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The Seriousness Requirement in Constitutional Pleas as a Fundamental Mechanism for Activating Post-Litigation Constitutional Review in Algerian Law: An Analytical Study in Light of the 2020 Constitutional Amendment and Organic Law No. 22-19

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Keywords

Seriousness requirement; Plea of unconstitutionality; Constitutional review; Constitutional Court; Post-litigation review; Organic Law No. 22-19; Algerian constitutional law.

Abstract

This study examines the seriousness requirement as a central legal and procedural condition for activating post-litigation constitutional review of laws within the Algerian legal system. The research is grounded in the constitutional transformations introduced by the 2020 constitutional amendment and the procedural framework established under Organic Law No. 22-19, which governs the mechanism for raising pleas of unconstitutionality before judicial bodies and their referral to the Constitutional Court. The paper provides a conceptual and analytical examination of the seriousness requirement, highlighting its dual procedural and substantive nature and the criteria relied upon by judges to assess whether a constitutional plea merits referral. Particular attention is devoted to the role of this requirement in filtering frivolous, abusive, or malicious claims, thereby preventing procedural congestion and safeguarding judicial efficiency, while simultaneously ensuring effective constitutional protection of fundamental rights and freedoms. Furthermore, the study analyzes how the seriousness requirement operates as a juridical link between ordinary courts and the Constitutional Court, reinforcing institutional cooperation and strengthening the principle of constitutional supremacy. Through an examination of legislative texts, judicial practices, and doctrinal interpretations, the article demonstrates that the seriousness condition is not merely a formal threshold but a substantive guarantee that balances access to constitutional justice with procedural discipline. The findings of the study reveal that the seriousness requirement plays a decisive role in transforming the plea of unconstitutionality into an effective tool for rights protection and the consolidation of the rule of law in Algeria. However, the research also raises critical questions regarding the sufficiency of current criteria and the extent of judicial discretion in determining seriousness, suggesting the need for clearer standards to enhance legal certainty and uniform application.

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Introduction

The requirement of seriousness constitutes a cornerstone in ensuring the effectiveness of post-litigation constitutional review of laws. Its primary function is to prevent the misuse of constitutional pleas through frivolous or malicious objections that may overwhelm the Constitutional Court and disrupt the proper functioning of judicial bodies before which such objections are raised. By filtering unfounded challenges, the seriousness requirement safeguards judicial efficiency while simultaneously reinforcing the supremacy of the Constitution and contributing to the establishment of a state governed by the rule of law, in which individual and collective rights and freedoms are effectively protected (Favoreu, 2011; Cappelletti, 1984).

The mechanism for challenging the constitutionality of laws in Algeria was initially introduced by the 2016 constitutional amendment, which marked a decisive shift in constitutional justice by expanding access to constitutional review beyond political authorities. This reform enabled individuals, for the first time, to raise pleas of unconstitutionality within the context of ongoing judicial proceedings. The judiciary thus became a central actor in constitutional adjudication, entrusted with the responsibility of examining the admissibility and seriousness of constitutional objections (Benkirane, 2018).

This role was initially regulated by Organic Law No. 18-16, which established the conditions and procedures for raising pleas of unconstitutionality. Subsequently, this framework was replaced and refined by Organic Law No. 22-19, which currently governs the procedures for notification, examination, and referral of constitutional pleas to the Constitutional Court. The latter law strengthened procedural safeguards and clarified the institutional relationship between ordinary courts, the Supreme Court, the Council of State, and the Constitutional Court.

Through this mechanism, individuals are allowed to raise a plea of unconstitutionality before any judicial body, at any stage of the original proceedings, whenever they claim that the outcome of the dispute depends on a legislative provision that violates their constitutionally guaranteed rights and freedoms. However, even when the formal conditions for raising such a plea are fulfilled, the effectiveness of constitutional review remains contingent upon the verification of the seriousness of the objection. Seriousness thus operates as both a procedural gateway and a substantive safeguard.

The seriousness requirement is therefore one of the most significant formal and substantive conditions for the exercise of the plea of unconstitutionality. Its practical relevance can be assessed by examining the procedures adopted by judicial authorities when applying this mechanism and by analyzing the criteria used to distinguish serious constitutional claims from abusive or dilatory ones (Rousseau, 2016).

