, or in certain criminal contexts the prosecution—asserts during the course of civil, administrative, or criminal proceedings that a statute or regulation applied to their case violates the constitution because it infringes their fundamental rights. Critically, this is not a standalone action. A litigant cannot file directly with the Constitutional Court claiming that a statute is unconstitutional in the abstract. Rather, the exception arises only within the context of existing litigation. This limitation ensures that the Court addresses constitutional questions arising from concrete factual situations where constitutional analysis illuminates the actual dispute, rather than purely theoretical constitutional controversies. International jurisprudence recognizes such incidental mechanisms as operating multiple protective functions. First, they filter unconstitutional legislation out of concrete cases. If a statute violates constitutional rights, ordinary courts should not apply it to the parties before them; instead, the constitutional question should be resolved before the statute affects the parties' substantive rights. Second, they enforce constitutional supremacy by preventing courts from applying rights-violating norms. A court that applies an unconstitutional statute implicitly denies supremacy; if the statute violates the constitution, no court should apply it. Third, they empower ordinary litigants to access constitutional review without requiring separate petition procedures or specialized expertise. An ordinary litigant in an ordinary dispute can invoke constitutional protections; they need not navigate specialized constitutional procedures. Morocco's unconstitutionality plea is framed explicitly as a "basic safeguard" ensuring statutes conform to the constitution and protecting individual rights from legislative

excess (Abdellaoui, 2022). Romania's exception of unconstitutionality functions similarly, creating a legal dialogue between ordinary judges and the Constitutional Court (Tebieş, 2024; Barbu & Florescu, 2020). Algeria's mechanism adopts this protective logic while implementing procedural safeguards specific to its constitutional tradition. The mechanism's protective power depends, however, on several conditions. First, ordinary litigants must be aware that the exception exists and understand how to invoke it. Lack of legal awareness limits access; many parties whose rights are violated by unconstitutional statutes may never discover that they could challenge the statutes' constitutionality. Second, ordinary judges must recognize the exception as raising justiciable constitutional questions rather than dismissing constitutional objections as matters beyond their competence. Some judges, particularly in civil law traditions where ordinary judges may view constitutional law as the exclusive domain of specialized constitutional courts, might be reluctant to consider constitutional objections. Third, the exception must actually reach the Constitutional Court; procedural obstacles at intermediate stages might prevent constitutional scrutiny. Algeria's framework addresses these concerns through mandatory procedures: if admissibility conditions are met, the ordinary court must refer the exception to the Superior Court, which must in turn consider whether to refer to the Constitutional Court. However, these mandatory procedures depend on the Superior Courts actually engaged in genuine review rather than routine referral or dismissal. The comparative record reveals both successes and failures. In Colombia, despite formal availability of the unconstitutionality exception, empirical study shows judges rarely utilize it, leaving constitutional supremacy under-enforced in ordinary adjudication (Bayona et al., 2021). This suggests that merely making the mechanism available does not guarantee its use. Rather, cultural factors, judicial training, and institutional incentives shape whether courts actually employ available constitutional mechanisms.

3.2 Procedural Framework and Admissibility Gatekeeping

Organic Law 22-19 establishes a multi-stage procedural framework carefully balancing access with gatekeeping. The framework reflects recognition that constitutional courts possess finite resources and should not be overwhelmed with frivolous or unmeritorious claims. Yet excessive gatekeeping might prevent legitimate constitutional questions from receiving proper scrutiny. Stage One: Exception Before Ordinary Courts The mechanism begins when a party raises a written, separate, reasoned memorandum before the ordinary court (civil, administrative, or criminal) asserting that a contested statute or regulation violates their constitutional rights. The ordinary court, upon receipt of this exception, must immediately decide—before proceeding to final judgment—whether to forward the exception to the Constitutional Court. This decision is not discretionary in the sense of allowing judges to apply personal preference; rather, it is conditional on satisfaction of objective admissibility criteria established in Article 21 of Organic Law 22-19:

(1) **Decisional Relevance:** The contested norm must be relevant to the outcome of the dispute. The judicial decision cannot be rendered without applying or interpreting the challenged norm. This requirement prevents parties from raising constitutional objections to norms that have no bearing on the actual dispute. A defendant in an embezzlement case cannot successfully challenge the constitutionality of environmental protection statutes merely because they object to environmental law generally.

(2) **Prior Declaration Absence:** The contested norm must not have been previously declared constitutional by the Constitutional Council (prior regime) or Constitutional Court (new regime), except where material circumstances have changed. This requirement promotes judicial efficiency and stare decisis principles (respecting prior decisions) while allowing reconsideration when genuine changes warrant it. However, the "material change" exception requires careful application. A minor amendment to a statute does not necessarily constitute material change warranting reconsideration of prior constitutional approval. Conversely, significant societal changes—technological developments, human rights evolution, empirical findings about statutory consequences—might warrant reconsideration.

(3) **Serious Constitutional Objection:** The constitutional objection must be "serious"—not merely speculative or frivolous but substantively meritorious. This requirement prevents the exception from becoming a delay tactic. Parties facing adverse judgments might reflexively assert constitutional violations hoping to postpone or derail proceedings. The "seriousness" requirement filters out such frivolous claims. However, seriousness assessment is not mechanical; it requires judicial judgment about whether a constitutional objection has genuine merit. These requirements reflect comparative practice. Romania and the EU preliminary reference mechanism similarly rely on national judges as gatekeepers (Tebieș, 2024; Barbu & Florescu, 2020). Morocco and France's question prioritaire mechanism similarly condition access on relevance to the dispute and procedural propriety (Abdellaoui, 2022). This gatekeeping approach balances competing values: access for parties with legitimate constitutional objections, and efficiency through filtering of frivolous claims.

However, gatekeeping involves inherent risks. Ordinary judges, lacking specialized constitutional training, might mistakenly dismiss meritorious constitutional objections as "not serious." Conversely, sympathetic judges might forward objections lacking genuine merit, burdening the Constitutional Court with unmeritorious claims. Algeria's framework does not provide detailed guidance on assessing "seriousness," leaving this judgment to individual courts. Future jurisprudence should establish clearer standards.

