International Comparative Jurisprudence 2026 Volume 12 Issue 1
ISSN 2351-6674 (online) DOI: https://doi.org/10.13165/ICJ.2026.12.01.06

CONSTITUTIONAL PROTECTION OF SOCIAL RIGHTS: AN ANALYSIS OF THE MOROCCAN LEGAL FRAMEWORK AND SELECTED EUROPEAN SYSTEMS

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Received:1 March 2025; accepted: 23 April 2026
DOI: https://doi.org/10.13165/ICJ.2026.12.01.06

Abstract. During the second half of the twentieth century, social rights gradually gained increasing importance, until they were enshrined as fundamental rights in most national constitutions. International and comparative law contributed to this process, leading to the constitutionalization of these rights even in emerging democracies and developing countries, including Morocco. This study aims, through a comparative approach, to explore how the Moroccan model of social rights protection can be influenced and inspired by selected European experiences. The research methodology adopted is a comparative analytical approach, combining the analysis of constitutional and legislative texts, and monitoring relevant jurisprudence in order to identify best practices in this area. The results highlight the diversity of existing protection mechanisms, with varying levels of legal recognition. The study also reveals a persistent gap between the official recognition of these rights and the possibility of enforcing them before the judiciary, especially in constitutional cases in the Moroccan context. Bridging this gap requires greater precision in the constitutional formulation of these rights, as well as the effective implementation of the remedies provided for this purpose.

Keywords: Social rights; Fundamental rights; Constitutional protection; Constitutional judiciary.

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Introduction

Against the backdrop of a global trend toward the universalization of social rights – including the right to work, social security, health, housing, and protection against discrimination – and the aim to extend them to broad segments of contemporary societies, these rights have been enshrined since 1948 in the Universal Declaration of Human Rights (1948), and notably in the International Covenant on Economic, Social and Cultural Rights (1966). However, the practical realization of these rights still falls short of the spirit of these foundational texts and their high expectations, especially in developing countries.

Social rights gained renewed prominence in the post-war era, shaped by a human-centred vision of development and the mobilisation of social and labour movements. During this period, these entitlements were progressively incorporated into the international human rights framework.

At the national level, however, the present recognition of these rights depends largely on prevailing ideology, political orientation, and the level of economic development. Consequently, the post-war social developments do not ensure the effective realization of social rights, as their recognition remains contested, and their enforceability against the state – especially through judicial channels – varies significantly (justiciability). In some constitutional systems, social rights are considered merely as constitutionally enshrined political principles or programmatic guidelines. However, comparative law has developed rules and mechanisms that allow these rights to be interpreted, assessed, and even monitored for compliance (Jung et al., 2014).

The situation of social rights in Morocco has not been markedly different from this general trend. The past decades have witnessed a gradual recognition of social rights within the domestic legal framework, though questions about their effective implementation persist. Morocco's ratification of several international treaties and conventions has contributed to strengthening this commitment, which has subsequently been translated into constitutional and legislative provisions. The Constitution of Morocco (2011) not only enshrined the recognition of social rights but also laid the foundations for building a social state. However, a legal and comparative analysis reveals the need to adapt and strengthen the mechanisms for the implementation, protection, enjoyment, and widespread realization of these rights.

It is therefore natural to pose the following problematic question: What is the real extent of the protection of social rights within the Moroccan constitutional system? The purpose of this paper, guided by this central question, is to assess the effectiveness of social rights in Morocco in comparison with other legal systems. To this end, and before engaging in any comparative analysis, it is essential in the first section to establish a theoretical and historical framework outlining the legal dimensions and evolution of these rights. Subsequently, in the second section, it is necessary to examine certain European constitutional experiences in the protection of these rights – particularly those of France, Italy, and Spain – which, while sharing common philosophical foundations, differ in the specifics of their practice and in the scope and strength of the protection afforded to these rights. The third section reviews the development of social rights in Morocco, and considers the potential contributions and influence that these models may exert upon the Moroccan experience in this domain. The fourth section reviews the results of the comparative analysis, while a final section concludes.

Regarding the research methodology, a comparative analysis involving three European systems – those of France, Italy, and Spain – is conducted. It first focuses on constitutional texts to identify the forms and scope of the recognition of social rights, and then examines the role of the judiciary in their protection, with particular attention to the general orientation of the relevant case law.