Against this background, the central research question of this study is formulated as follows:

What is the impact of the seriousness requirement on activating post-litigation constitutional review of laws in Algerian legislation?

This question gives rise to several subsidiary inquiries, notably:

- What criteria and standards do judges rely upon to determine the seriousness of a plea of unconstitutionality?
- How does the seriousness requirement contribute to activating institutional relations among judicial bodies?
- Is the establishment of seriousness, in itself, sufficient to justify referral to the Constitutional Court?

To address these questions, this study adopts a descriptive-inductive methodology, relying on an analysis of the constitutional provisions introduced by the 2020 constitutional amendment, the procedural rules set forth in Organic Law No. 22-19, and selected provisions of the internal regulations of the Constitutional Court. Particular emphasis is placed on provisions directly related to the assessment of seriousness.

The importance of examining the seriousness requirement lies primarily in its role in countering abusive litigation strategies aimed at delaying proceedings, obstructing the execution of obligations, or undermining judicial efficiency. Since referral to the Constitutional Court constitutes a subsidiary procedure within the framework of an original dispute, the seriousness requirement ensures that constitutional review remains a genuine instrument for protecting rights and freedoms rather than a tactical device for procedural obstruction.

Section One: The Concept of the Seriousness Requirement in Pleas of Unconstitutionality

A conceptual understanding of the seriousness requirement is essential prior to examining its practical application. This condition must be analyzed from linguistic, jurisprudential, and legislative perspectives in order to enable judges to accurately assess its existence and legal implications. The seriousness requirement cannot be mechanically applied; rather, it requires interpretative judgment grounded in legal reasoning and constitutional principles.

First Requirement: Defining the Seriousness Requirement in a Plea of Unconstitutionality

The definition of seriousness in constitutional pleas has become indispensable due to its decisive role in determining whether a judicial body may engage constitutional review. Although legal doctrine does not provide a uniform definition, seriousness may be examined through linguistic, jurisprudential, and legislative lenses.

First Branch: Linguistic Definition of Seriousness

From a linguistic perspective, the Arabic term *jidā iyyah* (seriousness) derives from the verb *jadda*, meaning diligence, effort, determination, and firmness. Classical Arabic usage associates seriousness with commitment, discipline, and the absence of frivolity or negligence. In legal reasoning, these connotations imply that a serious plea must be grounded in careful legal argumentation and objective constitutional analysis.

Accordingly, when examining seriousness, the judge is required to exercise diligence and objectivity by scrutinizing constitutional provisions, legislative texts, and relevant jurisprudence to determine whether the plea raises a genuine constitutional issue.

Second Branch: Jurisprudential Definition

From a jurisprudential standpoint, definitions of seriousness vary depending on whether emphasis is placed on the relationship between the subsidiary plea and the main dispute, or on the potential unconstitutionality of the challenged provision itself. Dr. Ramzi Al-Shaer, for example, defines seriousness as requiring:

1. A direct connection between the subsidiary plea and the subject matter of the original dispute; and
2. The existence of legitimate constitutional doubt arising from ambiguity or conflicting interpretations of the challenged text (Al-Shaer, 2014).

The first condition reflects the distinctive nature of the plea of unconstitutionality, which must arise within an existing dispute and cannot be initiated independently, unlike systems such as those in Switzerland, Spain, or Italy. The second condition highlights the necessity of constitutional uncertainty, requiring judicial evaluation of the quality, clarity, and constitutional compatibility of the legislative provision.

Third Branch: Legislative Definition

The Algerian legislator did not provide an explicit statutory definition of seriousness. However, its meaning may be inferred from parliamentary debates and ministerial statements during the adoption of Organic Law No. 18-16. The former Minister of Justice emphasized that seriousness is a matter of judicial discretion, varying from case to case, and shaped progressively through judicial practice and Constitutional Court jurisprudence.

Organic Law No. 22-19 implicitly defines seriousness by establishing a set of formal, substantive, and procedural conditions, the absence of which leads to the inadmissibility of the plea. Seriousness thus emerges as a composite legal condition whose assessment depends on cumulative criteria rather than rigid rules.