Stage Two: Transmission to Superior Courts

If the ordinary court finds admissibility conditions satisfied, it must transmit the exception to the competent Superior Court—either the Supreme Court (for civil and

criminal matters) or the Council of State (for administrative matters)—within 10 days. This transmission must include the reasoned order from the ordinary court, the contested norm, the parties' memoranda, and all factual background necessary for constitutional review.

Stage Three: Superior Court Decision on Referral

The Superior Court has two months from receipt to decide whether to refer the exception to the Constitutional Court. During this period, the Superior Court must consult the Attorney General (for Supreme Court matters) or the Government Commissioner (for Council of State matters), affording them opportunity to present written observations. The Superior Court's task is not to reapply the ordinary court's admissibility assessment but rather to undertake genuine review. The Court must determine whether the exception satisfies admissibility criteria and whether referral to the Constitutional Court is justified. If the Superior Court determines that conditions are met, it issues a reasoned decision referring the exception to the Constitutional Court. If it declines referral, it must communicate this decision to the ordinary court, which then proceeds to final judgment applying the ordinary law (without striking down or reinterpreting the contested statute). This stage introduces an important filtering mechanism. Even if the ordinary court forwards an exception meeting technical admissibility criteria, the Superior Court might determine that the exception, while technical admissible, is not serious or that ordinary interpretation of the statute can resolve the dispute without constitutional analysis. This secondary gatekeeping prevents the Constitutional Court from being overwhelmed while preserving access for serious constitutional questions.

However, a two-month decision period in the Superior Court creates potential delay. In urgent matters—particularly criminal cases where liberty interests are at stake—two months is excessive. Organic Law 22-19 addresses this through an express exception: when a person is deprived of liberty due to the proceedings, or when statutory law mandates expedited decision, the ordinary court does not delay final judgment pending the Superior Court's referral decision. This exception recognizes that constitutional protection becomes meaningless if secured only after the harm has occurred.

Stage Four: Constitutional Court Adjudication

Once referred, the Constitutional Court notifies key state actors (President of the Republic, Senate President, National Assembly President, Prime Minister), affording them opportunity to file written observations. Any interested third party may also intervene through separate, reasoned memoranda filed before the Court begins deliberations.

The Constitutional Court must render decisions within 30 days of notification. In extraordinary circumstances (typically at the President's request), this period may be shortened to 10 days. The Court deliberates in closed session, following international practice in constitutional courts. The decision addresses whether the contested norm

violates the constitution as applied to the parties' circumstances. The Supreme Court or Council of State, having referred the exception, remains seized of the underlying dispute but must suspend judgment pending the Constitutional Court's decision—except in the urgent circumstances noted above. Once the Constitutional Court renders its decision, the Supreme Court or Council of State implements it and completes adjudication of the underlying dispute. Procedural Strengths and Vulnerabilities The Algerian framework exhibits both considerable strengths and notable vulnerabilities. Strengths include: (1) objective admissibility criteria reducing political manipulation; (2) mandatory procedures requiring courts to address constitutional questions rather than summarily dismissing them; (3) reasonable decision periods preventing indefinite delay; (4) expedited procedures for cases involving liberty interests; and (5) integration with ordinary litigation, reducing access barriers compared to specialized constitutional petition procedures.

Vulnerabilities include: (1) ambiguous "seriousness" standard lacking detailed guidance; (2) reliance on ordinary judges to assess constitutionality, potentially disadvantaging parties without sophisticated counsel; (3) two-month Superior Court period creating delay in non-urgent matters; (4) no express provision for intervention by affected third parties at the ordinary court stage, limiting input regarding constitutional implications; and (5) unclear consequence if the Constitutional Court's decision is rendered after the ordinary court has already proceeded to final judgment (does the decision require retrial? Does it bind appellate courts reviewing the judgment?).

3.3 Comparative Analysis: The Exception Across Jurisdictions

Comparative examination of unconstitutionality exceptions across jurisdictions illuminates both the choices Algeria made and the consequences of those choices. Three jurisdictions warrant particular attention: Romania, Morocco, and Colombia.

Romania: Exception as Rights-Protecting Dialogue

Romania's exception of unconstitutionality (*excepție de neconstituționalitate*) provides the most direct parallel to Algeria's mechanism. The exception permits parties in ongoing litigation to challenge the constitutionality of statutes applied to them. Like Algeria, Romania employs objective admissibility criteria and mandatory referral procedures. The exception operates explicitly as a dialogue mechanism between ordinary judges and the Constitutional Court, with ordinary judges referring constitutional questions and the Constitutional Court resolving them authoritatively.

Romanian jurisprudence treats the exception as serving fundamental protective functions: ensuring legal certainty, protecting individual rights, and maintaining rule of law (Tebieș, 2024; Barbu & Florescu, 2020; Cheptene-Micu, 2024; Toader & Safta, 2016). The Romanian Constitutional Court has developed extensive jurisprudence addressing what constitutes "serious" constitutional grounds, how to evaluate admissibility, and how to balance deference to legislative judgment with vigilant rights protection.

However, Romanian experience also reveals limitations. Admissibility filters are strict; the exception must be raised in a pending case and cannot be brought as a standalone action. Courts can summarily reject exceptions deemed non-serious without detailed analysis. These characteristics limit the exception's protective reach; complex constitutional questions requiring extensive analysis might be dismissed as merely technical disputes. Moreover, reliance on lower courts to identify constitutional questions depends on lower court sophistication and willingness to engage constitutional reasoning—prerequisites not universally present.

Morocco: Safeguarding Individual Rights from Legislative Excess
Morocco's unconstitutionality plea (*dafa'aadam ad-dusturiyya*) shares structural similarities with the Algerian mechanism but exists within Morocco's distinct constitutional framework. Morocco explicitly frames the plea as a "basic safeguard" ensuring statutes conform to the constitution and protecting individual rights from legislative excess (Abdellaoui, 2022). The mechanism permits litigants to challenge statutes as unconstitutional, with conditions similar to Algeria's: relevance to the dispute and serious constitutional grounds.