These three models were chosen for several reasons: all three legal systems, along with Morocco, share the Romano Germanic civil law tradition (as opposed to the Anglo-Saxon system), which is characterized in

particular by the existence of a written constitution, and a hierarchical structure of legal norms. The coherence and relevance of the comparative analysis are guaranteed by this convergence of legal foundations. Due to its influence on Moroccan constitutionalism, and its potential value for guiding future reforms, the French system is especially significant. By contrast, the other two jurisdictions provide important variations illustrating practical approaches to the constitutionalization of social rights, marked by conceptual clarity and a well-defined scope.

In terms of constitutional justice, the models demonstrate a variety of mechanisms that will be further discussed below: Spain relies on the Amparo appeal, France relies on the plea of unconstitutionality, Morocco has a similar mechanism still pending implementation, and Italy has developed the "essential core" doctrine of social rights, which is enforceable against the State.

Finally, the selection of these models for comparative analysis is further justified by the richness of their case law, and the broad availability and accessibility of legal norms and jurisprudence through official constitutional court platforms and websites.

AI-assisted technology was used in the preparation of this article for checking grammar and spelling.

1. The theory of social rights within the classical approach to constitutional jurisprudence

The development of social rights theory was closely linked to the emergence of the so-called “Welfare State” in European countries and the United States (Tweedy & Hunt, 1994). At the heart of this theory lies an enduring debate over the “fundamental” nature of such rights and the extent of their enforceability against the state. Despite explicit constitutional provisions and recognition under international law, certain strands of jurisprudence have continued to deny social rights full fundamental status (Roman, 2012). This position rests on two principal arguments: first, their character as broad programmatic principles rather than binding norms; and secondly, their alleged non-justiciability.

1.1. Social rights as guiding principles

With its historical roots stretching back to the French Revolution, the approach to social rights as guiding principles has remained a central feature of the French theory of social rights, long predating 1946, the year in which provisions entitled “political, economic, and particularly necessary social principles” were incorporated into the French Constitution (the current version dating from 1958). This conception has become deeply embedded in French legal thought (Gay, 2020), even though the role of the state and society in protecting, respecting, and enabling the enforcement of these rights (*droits-créance*) remains debated. A key observation regarding this declaration of general principles is that it does not impose a concrete legal obligation on the state. Even though they are constitutionally enshrined, the implementation of these rights is neither immediate nor directly enforceable, as the details of their application are typically left to ordinary legislation.

This school of thought also argues that the realization of such rights depends on the availability of favourable political and economic conditions, which in turn determine the timing, mechanisms, and scope of government intervention (Hamel, 2009). Within this framework, scholars have proposed various criteria to justify the exclusion of social rights from the category of fundamental rights (Hennebel, 2011). Some emphasize that social rights are merely benefits or services targeted at the needy or specific population groups, and therefore cannot be legally claimed (Donier et al., 2012; Roman, 2013). These rights are exercised through the provision of public services, and lack both universality and permanence, as they are subject to evolving circumstances and state capacity. Accordingly, they are often placed within the so-called "second generation" of rights or even classified as solidarity rights (Vasak, 1977).

Even liberal legal and political thought has traditionally rejected the notion that wealth redistribution or the provision of social benefits constitutes a social right. Instead, it refers to the interests of society as a whole – an idea often viewed as vague and ill-defined, though one that is frequently invoked to justify state intervention in market mechanisms (Herrera, 2009).

In this context, it is important to distinguish between social rights as liberties (negative social rights), such as the right to strike or to join a trade union, which require state recognition and protection, and social rights as claims (positive social rights), which impose positive obligations on the state (El Yaagoubi, 2012; Fabre, 1998). The issue of effectiveness arises more acutely with the latter, as their realization often requires the provision of costly public services.

The concept of *droits-créance* (literally, "claim rights") in French legal doctrine dates back to the French Revolution, when the notion of a "social debt" owed by the state to the poor – particularly in the areas of education and assistance – was debated under the influence of social contract theory (Gay, 2020). The limited effectiveness of these rights is also reflected in the wording of the constitutional texts themselves, which often confine the state's responsibility to a duty of means, without explicitly requiring it to guarantee actual access to these rights (as is the case with the Moroccan Constitution of 2011, which will be discussed later).