Second Requirement: Criteria for Determining the Seriousness of a Plea of Unconstitutionality

Judicial determination of seriousness relies on a set of interrelated criteria. A plea of unconstitutionality may be raised by any party to the dispute before ordinary or administrative courts, at any procedural stage, including appeal or cassation, and even by a third party before the Constitutional Court has issued its decision (Organic Law No. 22-19).

The seriousness of the plea is established through three essential elements: legal standing and interest, infringement of constitutional rights and freedoms, and the presumption of constitutionality.

Section One: Legal Standing and Interest

Article 22 of Organic Law No. 22-19 requires that the plea be submitted through a separate, written, and reasoned memorandum, under penalty of inadmissibility. This requirement enables the judge to verify the standing and interest of the claimant and to identify the alleged constitutional conflict. Failure to satisfy this requirement results in the immediate dismissal of the plea as frivolous.

Section Two: Infringement of Rights and Freedoms

A plea of unconstitutionality must be based on an alleged violation of constitutionally protected rights and freedoms. Since the preamble forms an integral part of the Constitution, the rights enshrined therein enjoy constitutional protection. When a legislative provision infringes upon such rights, the seriousness of the plea is presumed, compelling the judge to proceed with constitutional referral (Vedel & Delvolv  , 2010).

Section Three: Presumption of Constitutionality

Legislation benefits from a presumption of constitutionality, reflecting the constitutional role of Parliament. This presumption may only be rebutted where reasonable doubt exists regarding the compatibility of the provision with constitutional norms. Judges must favor constitutional interpretation whenever multiple interpretations are possible, in accordance with established constitutional jurisprudence (Rousseau, 2016).

Section Two: The Role of the Seriousness Requirement in Activating Post-Litigation Constitutional Review

The seriousness requirement plays a decisive role in activating post-litigation constitutional review by structuring institutional interaction among judicial bodies. It determines whether a plea progresses from local courts to the Supreme Court or the Council of State, and ultimately to the Constitutional Court.

Where seriousness is rejected, the plea is not transmitted, and the decision may only be contested through appeal against the final judgment. While this mechanism prevents procedural abuse, it also raises concerns regarding access to constitutional justice and the principle of double-tier litigation.

Conversely, when seriousness is established, Article 22 of Organic Law No. 22-19 obliges the court to issue a reasoned decision referring the plea to the competent higher judicial authority after consulting the Public Prosecutor or State Commissioner. This expedited procedure underscores the protective function of constitutional review and ensures effective judicial cooperation.

Section Two: The Seriousness Requirement as a Procedural Engine for Activating Post-Litigation Constitutional Review

1. Suspension of the Main Dispute and Transmission of the Referral File

Once the trial court (or the administrative judicial body) finds that the plea of unconstitutionality satisfies the admissibility requirements and that the objection is sufficiently serious, it must transmit its reasoned decision within ten (10) days to the Supreme Court or the Council of State, as appropriate, together with the parties' petitions, memoranda, and supporting documents (Algeria, 2022a). This procedural step produces immediate consequences for the original dispute: as a rule, adjudication on the merits is suspended until the competent central judicial body decides whether the objection should proceed, and—if the objection is forwarded further—until the Constitutional Court rules on the challenged provision (Algeria, 2022a).

This suspension is not merely a technical delay; rather, it reflects the logic of constitutional supremacy. If the outcome of the dispute depends on a legislative provision whose constitutionality is contested, proceeding to a merits ruling without resolving the constitutional question could undermine the hierarchy of norms and potentially entrench unconstitutional effects (Favoreu, 2011; Rousseau, 2016).

However, Algerian law adopts a calibrated approach that limits suspension where fundamental rights—especially personal liberty—are at stake. Article 26 of Organic Law No. 22-19 provides that postponement does not apply in cases where the person is deprived of liberty due to the litigation, where the litigation aims to end deprivation of liberty, or where a legal text requires the court to decide within a specified timeframe or on an urgent basis (Algeria, 2022a). This exception embodies a rights-protective balance: it preserves access to constitutional justice while preventing constitutional procedures from becoming instruments that prolong detention or frustrate urgent judicial protection (Rousseau, 2016).