Morocco's Constitutional Court has been notably activist in protecting rights through unconstitutionality exceptions, striking down statutes violating freedom of expression, equality rights, and fair procedure. This activism reflects judicial commitment to rights protection, but it also generates criticism about judicial overreach and disrespect for legislative prerogative. The tension between judicial protection and legislative autonomy is constant; different jurisdictions resolve it differently based on institutional traditions and political context.

The Moroccan experience is particularly relevant for Algeria because both are North African civil law jurisdictions with Muslim-majority populations and recent democratization. If Morocco's Constitutional Court can function effectively to protect rights through the unconstitutionality mechanism, Algeria's can as well—but cultural, institutional, and political differences matter. Success in Morocco does not guarantee success in Algeria.

Colombia: Hybrid System and Underutilization

Colombia employs a hybrid approach combining incidental exceptions with public actions of unconstitutionality, permitting both individual litigants and any citizen to challenge norms before the Constitutional Court. This expansive access design reflects Colombia's constitutional commitment to maximum individual vindication of rights. However, empirical research reveals a troubling pattern: despite formal availability, Colombian judges rarely utilize the incidental exception of unconstitutionality in ordinary proceedings (Bayona et al., 2021). Judges appear reluctant to stop proceedings to refer constitutional questions, preferring to apply law as written and allow constitutional challenges to proceed through separate mechanisms. This underutilization suggests that

merely making the exception available does not guarantee its use; cultural factors, judicial training, and institutional incentives shape whether courts actually employ constitutional mechanisms.

This Colombian pattern warns that Algeria's success depends not on the mechanism's theoretical availability but on whether ordinary judges actually recognize and employ it. If Algerian judges view constitutional questions as beyond their competence and outside their judicial role, they might underutilize the exception just as Colombian judges do. Conversely, if Algerian legal culture comes to view constitutional review as integral to ordinary adjudication, the exception could flourish. Institutional Effectiveness: The Independence Factor

Comparative analysis reveals a consistent finding: the exception of unconstitutionality succeeds as a rights-protecting mechanism only when certain institutional preconditions exist. First, the constitutional court must be genuinely independent, not merely formally independent. An unconstitutionally pliant court that routinely defers to legislative judgment provides little protection regardless of procedural access mechanisms. Second, ordinary courts must actively engage with the exception, recognizing constitutional questions as legitimate and appropriately referring serious questions. Third, the broader legal culture must view constitutional litigation as appropriate to ordinary adjudication, not aberrational activism. Fourth, implementation mechanisms must exist ensuring that constitutional decisions are honored by other state actors. These preconditions are not automatically present. Indeed, they require sustained institutional commitment and societal acceptance that courts play a role in protecting constitutional rights. Algeria faces genuine challenges in establishing these preconditions, particularly given institutional legacies of executive dominance and limited judicial independence history. The constitutional reform creates opportunity for institutional change, but realizing that opportunity requires more than legal amendments; it requires practical commitment by judges, legislatures, and broader society to constitutional governance.

4. JUDICIAL INDEPENDENCE: CONSTITUTIONAL PROVISIONS AND PRACTICAL REALITIES

The protective effectiveness of the exception of unconstitutionality depends fundamentally on the independence of the Constitutional Court. An independent court can exercise meaningful review; a court beholden to political pressures cannot. The 2020 Algerian Constitution incorporates sophisticated provisions addressing personal, institutional, and procedural dimensions of judicial independence. However, *de jure* independence (independence on paper) frequently diverges from *de facto* independence (independence in practice).

Quantitative research demonstrates this divergence. A systematic EU study found that "judicial independence has a strong positive effect on human rights support, while the

mere existence of judicial review shows no statistically significant effect once other factors are controlled" (Volcansek & Lockhart, 2012). This finding suggests that formal review power means little without underlying judicial independence. Other research emphasizes that "de jure guarantees do not automatically ensure de facto independence" (Awawda, 2024).

Algeria's challenge, therefore, is not merely establishing independence on paper but realizing it in institutional practice. This section examines constitutional provisions and then considers conditions for practical realization.

4.1 Constitutional Safeguards: Personal, Institutional, and Procedural

Personal Independence Safeguards

The 2020 Constitution establishes multiple personal safeguards protecting Constitutional Court members from retaliation or influence. Article 187, paragraph 4, mandates that Constitutional Court members cannot maintain party political affiliation, eliminating a source of political loyalty that plagued the prior Constitutional Council. Upon appointment, members must cease all other professional activities, governmental positions, or private business engagements. This prohibition on concurrent office-holding eliminates conflicts of interest that might compromise impartiality.

The Constitution provides members with immunity for acts performed in their judicial capacity. This immunity operates broadly: members cannot be subjected to criminal prosecution based on judicial decisions or actions taken in the course of constitutional review. However, immunity is not absolute; members remain subject to criminal law regarding acts unrelated to their constitutional duties. Critically, prosecution for even non-judicial acts requires either the member's express waiver of immunity or authorization from the Constitutional Court itself, preventing political manipulation through selective prosecution of disfavored judges.

These personal safeguards address core independence concerns. A judge fearing political prosecution for unpopular decisions might suppress legitimate constitutional objections to protect themselves; absolute immunity eliminates this fear. Prohibition of party affiliation eliminates a source of political loyalty distinct from impartiality concerns. Prohibition of concurrent office-holding eliminates the conflict between judicial duty and other institutional obligations.

However, personal safeguards address only part of the independence challenge. De facto independence also depends on judicial character and commitment. A judge might possess absolute immunity but choose deference to political pressure anyway. Constitutional design can create opportunity for independence but cannot compel its exercise.