1.2. The limits of judicial enforcement of social rights

While holders of fundamental rights can demand their enforcement before the courts, this avenue remains significantly limited – and even excluded – when it comes to social rights. Taking the French judiciary as an example, at least prior to the 1970s (before the Constitutional Council began issuing rulings on this matter) litigation was not a viable option.

Several doctrinal explanations have been proposed to account for this limited justiciability, which can be grouped into three main areas: issues relating to the nature of these rights, the absence of an institutional framework at the international level, and the exclusive jurisdiction of the legislative authority on financial matters (Gay, 2020), or what is referred to as "*democratic objection"* (Michelman, 2003).

With regard to the nature of these rights, the debate on their classification resurfaces. Certain jurists argue that social rights cannot be considered fundamental rights, because the latter are viewed as initial rights, which are clear and coherent, whereas social rights are understood as new, second-generation rights that may, in some cases, come into tension with these initial rights (Lévis, 2010). They are also seen as constructs of positive law, and their implementation is considered more effective when accompanied by a weak form of judicial review, a type of review that helps prevent any encroachment or usurpation of legislative authority by the judiciary (Tushnet, 2009).

Furthermore, the difficulty of classifying social rights as fundamental rights stems primarily from the lack of a clear and binding definition in international law. Their recognition in key international instruments, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966), occurred only after the acknowledgment of civil and political rights.

As a result, no permanent international judicial bodies are tasked with ensuring the enforcement of social rights, unlike the tribunals established for prosecuting violations of civil and political rights such as genocide or crimes against humanity, which fall under the scope of rights to life, dignity, and liberty. The institutional mechanisms concerning social rights are largely limited to monitoring bodies, such as the United Nations Economic and Social Council (ECOSOC), whose functions are primarily confined to reviewing periodic state reports on the status of these rights.

Finally, the principle of exclusive fiscal competence, meaning the legislature's sole authority over resource allocation, poses an additional barrier to judicial enforcement. Judicial intervention in the realization of social rights may therefore be seen as infringing on the constitutional principle of the separation of powers (Bignami & Spivack, 2014; Gay, 2020; Sweet, 2002; Tushnet, 2009).

This debate has undergone a profound transformation, as social rights have increasingly asserted themselves as an integral component of the broader system of fundamental rights (Fabre, 1998), and their judicial review is not considered, therefore, to create any conflict with democratic principles or with the separation of powers (Spector, 2003). Social rights now constitute a crucial entry point for advancing the principles of equality and justice within contemporary societies, particularly by narrowing socio-economic disparities.

In modern legal and philosophical thinking, it is no longer viable to draw a rigid distinction between "primary" and "secondary" rights. Instead, rights are understood as forming an integrated and coherent system, all of which are subject to judicial oversight and enforcement (Fabre, 2000). This trend toward the justiciability of social rights has progressively extended to many countries in the Global South (Langford, 2009), and it can no longer be denied on the basis of arguments such as vagueness or excessive financial burden (De Schutter, 2019). Moreover, it is now widely recognized that certain social rights – especially the right to work and the right to social protection – constitute a structural cornerstone for any democratic system in the modern state (Supiot, 2010).

On the other hand, this jurisprudential position has coincided with the adoption of several international instruments, particularly those related to the institutions and bodies of the European Union. Although the European Convention on Human Rights (ECHR, 1950) does not explicitly provide for social rights, the case law of the European Court of Human Rights has nonetheless contributed to the expansion and strengthening of the protection afforded to such rights (Stec and Others v. The United Kingdom, 2006). Conversely, the Charter of Fundamental Rights of the European Union (2010) explicitly recognizes social rights in its fourth chapter, albeit under the label of "solidarity rights".

2. Protection of social rights in European legal systems

The post-war period, particularly in European countries – and in France following the first rulings of the Constitutional Council in the 1970s – witnessed a renewed interest in social rights and their consolidation as justiciable rights (Chabrot, 2013; Luchaire, 1981). Today, most constitutions recognize these rights and establish them as responsibilities incumbent upon the state.

A review of European constitutional models shows that no unified approach to the protection of social rights has been established, despite the jurisprudence of the European Court of Human Rights and the efforts of EU treaties toward harmonization. Nevertheless, at first glance, the list of constitutionally guaranteed rights in European countries appears relatively consistent, as most written constitutions in Europe proclaim a set of rights in the economic and social domains.