2. Activating the Relationship Between the Central Judiciary and the Constitutional Court

The seriousness requirement becomes institutionally decisive at the level of the **central judiciary**, where the Supreme Court and the Council of State operate as a structured filter between lower courts and the Constitutional Court. This filtering function is foundational in contemporary constitutional justice systems: it maintains access to constitutional review while protecting the constitutional judge from procedural overload and ensuring that only disputes raising genuine constitutional questions reach constitutional adjudication (Cappelletti, 1984; Favoreu, 2011).

Section One: Procedures at the Level of the Supreme Court and the Council of State

Organic Law No. 22-19 devotes specific provisions to proceedings before the Supreme Court and the Council of State. After the initial screening by the trial court, the referral is transmitted to the First President of the Supreme Court or the President of the Council of State, who promptly seeks the opinion of the Attorney General or the State Commissioner, while enabling the parties to submit written observations on the plea (Algeria, 2022a).

At this stage, the objection is examined by a dedicated panel formed according to the internal organization of the relevant central court. The review focuses on whether the plea fulfills the legal conditions—procedural and substantive—including the seriousness requirement, which remains the decisive criterion for progression to the constitutional level (Algeria, 2022a).

The Supreme Court or the Council of State must issue a reasoned decision within two (2) months from receipt of the referral file. If the conditions are satisfied, the objection is transmitted to the Constitutional Court together with all petitions and memoranda; the referring court is notified, and the parties are informed within ten (10) days of the decision (Algeria, 2022a). This system institutionalizes a sequence of accountability: each stage produces a written and reasoned procedural act, thereby strengthening transparency and legal certainty (Rousseau, 2016).

Organic Law No. 22-19 also addresses the risk of inactivity at the central level by providing mechanisms that prevent constitutional justice from being neutralized by procedural delay. The legal choice to allow progression in the event of failure to decide within the legal period reflects the understanding that constitutional review is not a discretionary privilege but a rights-protective pathway that must remain practically effective (Favoreu, 2011; Algeria, 2022a).

Section Two: Procedures Before the Constitutional Court

Once the Supreme Court or the Council of State confirms seriousness and refers the objection, the Constitutional Court becomes seized of the subsidiary constitutional dispute through a set of procedures that precede deliberations and shape the adversarial nature of constitutional adjudication.

First: Procedures Prior to Deliberations

Upon referral, the file is registered at the Registry of the Constitutional Court, including petitions, memoranda, and supporting documents. The date of registration is treated as the effective procedural starting point for the constitutional objection, consistent with the constitutional framework introduced by the 2016 amendment and reaffirmed in the 2020 Constitution (Algeria, 2016; Algeria, 2020).

Immediately following registration, notifications are sent to constitutionally relevant authorities—such as the President of the Republic and the leaders of the legislative chambers—alongside the parties to the dispute, enabling them to submit written observations (Algeria, 2020; Algeria, 2022a). The President of the Constitutional Court appoints one or more

rapporteurs from among the Court's members to investigate the file, prepare a draft report/opinion, gather necessary documentation, and, where required, consult experts to clarify technical or legal issues (Algeria, 2022b). These steps ensure that constitutional review is evidence-based, structured, and procedurally fair.

Second: Deliberations and Decision-Making

The Constitutional Court convenes upon the request of its President. Where the President is absent, chairing follows the seniority rule provided in the Court's internal regulations (Algeria, 2022b). The Court's sittings require a minimum quorum (as specified in the internal framework), and decisions are adopted by majority; in the event of a tie, the President's vote is decisive (Algeria, 2022b). Such rules reflect a design aimed at institutional stability and coherent constitutional interpretation.

To guarantee adversarial proceedings and effective rights protection, the rapporteur presents the report at the opening of the session in the presence of the parties and the government representative, and the Court ensures that parties' lawyers may present oral observations. Sessions are public except where the internal regulations allow confidentiality in narrowly defined circumstances (Algeria, 2022b). This adversarial structure is central to the legitimacy of constitutional adjudication: constitutional review affects not only litigants but also the normative legal order, making procedural fairness a core requirement (Rousseau, 2016).