Institutional Independence Safeguards

The Constitutional Court's institutional structure incorporates independence-enhancing design. Composition: The 2020 reform altered compositional representation compared to the prior Constitutional Council. The Council had contained representatives appointed by

the President, the Senate, and the National Assembly. This tripartite structure meant that all branches had direct representation, potentially compromising the Court's appearance of impartiality. The Constitutional Court retains nine members but modifies representation: three elected by the electoral college (introducing democratic legitimacy), three appointed by the President, and three appointed by the President from recommendations of the judicial system. This modified composition reduces direct legislative or senatorial influence while introducing electoral representation. Moreover, the Constitutional Court possesses autonomous institutional administration: budget control, authority over internal procedures, and independence from executive or legislative direction. The Court's president can speak publicly about the institution's role, interpret its jurisprudence, and defend its decisions—protections ensuring the Court can explain itself rather than being misrepresented by other actors. However, constitutional structure cannot eliminate political influence entirely. If the President controls appointments (as reflected in the composition) and can pressure appointees, the Court's independence remains questionable. Algerian practice will ultimately determine whether Presidential appointees exercise judicial judgment independently or defer to Presidential preferences.

Procedural Independence Safeguards The procedural framework protects independence through several mechanisms. Fair hearing guarantees ensure that parties receive notice of constitutional proceedings and opportunity to present arguments before the Court decides. Reasoned judgment requirements ensure that decisions rest on constitutional analysis rather than unstated political preferences. Secret deliberation (in closed session) protects judges from public pressure during decision-making. Immunity from individual suit ensures the Court need not defend its decisions through litigation challenging their propriety.

These procedural safeguards are important but insufficient. A court that conducts fair hearings but reaches outcomes predetermined by political pressure has satisfied procedural formality while violating substantive independence. Conversely, a court exercising genuine judicial judgment might produce outcomes that appear political but actually reflect honest constitutional analysis. The fundamental independence challenge is not mechanical or procedural; it is cultural and institutional. Independence requires that judges view themselves as bound by constitutional duty, not political obligation. That institutional culture develops through practice, socialization, and social respect. Constitutional amendment can create conditions facilitating such culture, but cannot create it directly.

4.2 Conditions for Effective Judicial Independence in Practice

Constitutional provisions alone do not guarantee operational independence. Research identifies several factors that courts operating even within protective constitutional frameworks require to maintain independence in practice. Access to Representation and

Legal Expertise Constitutional rights protection depends partly on legal counsel capable of identifying constitutional violations and articulating constitutional arguments effectively. If most litigants lack access to sophisticated legal counsel, many constitutional violations will go unasserted. Conversely, robust bar associations, legal aid systems, and law school education focused on constitutional law facilitate identification of constitutional questions. Algeria's legal profession is reasonably well-developed, but uneven distribution of expertise might disadvantage rural or economically vulnerable litigants. Constitutional questions might be recognized in major cities but overlooked in provincial courts. Systematic legal education in constitutional law across all judicial education programs would strengthen access. Implementation and Inter-Branch Cooperation

Constitutional Court decisions protect rights effectively only if implementation follows. If the legislature ignores constitutional invalidations of statutes and re-enacts substantially identical legislation, or if lower courts decline to apply the Court's reasoning, constitutional protection becomes illusory. Effective rights protection requires that other state branches accept constitutional decisions as binding and implement them in good faith. Algeria's prior constitutional experience provides mixed evidence on implementation willingness. The Constitutional Council's decisions were generally honored by other branches, suggesting institutional acceptance of constitutional adjudication. However, the Council operated primarily through abstract review, not concrete case adjudication, limiting opportunity for implementation defiance. Whether the Constitutional Court, engaging in more active rights protection through concrete case review, will experience greater implementation resistance remains to be seen. Societal Support and Legal Culture Courts operate within broader political and social contexts. A court that vigorously protects rights in a society that values constitutional governance gains legitimacy and support. A court that vigorously protects rights in a society skeptical of judicial authority faces backlash and institutional retaliation. Courts must therefore calibrate their protection efforts within politically sustainable bounds—a reality courts in many democracies experience. Algeria's transition toward greater democratic openness creates opportunity for legal culture valuing constitutional protection. However, legacies of executive dominance and skepticism toward judicial independence might persist. Whether Algerian society comes to view constitutional courts as legitimate protectors of rights depends partly on court performance and partly on broader political evolution. Adequate Resources and Professional Development Constitutional courts require adequate budget, skilled personnel, and supporting infrastructure. Courts operating under severe resource constraints inevitably struggle to provide thorough review. Insufficient judicial salaries invite corruption. Lack of research staff limits the Court's capacity to analyze complex constitutional questions. Absence of continuing legal education prevents judges from staying current with constitutional developments. Algeria's commitment to

the Constitutional Court's resource needs will significantly impact its effectiveness. If the Court receives adequate budget, personnel, and facilities, it can function as intended. If it operates under resource constraint, its protective capacity will suffer. Public Awareness and Civil Society Engagement Rights protection depends on individuals being aware that remedies exist and capable of accessing them. If citizens know nothing of the exception of unconstitutionality, they cannot invoke it. If civil society organizations cannot identify and litigate constitutional violations, many violations remain unchallenged. Media education about constitutional rights, law school clinics providing pro bono constitutional representation, and civil society organizations focusing on rights protection all strengthen access. Algeria's civil society is developing capacity in these areas, but sustained commitment is necessary to build public understanding of constitutional remedies.

ASSESSMENT OF ALGERIA'S INSTITUTIONAL DESIGN: STRENGTHS, LIMITATIONS, AND PROSPECTS FOR EFFECTIVE RIGHTS PROTECTION

Having examined Algeria's constitutional framework in detail, this section synthesizes findings into an overall assessment of whether the 2020 reforms successfully establish effective rights protection. The analysis considers both theoretical potential and practical challenges.

Significant Strengths

Algeria's 2020 constitutional reforms embody considerable sophistication in institutional design. The shift from political to judicial constitutional review addresses a genuine legitimacy problem with the prior Constitutional Council model. A body composed partially of political appointees and focused primarily on pre-enactment review cannot function as an impartial guardian of rights. The Constitutional Court model—with independence safeguards, focus on concrete cases, and access through the exception of unconstitutionality—addresses these limitations.