This constitutional protection takes various forms. It may involve references to the social character of institutions, as seen in: Germany (Article 11, paragraph 8 (Basic Law for the Federal Republic of Germany, 1949)), Italy (Article 3 (Constitution of the Italian Republic, 1947)), Spain (Article 8 (The Spanish Constitution, 1978)), Portugal (Article 1 (Constitution of the Portuguese Republic, 1976)), and France (Article 8 (Constitution of the French Republic, 1958)). In other cases, this recognition is complemented (or replaced) by explicit provisions enshrining social rights, which generally include the right to work, the right to social protection, the right to health, the right to family protection, and sometimes the right to housing (Roman, 2014).

Moreover, beyond this gradual recognition, some common features emerge, allowing for the classification of the constitutional protection of social rights into three main models (Gambino, 2014). The first model corresponds to a classical liberal approach, where the prevailing view is that the constitution does not guarantee the actual enforceability of social rights (due to the absence of binding constitutional provisions), but rather delegates to legislation the task of defining the conditions and procedures for their implementation. This model is dominant in Northern and Scandinavian countries. However, this does not imply a weaker protection of social rights; on the contrary, many of these countries have adopted more advanced social policies than the rest of the continent (Ben-Bassat & Dahan, 2008; Gambino, 2014; Harbo, 2010).

The second model recognizes social rights in the constitutional text and classifies them as fundamental rights, but without providing effective judicial protection in parallel. This model is typical of the constitutions of Western European countries (Butt et al., 2000; Gambino, 2014).

The third model is represented by the constitutions of Southern Europe – namely Spain, Italy, and Portugal – which, in terms of both recognition and enforceability, "go beyond the average standard." (Butt et al., 2000; Dean & Brady, 2015).

In order to assess the status of social rights and the extent of their protection and effectiveness within European constitutional systems, this study focuses on the French, Italian, and Spanish experiences, given the richness of the data they offer and their relevance for a deeper understanding and more accurate comparisons aligned with the objectives of this research.

2.1. The constitutional status and protection of social rights in France

The preamble of the 1946 French Constitution affirmed adherence to the rights and freedoms enshrined in the Declaration of the Rights of Man and of the Citizen (1789), and considered a set of political, economic, and social principles as essential. Among these principles are: gender equality, the right to work and employment, freedom of association and trade union membership, the right to strike, the right to health and material security, as well as the right to education and vocational training.

Admittedly, this recognition faced long-standing reservations, particularly regarding justiciability, as it amounted to a merely declaratory constitutional provision. This reservation was evident in the jurisprudence of the French Council of State (*Conseil d'État)*, which – apart from rights and freedoms such as the right to strike – repeatedly refrained from directly applying the constitutional provisions relating to other social rights.

As mentioned previously, the turning point came in 1971, when the French Constitutional Council recognized the constitutional value of the 1946 preamble, integrating it as an integral part of the Constitution. Consequently, the general principles it contains acquired full legal force, thus granting them binding effect and justiciability (see the Decision on the constitutionality of the abortion law (Decision No. 74-54 DC, 1975)).

Since then, the Council's jurisprudence has consistently reaffirmed that social rights are fundamental rights enforceable against the State, as demonstrated in numerous decisions. One such decision is (Decision No. 2009-584 DC, 2009), where the Council affirmed that the right to health, as set out in the 1946 preamble, is constitutionally protected, and that the legal framework for health and safety committees in companies must not undermine the substance of this right. In (Decision No. 2023-859 DC, 2023) the Constitutional Council authorized the regulation of the right to strike in the aviation sector by requiring prior notice from workers. It held that this requirement does not undermine the substance of the right but is consistent with the necessities of public service.

Additionally, the (Decision No. 2015-502 QPC, 2015), (*Question prioritaire de constitutionnalité*, an application for a priority preliminary ruling on the issue of constitutionality) upheld the legitimacy of distributing financial support to trade unions based on objective criteria, provided that such distribution does not violate freedom of association or the right to participate in social life.

The French constitutional model is thus the result of a long historical process, whose major milestones range from the 1789 Declaration of the Rights of Man and of the Citizen to the 1946 Constitution. This process, accompanied by the progressive strengthening of the powers of the Constitutional Council, has likely exerted a significant influence on several constitutional systems in Europe and beyond.