After deliberation, the Court sets a date for pronouncing its decision. The decision addresses the challenged legislative provision and may also consider interconnected provisions where necessary to resolve the constitutional issue coherently (Algeria, 2022a; Rousseau, 2016). The decision is communicated to the referring central judicial body within a specified period (Algeria, 2022a).

When seized by referral, the Constitutional Court issues its decision within four (4) months, renewable once for an additional period by a reasoned decision, and the result is communicated to the notifying authority and relevant constitutional institutions. Publication in the Official Gazette ensures general accessibility and supports legal certainty and public awareness (Algeria, 2020; Algeria, 2022a).

Conclusion

General Synthesis

This study confirms that the seriousness requirement is not a marginal procedural formality; it is a structurally decisive condition that governs whether a plea of unconstitutionality advances from ordinary litigation to constitutional adjudication. It is linked, first, to the litigant, who bears the burden of articulating a precise constitutional conflict grounded in rights and freedoms; and second, to the judge, who evaluates seriousness through a discretionary—but legally framed—assessment. This makes seriousness a distinctive condition, separating constitutional pleas from ordinary procedural objections and distinguishing it from other admissibility requirements (Algeria, 2022a; Favoreu, 2011).

More broadly, the mechanism of challenging constitutionality was designed to create an institutional bridge between individuals and the Constitutional Court, enabling post-litigation constitutional review. The judiciary functions as an intermediary that structures this relationship through successive filters. Under this model, seriousness becomes the operational trigger of constitutional justice, preventing constitutional litigation from being diverted into a strategy for delay or abuse (Cappelletti, 1984; Rousseau, 2016).

Key Findings

1. Seriousness is a foundational condition for initiating and sustaining constitutional proceedings; its absence prevents referral and interrupts the constitutional review pathway (Algeria, 2022a).
2. The judge's assessment of seriousness is performed alongside verification of other admissibility requirements, combining formal compliance with a substantive evaluation of constitutional relevance (Algeria, 2022a; Rousseau, 2016).
3. The seriousness assessment may operate at one level (central judiciary) or two levels (trial courts + central judiciary), depending on where the plea is initially raised, which affects access dynamics and procedural guarantees (Algeria, 2022a).
4. If seriousness is rejected, the plea is not transmitted to the higher bodies and the judge must return to adjudicating the original dispute, which enhances efficiency but may raise fairness concerns if serious pleas are mistakenly filtered out without effective review (Favoreu, 2011; Rousseau, 2016).

Recommendations

1. Create an additional review pathway for pleas deemed frivolous by the trial court, enabling a limited mechanism of oversight to reduce the risk of erroneous dismissal of serious constitutional claims (Rousseau, 2016).
2. Consider recognizing the plea of unconstitutionality as a matter of public order, allowing judges to raise it *ex officio* when constitutional violations are evident but not invoked by parties, thereby strengthening constitutional supremacy and rights protection (Cappelletti, 1984; Favoreu, 2011).

3. Strengthen the two-tier litigation principle by allowing parties to challenge a refusal to transmit a plea on seriousness grounds through a structured, time-bound appeal mechanism—so that access to constitutional justice is not dependent solely on first-instance discretion (Rousseau, 2016).
4. Reassess whether seriousness should be required at the first-instance “dispatch” stage, and consider concentrating the seriousness assessment at the Supreme Court/Council of State level, where institutional expertise may support more consistent standards and stable jurisprudential development (Favoreu, 2011).

Ethical Considerations

This research adheres to internationally recognized standards of academic integrity and research ethics. The study is based exclusively on the analysis of legal texts, constitutional provisions, legislation, and publicly available doctrinal and judicial materials. No human participants, personal data, or confidential information were involved. Consequently, ethical approval from an institutional review board was not required.

Author Contributions

Both authors contributed substantially and equally to the conception, design, analysis, and writing of this manuscript.

- Dr. Tahir Abdennacer contributed to the theoretical framework, constitutional analysis, and legal interpretation.
- Dr. Bouhabel Fayssal contributed to the legislative analysis, doctrinal discussion, and methodological structuring of the study.

Both authors reviewed and approved the final version of the manuscript and agree to be accountable for all aspects of the work.

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Conflict of Interest

The authors declare no conflict of interest, financial or non-financial, that could have influenced the research process or the interpretation of the findings.

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