The exception of unconstitutionality mechanism is particularly significant. By integrating constitutional review into ordinary litigation, rather than requiring separate constitutional petitions, Algeria reduces access barriers for ordinary litigants. A party in any civil, criminal, or administrative case can invoke the exception; they need not navigate specialized constitutional procedures or engage costly expert counsel. This design choice reflects democratic theory: rights protection should not be available only to sophisticated litigants.

The principle of legal certainty, explicitly elevated to constitutional status, represents sophisticated recognition that formal rights declarations are empty without stable, clear, accessible legal frameworks. Mandating that rights-related legislation satisfy standards of clarity, accessibility, and stability is not common in constitutional texts; it reflects Algeria's learning from international experience about how rights protection actually operates.

The independence safeguards—personal protection through immunity and party affiliation prohibition, institutional protection through autonomous administration, procedural protection through fair hearing and reasoned judgment requirements—create conditions under which a court can function independently. While safeguards alone do not guarantee independence, they eliminate some conditions that force dependence.

Remaining Limitations and Vulnerabilities

Despite these strengths, significant limitations remain. First, the mechanism's success depends on judicial willingness to exercise it. Colombian experience demonstrates that making an exception formally available does not guarantee its use. Algeria's ordinary judges must recognize constitutional questions as justiciable matters appropriately addressed through the exception. This requires legal training in constitutional law and cultural acceptance that constitutional analysis is part of ordinary judicial function. Second, gatekeeping through admissibility criteria creates risk of underprotection. The "seriousness" requirement lacks detailed definition. Well-meaning judges might dismiss meritorious constitutional objections as insufficiently serious; conversely, sympathetic judges might forward frivolous claims. Clear jurisprudential standards establishing what constitutes "serious" constitutional grounds would improve gatekeeping accuracy. Third, the two-month Superior Court decision period creates delay. While expedited procedures exist for liberty cases, ordinary civil cases might wait two months while the Superior Court considers referral. This delay, while not catastrophic, means that constitutional questions do not receive immediate attention; interim harm to rights occurs during the waiting period.

Fourth, the mechanism addresses only statutory unconstitutionality. If executive action or administrative regulation violates constitutional rights, the exception applies only if a statute authorizes the action. If unconstitutional regulation exists without clear statutory authorization, the exception might not apply. This limitation means the Court's protection is narrower than ideal.

Fifth, implementation depends on cooperation from other branches. If the legislature ignores constitutional invalidations or if lower courts decline to honor the Court's decisions, protection becomes illusory. Algeria's legal tradition of respecting constitutional judgments provides some reassurance, but nothing guarantees that institutional acceptance will persist if the Court issues decisions threatening significant legislative interests.

Sixth, the Constitutional Court's composition, while improved from the prior Council model, still reflects Presidential influence. Three of nine members are Presidential appointees. If the President can influence these appointees, the Court's independence remains questionable. Democratic rotation and transition of power will ultimately test whether Presidential appointees maintain independence across political transitions.

Institutional Preconditions Requiring Development

Realizing the reforms' protective potential requires several institutional developments. Legal education must emphasize constitutional law and constitutional reasoning in ordinary judicial training. Judges must understand not merely that constitutional questions exist but how to analyze them and recognize when exceptions are appropriate. Civil society must develop capacity to identify constitutional violations and assist litigants in asserting exceptions. Organizations focused on rights protection, law school clinics, and bar association committees can facilitate this capacity.

The Constitutional Court must develop clear jurisprudence establishing admissibility standards and substantive rights analysis. Early decisions establish patterns that later courts follow; if initial decisions are cautious and deferential, a pattern of limited protection might entrench. Conversely, if early decisions embrace the protective mandate, a culture of vigorous review might develop.

Media and public education should emphasize citizens' rights and available remedies. Citizens cannot vindicate constitutional rights they do not know they possess.

6. CONCLUSION: CONSTITUTIONAL COURTS, INSTITUTIONAL DESIGN, AND THE PROSPECTS FOR MEANINGFUL RIGHTS PROTECTION

This comprehensive analysis of Algeria's 2020 constitutional reforms demonstrates that the transition from political to judicial constitutional review represents a significant institutional evolution in rights protection mechanisms. The Constitutional Court model, implementing the exception of unconstitutionality mechanism and incorporating sophisticated independence safeguards, addresses genuine limitations of the prior Constitutional Council approach. The explicit elevation of legal certainty as a constitutional principle recognizes that rights protection requires not merely formal declarations but stable, clear, accessible legal frameworks enabling meaningful exercise of rights. The analysis also reveals that institutional design alone—however sophisticated—does not guarantee effective rights protection. Constitutional courts prove most protective of rights when operating within broader institutional and social contexts supporting judicial independence and respecting constitutional limits on power. Where these supporting contexts are absent, even elegant institutional frameworks produce disappointing results. Conversely, where they are present, courts become powerful instruments for vindicating rights.

Key Findings

First, constitutional supremacy is inoperable without effective mechanisms for supervising constitutionality of laws. Algeria's move to judicial review, enabling courts to invalidate unconstitutional legislation, addresses this necessity. However, supervision functions only when courts actually exercise review power rather than deferring to legislative judgment. Research on judicial independence demonstrates that quality and

independence of courts, not merely formal review power, prove decisive (Volcansek & Lockhart, 2012).

Second, the exception of unconstitutionality represents a significant protective innovation. By integrating constitutional review into ordinary litigation rather than requiring separate constitutional petitions, Algeria reduces access barriers and democratizes constitutional protection. However, the mechanism's protective capacity depends on ordinary judges recognizing and utilizing it. Colombian experience demonstrates that formal availability of exceptions does not guarantee their use; judges may be reluctant to suspend proceedings for constitutional review.

Third, judicial independence—personal, institutional, and procedural—constitutes the foundation for effective rights protection. The 2020 Constitution incorporates sophisticated safeguards across all three dimensions. However, *de jure* guarantees do not automatically ensure *de facto* independence. Algeria's challenge is translating constitutional provisions into operational reality through sustained institutional commitment.