2.2. Constitutional protection of social rights in Italy

Italy possesses a post-war constitution (Constitution of the Italian Republic, 1947) that has significantly influenced the European legal order. It enshrines key social rights, including the protection of the family (Arts. 29–31), the right to health (Art. 32), education (Arts. 33–34), work and fair remuneration (Arts. 35–36), social security and assistance (Art. 38), trade union freedoms (Art. 39), and the right to strike (Art. 40).

Despite these explicit provisions, as is the case in other constitutions, debates persisted regarding the actual effectiveness of social rights. However, this issue was swiftly resolved in favour of their justiciability, meaning these rights can be legally enforced, particularly against laws that might restrict them (Bignami, 2024).

The Italian Constitutional Court plays a central role in protecting social rights. Under Article 134 of the Constitution (1947), it reviews the constitutionality of laws, settles disputes over the allocation of powers between the State and the Regions, and adjudicates charges against the President of the Republic.

According to Guiglia (2018), the Court has repeatedly played a role in arbitrating between ensuring constitutional social rights and addressing budgetary constraints. For instance, (Judgement No. 354/2008, 2008) summarized the Court's conclusions, particularly drawing on Decision No. 309/1999, which established a framework to balance the guarantee of fundamental rights with their financial cost.

In that judgement (No. 354/2008), arising from the constitutional review of certain provisions of Law No. 595 of 23 October 1985 (regulating health planning and the 1986–1988 Three-Year Health Plan), the Court examined whether Italian citizens could be denied access to healthcare abroad. The Court held: "It is true, indeed, that constitutional jurisprudence has recognized that the protection of the right to health is subject to the limitations and constraints arising from the scarcity of financial resources. It is equally true, however, that the balancing exercise that the legislator may legitimately undertake must not assume such an overwhelming weight as to compress the core, non-reducible nucleus of this right, protected by the Constitution as an inviolable area of human personality."

This clearly illustrates the approach and general orientation of the Constitutional Court, which holds that limited financial resources can under no circumstances justify depriving individuals of their fundamental rights.

This position was reaffirmed in the (Judgment No. 70/2015, 2015) in which the Court ruled that certain provisions of Decree-Law 6 December 2011, no. 201 (Urgent Provisions for Growth, Equity and the Consolidation of Public Finances, 2011) were unconstitutional. This law had frozen pension increases in certain cases as part of austerity measures prompted by the economic crisis. The Court based its decision on the grounds that these provisions were incompatible with the fundamental right to social assistance, the principle of solidarity set forth in Article 2, and the principle of equality as enshrined in Articles 3, 31, and 38 of the Constitution. In

another ruling (Judgment no. 178/2015, 2015), the Court found that the prolonged suspension of collective wage negotiations in the public sector violated trade union rights and freedoms, as protected under Article 39 of the Constitution.

Through these rulings and decisions, the Italian Constitutional Court has played a crucial and central role in safeguarding social rights and ensuring their effective implementation, despite the numerous justifications and pretexts often put forward by the executive and legislative branches to restrict or limit the enjoyment of these rights, not only for citizens, but also for immigrants and foreigners. This inclusive approach was affirmed in (Judgment No. 196/2021, 2021) of the Italian Constitutional Court, in which the Court declared certain provisions of Legislative Decree No. 147 of 2017 (Provisions for the Introduction of a National Measure to Combat Poverty, 2017) unconstitutional and in violation of European agreements. These provisions had required possession of a long-term residence permit as a condition for accessing social assistance.

Italy has thus developed a strong protection of constitutional rights, not only through their formal recognition from the very beginning of the post-war period, but also through the active involvement of the Constitutional Court, which rules on a wide variety of cases. This model also shares several features with that of Spain.

2.3. Safeguarding social rights in the Spanish constitutional model

The Spanish Constitution (1978) is distinguished by its clarity and explicit recognition of social rights, enshrining them as a core component of freedom and human dignity. It also defines mechanisms for their protection through various judicial means, including ordinary legal appeals and the constitutional remedy known as *Amparo*.

The strengthening of the constitutional status of these rights is illustrated by several provisions. The first article defines Spain as a "social and democratic state governed by the rule of law," while Article 10 proclaims "the dignity of the person, inviolable rights, and the free development of personality are the foundation of political order and social peace." (The Spanish Constitution, 1978).

Constitutionally guaranteed social rights include, in particular, the right to education (Article 27), the right to work (Article 35), fair working conditions (Articles 35 and 38), as well as the right to organize and to join a trade union (Article 28).