Fourth, legal certainty, as an explicit constitutional principle, distinguishes Algeria's approach from jurisdictions treating rights-related legislation as ordinary subject matter, revise-able at legislative whim. This principle recognizes that citizens cannot reliably exercise rights affected by constantly changing legal frameworks. However, legal certainty must be balanced with democratic accountability and the need for statutory evolution as circumstances change.

Fifth, implementation of constitutional protections depends on cooperation from other state branches. If legislatures ignore constitutional invalidations, if courts decline to honor the Constitutional Court's decisions, or if the executive fails to comply with orders protecting rights, constitutional protection becomes illusory. Algeria's legal tradition of respecting constitutional judgments provides some assurance, but institutional acceptance is not guaranteed to persist if the Court issues decisions threatening significant interests.

Critical Questions Requiring Future Attention

Several questions will determine whether Algeria's reforms succeed in establishing effective rights protection:

1. Will ordinary courts embrace the exception of unconstitutionality as a legitimate and important mechanism, or will they reluctantly employ it only under pressure? This depends on legal training, judicial culture, and institutional incentives.
2. Will the Constitutional Court develop robust, independent jurisprudence protecting rights, or will it exercise restrained review deferential to legislative judgment? The Court's early decisions will establish patterns that subsequent courts follow.
3. Will admissibility gatekeeping filter frivolous claims while preserving access for serious constitutional questions, or will it become a mechanism suppressing legitimate constitutional objections? This depends on judicial judgment and clear jurisprudential

standards.

4. Will implementation mechanisms prove adequate, with lower courts honoring Constitutional Court decisions and other branches complying with constitutional requirements? This depends on institutional culture and political commitment to constitutional governance.

5. Will public awareness and civil society engagement develop sufficiently to enable citizens to identify and assert constitutional violations? This depends on education, media engagement, and civil society capacity.

6. Will judicial independence persist across political transitions as different Presidents appoint Constitutional Court members? This depends on whether appointees maintain independence or become captured by appointing authority.

Recommendations for Strengthening Rights Protection

Realizing the reforms' potential requires several concrete steps:

Constitutional Court Resources: Adequate budget, personnel, and facilities are essential. Resource constraints inevitably limit the Court's capacity to provide thorough review. Priority should be placed on ensuring the Court receives resources sufficient for its mandate.

Legal Education: Law schools should emphasize constitutional law and constitutional reasoning in curricula. Judicial education programs should provide training on constitutional analysis and the exception mechanism. Bar associations should offer continuing education on constitutional litigation.

Civil Society Capacity: Support for organizations focused on rights protection, law school clinics, and bar association constitutional law committees would facilitate identification of constitutional violations and access to representation. International legal organizations can assist with knowledge transfer and capacity building.

Jurisprudential Development: The Constitutional Court should issue reasoned decisions establishing clear admissibility standards and substantive rights analysis. Transparency regarding the Court's work—through published decisions, annual reports, and public engagement—would build legitimacy and provide guidance to lower courts.

Implementation Mechanisms: The legislature should establish procedures for responding to Constitutional Court decisions. When the Court invalidates statutes, mechanisms should exist for prompt legislative correction. Lower courts should receive guidance on implementing the Court's decisions and applying its reasoning.

Public Education: Media campaigns, educational materials for schools, and public discourse about constitutional rights and available remedies would increase awareness. Citizens who know their rights and remedies can vindicate them; citizens ignorant of their rights have no practical protection.

Monitoring and Evaluation: Systematic study of the Court's work—how many exceptions are raised, what proportion are referred to the Court, how many result in favorable constitutional decisions, what implementation challenges arise—would provide evidence base for evaluating success and identifying necessary adjustments.

Final Observations

The Algerian Constitutional Court, established under the 2020 Constitution and operative under Organic Law 22-19, represents a sophisticated institutional response to the challenge of protecting fundamental rights and freedoms in a constitutional democracy. The shift from political to judicial constitutional review, the introduction of the exception of unconstitutionality mechanism, the establishment of independence safeguards, and the incorporation of legal certainty as a constitutional principle reflect serious constitutional commitment to the rule of law.

However, the ultimate success of these reforms depends not on the elegance of legal text but on the commitment of state authorities and civil society to honor constitutional promises. Institutional design creates opportunity for rights protection; realizing that opportunity requires sustained practice, professional commitment, and societal acceptance that courts play a legitimate role in protecting constitutional rights. The international research literature demonstrates that rights protection depends on independent, resilient courts applying meaningful constitutional review. Where independence, access to review, and fair-trial guarantees are strong, courts can transform constitutional promises into enforceable rights. Where they are weak or merely formal, rights remain largely illusory. Algeria's challenge is ensuring that the Constitutional Court becomes a robust protector of rights rather than a formal institution whose protective potential remains unrealized.

The constitutional framework is in place. Whether it produces meaningful rights protection depends on the next phase: whether judges embrace their constitutional mandate, whether citizens recognize and assert their rights, whether other branches implement constitutional decisions, and whether the broader society comes to view constitutional protection as essential to legitimate government. These questions can only be answered through practice. But the foundation has been created upon which effective rights protection can be built.

REFERENCES

- Abdellaoui, A. (2022). The Right of Individuals to Access Constitutional Justice and Its Role in Protecting Rights and Liberties in Morocco. *Rowaq Arabi*. <https://doi.org/10.53833/olis3197>
- Aboelazm, K. (2024). Supreme Constitutional Court review of the legislative omission in Egypt in light of international experiences. *Heliyon*, 10. <https://doi.org/10.1016/j.heliyon.2024.e37269>

- Aboelazm, K., Raafat, R., Sharif, H., & Ibrahim, E. (2025). The impact of judicial constitutional court review of legislative omission on constitutional authoritarianism. *Corporate Law & Governance Review*. <https://doi.org/10.22495/clgrv7i4p2>
- Abreu, J. (2017). An approach to today's EU constitutionality control. *UNIO – EU Law Journal*. <https://doi.org/10.21814/unio.3.2.9>
- Al-Jassam, M., & Abbar, F. (2025). Constitutional Review of Laws and Its Role in Protecting Public Rights and Freedoms. *International Academic Journal of Law*. <https://doi.org/10.47310/iajl.2025.v06i02.008>
- Al-Zubi, J. (2020). The Role of the Constitutional Court in Protecting the Rights and Freedoms of Individuals: A Case Study of Jordan. *Journal of Law, Policy and Globalization*. <https://doi.org/10.7176/jlpg/94-15>
- Aoudia, B. (2024). Legal Certainty of Rights and Freedoms in Algeria: Beyond the Constitutionalization. *Statute Law Review*. <https://doi.org/10.1093/slr/hmae036>
- Ardhanariswari, R., Fauzan, M., & Komari, A. (2018). The Attempt to Human Rights Protection Through Judicial Review in Indonesia. <https://doi.org/10.1051/shsconf/20185402006>
- Awawda, O. (2024). Assessment of De Jure Judicial Independence of Constitutional Courts According to International Guidelines. *Constitutional Review*. <https://doi.org/10.31078/consrev1017>
- Barbu, S., & Florescu, C. (2020). Aspects concerning the admissibility of the exception of unconstitutionality. *Series VII - Social Sciences and Law*. <https://doi.org/10.31926/but.ssl.2020.13.62.2.17>
- Bakhti, N. (2024). The Principle of Constitutional Judiciary's Commitment to Standards of Constitutional Review. *Journal of Law, Society and Authority*. <https://doi.org/10.52919/lsa.v13i2.258>
- Bayona, D., Caballero, S., Moreno, V., & Gualdrón, L. (2021). Aplicación de la excepción de inconstitucionalidad en Colombia. *Revista Republicana*. <https://doi.org/10.21017/rev.repub.2021.v30.a104>
- Belachi, M. (2024). Rights and Freedoms: The Essence of Legal Security. *Journal of Law, Society and Authority*. <https://doi.org/10.52919/lsa.v13i2.259>
- Biagi, F. (2021). Constitutional Review in Algeria Following the 2016 Reform. *Constitutional Review in the Middle East and North Africa*. <https://doi.org/10.5771/9783748912019-93>
- Bioy, X. (2019). Judicial Independence: Constitutional Principle or Human Right?. *Judicial Power in a Globalized World*. https://doi.org/10.1007/978-3-030-20744-1_4

- Boulahia, M., Abbassi, S., Henni, A., & Benazzoug, M. (2025). The Supervision of the Constitutionality of Laws. *Metafizika Journal*. <https://doi.org/10.33864/2617-751x.2025.v8.i6.353-369>
- Brahmbhatt, M. (2025). Comparative Analysis of Constitutional Remedies. *Journal of Advanced Legal Studies*. <https://doi.org/10.63665/jals.v1.i1.02>
- Case, J., Aisheh, B., A. Elkhateb, N., & Moghli, M. (2023). The Constitutional Rule is the Most Important Guarantee of Human Rights. *Russian Law Journal*. <https://doi.org/10.52783/rj.v11i3.987>
- Chávez, J. (2023). La acción pública de inconstitucionalidad en América Latina. *Anuario Iberoamericano de Justicia Constitucional*. <https://doi.org/10.18042/cepc/ajc.27.06>
- Cheptene-Micu, D. (2024). Unconstitutionality indicators of elements in the structure of crimes. *Revista de Drept Constituțional*. <https://doi.org/10.62938/rdc-2024-1-0003>
- Chilton, A., & Versteeg, M. (2018). Courts' Limited Ability to Protect Constitutional Rights. *University of Chicago Law Review*, 85, 293.
- Dinesh, N. (2025). Constitutionalism and Judicial Review in India. *Indian Journal of Legal Review*. <https://doi.org/10.65393/wwwr3206>
- Gunawan, A. (2026). The Role of The Constitutional Court. *Journal of Law, Politic and Humanities*. <https://doi.org/10.38035/jlph.v6i3.3163>
- Iacuba, A., & Stan, G. (2024). Constitution Supremacy and the Reasonable Limits. *Perspectives of Law and Public Administration*. <https://doi.org/10.62768/plpa/2024/13/2/07>
- Jain, K. (2021). The Supremacy of the Constitution.
- Jočienė, D. (2024). The Constitutional Principle of the Independence of the Judiciary. *Vilnius University Open Series*. <https://doi.org/10.15388/kjl.2023.6>
- Karamyan, S. (2025). Stability of Law as a Key Element. *Legal Concept*. <https://doi.org/10.15688/lc.jvolsu.2025.1.2>
- Kassar, A. (2025). The Transformation Impact in The Iraqi Constitutional Judiciary. *Journal of AlMaarif University College*. <https://doi.org/10.51345/v36i1.1026.g517>
- Lee, B. (2023). A Constitutional Study on the Fundamental Right to Safety. *Institute for Legal Studies*. <https://doi.org/10.38133/cnulawreview.2023.43.4.1>
- Menéndez, I. (2018). Los remedios de la inconstitucionalidad por omisión.
- Miaskowska-Daszkiewicz, K. (2023). Problemy konstytucyjne. *Santander Art and Culture Law Review*. <https://doi.org/10.4467/2450050xsnr.23.007.18119>
- Molbæk-Steensig, H., & Quemy, A. (2023). Judicial Independence and Impartiality. *European Journal of International Law*. <https://doi.org/10.1093/ejil/chad036>
- Muslifah, & Husodo, J. (2024). Menata Konstiusionalitas Undang-Undang. *Res Publica: Jurnal Hukum Kebijakan Publik*. <https://doi.org/10.20961/respublica.v8i3.85425>