A distinctive feature of the Spanish Constitution lies in its explicit and unequivocal distinction between social rights deemed fundamental and other rights referred to as "guiding principles of social and economic policy". These principles are set out in Title I, Chapter III, which places them under the responsibility of the state. For instance, Article 39 refers to the protection of the family, Article 43 to the right to health, and Article 40 emphasizes the fair distribution of income. This distinction has had significant legal implications, as the Spanish Constitution – unlike many other systems – has clearly settled the issue of justiciability, particularly with regard to the jurisdiction of the Constitutional Court. Indeed, under Article 53(2), only the rights listed in Articles 14 to 29 may be claimed through a constitutional appeal (in Spanish: *recurso de amparo*), whereas the guiding principles are not subject to constitutional challenge and may only be invoked before ordinary courts, and even then with limited enforceability.

In line with the objectives of this study, and in the context of examining key rulings by the Spanish judiciary, only the constitutional appeal (Amparo) will be considered, as it constitutes a central mechanism for the protection of social rights. This constitutional remedy is characterized by its personal and procedural nature, its free-of-charge access, and its availability to any person with a legitimate legal interest, provided that they are represented by legal counsel (Constitutional Court of Spain, 2018).

Moreover, the Amparo appeal is subsidiary in nature: it can only be brought once all ordinary remedies have been exhausted. As for its scope, an Amparo may be lodged against any act or omission by public authorities, whether legislative, judicial, or administrative.

According to Article 41 of (Organic Law 2/1979 on the Constitutional Court, 1979), this appeal can be directed against violations of fundamental rights and freedoms caused by provisions, legal acts, omissions, or mere acts of fact committed by the public authorities of the State, the Autonomous Communities, and other territorial, corporate, or institutional public bodies, as well as by their officials or agents.

For its part, article 42 provides that the *Amparo* is also directed against decisions or acts without the force of law issued by the *Cortes* (Parliament) or any of their bodies, or by the legislative assemblies of the Autonomous Communities or their organs, when such acts violate rights and freedoms eligible for this appeal.

The jurisprudence of the Constitutional Court frequently reflects its support for and protection of fundamental social rights. In certain cases involving competing or conflicting rights, the Court adopts a principle of balance, aiming to reconcile such tensions through proportional and context-specific reasoning. This interpretative approach can be observed in several landmark rulings.

In its (Judgment No. 88/2023, 2023), the Spanish Constitutional Court ruled on Amparo appeal No. 2192/2020, filed by the *Alternativa Sindical de Trabajadores* union against the ruling of the Administrative Chamber of the High Court of Justice of Madrid. The union had challenged the decision of the Government Delegate in Madrid to prohibit a demonstration planned for May 1, 2020. The Court dismissed the appeal, justifying its decision on the grounds that the restriction of a fundamental social right, namely the right of assembly (Article 21 of the Constitution), was necessary to safeguard another equally important right: the right to health, in the context of a serious public health crisis (the COVID-19 pandemic).

Similarly, in its (Judgment No. 157/2023, 2023), the Constitutional Court rejected Amparo appeal No. 5690-2022, which sought to overturn lower court rulings mandating COVID-19 vaccination. The Court upheld those rulings and refused to exempt a child from vaccination, emphasizing that the vaccine constituted a legitimate means of protecting public health.

The Spanish Constitutional Court has also issued several rulings aimed at protecting labour rights, particularly through *amparo* proceedings that address various aspects of the fundamental right to work. One notable example is Amparo Case No. 6369-2018, which led to (Judgment No. 71/2020, 2020). In this case, the Court ruled on the dismissal of a worker who enjoyed special protection due to his status as a trade union representative and his temporary suspension from work for medical reasons. The issue centred on an alleged violation of the right to work and the principle of non-discrimination. The same applies to Amparo Case No. 4167-2017, which concerned reinstatement at work and the principle of non-discrimination, particularly in the context of a disciplinary sanction deemed arbitrary and potentially infringing upon the worker's dignity or procedural safeguards (Judgement No. 66/2020, 2020).

It is thus evident that the Spanish Constitutional Court contributes significantly to the implementation and protection of social rights, reflecting a broader approach aimed at striking a balance between judicial safeguards through the expansion of access to *amparo* proceedings, and political flexibility, by leaving general policy guidelines and legislative texts in the domain of public policymaking.