- Nasrawin, L. (2016). Protecting Human Rights Through Constitutional Adjudication. *Digest of Middle East Studies*, 25, 264-284. <https://doi.org/10.1111/dome.12086>
- Nawal, D. (2024). The Role of the Constitutional Judge. *Journal of Law and Sustainable Development*. <https://doi.org/10.55908/sdgs.v12i5.3728>
- Nurhayati, N., Salamah, N., Marsela, M., Khaerani, N., & Maydikta, R. (2025). Analisis Peran Mahkamah Konstitusi. *Jurnal Res Justitia*. <https://doi.org/10.46306/rj.v5i1.241>
- Ongdashuly, Y., Baikenzheyev, A., & Toksanova, M. (2025). Constitutional justice as a principle of the rule of law. *Bulletin of the L.N. Gumilyov Eurasian National University*. <https://doi.org/10.32523/2616-6844-2025-151-2-88-100>
- Qaracayev, C. (2023). Due Process as Constitutional Control's Subject. *International Humanitarian University Herald*. <https://doi.org/10.32841/2307-1745.2023.64.3>
- Razak, A., Muhtar, M., Bloks, S., & Saragih, G. (2023). Balancing Civil and Political Rights. *Journal of Indonesian Legal Studies*. <https://doi.org/10.15294/jils.v8i2.70717>
- Ruano, H., & Salvador, J. (2015). Los Medios de Control Constitucionales.
- Ruiz, S., & Gómez, A. (2017). Inconstitucionalidad en la defensa del procesado.
- Ruiz, A., Camelo, A., Ortega, E., & Barrios, A. (2024). Excepción de inconvencionalidad. *Misión Jurídica*. <https://doi.org/10.25058/1794600x.2383>
- Sánchez, C. (2021). El constitucionalismo dialógico. <https://doi.org/10.18601/01229893.n49.12>
- Sandjaya, M., & Suherman, A. (2025). The Role of the Constitutional Court in Protecting Human Rights. *Justices: Journal of Law*. <https://doi.org/10.58355/justices.v4i1.140>
- Satria, R. (2025). Judicial Review and Its Role. *Riwayat: Educational Journal of History and Humanities*. <https://doi.org/10.24815/jr.v8i1.44832>
- Savchyn, M. (2025). Institutional guarantees of judicial independence. *Slovo of the National School of Judges of Ukraine*. [https://doi.org/10.37566/2707-6849-2025-1\(50\)-1](https://doi.org/10.37566/2707-6849-2025-1(50)-1)
- Schneider, K. (2020). The Constitutional Status of Karlsruhe's Novel Jurisdiction. *German Law Journal*, 21, 19-26. <https://doi.org/10.1017/glj.2020.17>
- Shabunevich, S. (2021). The Principle of Legal Certainty. *Legal Concept*. <https://doi.org/10.15688/lc.jvolsu.2021.3.14>
- Shcherbanyuk, O., Gordieiev, V., & Bzova, L. (2023). Legal nature of the principle of legal certainty. *Juridical Tribune*. <https://doi.org/10.24818/tbj/2023/13/1.02>
- Shelever, N., Filipaska, N., Varunts, L., Pylyp, V., & Voron, D. (2023). Constitutional law and judicial guarantees. *Cuestiones Políticas*. <https://doi.org/10.46398/cuestpol.4177.17>
- Siswadhi, R., & Aprilliani, A. (2025). Designing Justice. *Legalis: Journal of Law Review*. <https://doi.org/10.61978/legalis.v3i3.1123>

- Sychev, S. (2022). Law-Making and Law Enforcement of Civil Rights. *Bulletin of Kemerovo State University*. <https://doi.org/10.21603/2542-1840-2022-6-1-64-74>
- Szwed, M. (2025). The Meaning and Function of Judicial Independence. *Studia Iuridica*. <https://doi.org/10.31338/2544-3135.si.2025-107.5>
- Tamayo, J., & Cardona, S. (2020). Acción de inconstitucionalidad por omisión legislativa relativa. <https://doi.org/10.22395/ojum.v19n39a9>
- Tarak, Q. (2025). The Concept of the Principle of Legal Security. *Ancient Land*. <https://doi.org/10.36719/2706-6185/44/151-157>
- Tebieș, M. (2024). A comparative analysis of achieving access to constitutional justice. *Revista de Drept Constituțional*. <https://doi.org/10.47743/rdc-2023-2-0003>
- Tibaka, L., & Rosdian, R. (2018). The Protection of Human Rights in Indonesian Constitutional Law. <https://doi.org/10.25041/fiatjustisia.v11no3.1141>
- Toader, T., & Safta, M. (2016). Unconstitutional legal solutions in the Code of Criminal Procedure. *Revista de Drept Constituțional*. <https://doi.org/10.47743/rdc-2016-3-0004>
- Urushadze, T. (2025). The Role of the Constitutional Court of Georgia. *Current Issues in Law*. <https://doi.org/10.52340/zssulaw.2023.01.08>
- Valea, D. (2012). The Role of the Romanian Constitutional Court. *Procedia - Social and Behavioral Sciences*, 46, 5548-5552. <https://doi.org/10.1016/j.sbspro.2012.06.473>
- Volchenko, O. (2024). Judicial Protection of Human Rights in Constitutional Law. *Ex jure*. <https://doi.org/10.17072/2619-0648-2024-1-48-65>
- Volcansek, M., & Lockhart, C. (2012). Explaining Support for Human Rights Protections. *Journal of Human Rights*, 11, 33-50. <https://doi.org/10.1080/14754835.2012.648149>
- Woods, L., McNamara, L., & Townend, J. (2021). Executive Accountability and National Security. *The Modern Law Review*. <https://doi.org/10.1111/1468-2230.12624>
- Vyhnánek, L., Blechová, A., Bátrla, M., Míšek, J., Novotná, T., Reichman, A., & Harasta, J. (2024). The Dynamics of Proportionality. *German Law Journal*, 25, 386-406. <https://doi.org/10.1017/glj.2023.96>
- Zharovska, I. (2023). Generalization of the grounds of unconstitutionality. *Analytical and Comparative Jurisprudence*. <https://doi.org/10.24144/2788-6018.2023.06.19>