The value of this model – alongside other European experiences such as the Italian and French systems – lies in its potential to inspire rights-based frameworks, particularly in developing countries like Morocco, where the

effectiveness of oversight mechanisms for the protection of social rights should be enhanced in a way that takes into account national specificities and economic constraints, without compromising the core of these rights.

3. Social rights in Morocco: constitutional entrenchment and judicial safeguards

Since independence, and especially since the 1962 Constitution, Morocco has progressively integrated human rights into its state-building framework. The recognition of social rights has expanded incrementally, yet their effective protection remains below the desired standard.

3.1. Gradual recognition of social rights

The first important observation regarding the social rights enshrined in the Constitution of the Kingdom of Morocco is the implicit classification of these rights. Rights classified as liberties – such as the right to join trade union organizations and associations – have been constitutionally guaranteed since the Kingdom's first Constitution of 1962. They were enshrined in Article 9 of the 1962, 1970, and 1972 Constitutions, and reaffirmed in Articles 8, 9, and 29 of the 2011 Constitution.

The same applies to the right to strike, which has been consistently recognized through the expression: "*The right to strike is guaranteed."* However, recognition of this right has always been subject to the adoption of an organic law defining the conditions and procedures for exercising this right. Despite its recent publication in the Official Gazette, this law had not entered into force prior to September 2025. This does not necessarily imply that the right to strike was restricted. On the contrary, trade unions and professional organizations have been able to exercise this right freely, provided that certain simple preliminary administrative procedures were observed.

In contrast, rights with significant financial implications were addressed more cautiously. Successive Moroccan Constitutions prior to that of 2011 focused primarily on the right to education and the right to work. For example, Article 13 of the 1962, 1970, and 1972 Constitutions declared: "Education and employment are rights of all citizens." These were the only two social rights explicitly enshrined during that period, which may be explained by the historical context of the time – marked by the early stages of state building – and the limited resources available to ensure the effective realization of such rights.

In 2011, the broader political and social context once again shaped the course of constitutional development in Morocco. The adoption of the new Constitution took place amid a wave of widespread social mobilization and growing demands for human and social rights. In this context, the constitutional text marked significant progress, not only by expanding the catalogue of social rights, but also by detailing their substance and clarifying their implications.

With regard to freedoms, in addition to the already enshrined rights to strike and to unionize, Article 8 emphasized the democratic principles that must guide the structure and functioning of trade unions. It also highlighted the key role of unions in defending the social and economic interests of the groups they represent. The same provision further required public authorities to promote and support the conclusion of collective labour agreements. Moreover, Article 29 reaffirmed the right to union membership and recognized associated freedoms such as the freedom of assembly, freedom of association, and the right to peaceful protest.
In light of comparative experiences, several conclusions may be drawn regarding the constitutional enshrinement of social rights. Whereas European constitutions have recognised these rights in a detailed and comprehensive manner – often in response to strong social demands, as in post-war Italy (1948) or post-transition Spain – the Moroccan experience reflects a form of constitutional pragmatism.

From a structural standpoint, social rights in the Morocco Constitution are not organised as a coherent block but dispersed across various titles (notably Articles 8, 31, 34, 35 and 154). This contrasts with other constitutions, where such rights are more systematically arranged – for example, in the Preamble of the French Constitution, within the 'Rights and Duties' section of the Italian Constitution, or under distinct categories in the Spanish Constitution.

Providing for social rights in a dedicated chapter could enhance their clarity and symbolic weight, potentially signalling their justiciability, while facilitating a more coherent and integrated interpretative approach by both scholarship and the judiciary.

On the other hand, Article 31 of the Moroccan Constitution recognises several positive social rights, but frames them within a logic of programmatic or progressive duties. By requiring the State and public authorities to mobilise available resources to facilitate equal access to these rights, the provision renders their realisation conditional and resource-dependent. By contrast, comparable constitutions adopt more explicit formulations: the declaratory phrasing of the French Constitution's Preamble (*Everyone has the right to*…), the binding language of the Italian Constitution (*The State guarantees…*), and the differentiated degrees of enforceability established under the Spanish Constitution.

The manner in which social rights are recognized in the constitutional text, whether through their inclusion or omission, or the way in which they are formulated, is a key factor in determining the extent to which the constitutional judiciary may intervene to protect them. What forms of protection do the competent institutions guarantee for these rights?

3.2. Judicial guarantees for social rights

The system for the protection of human rights in Morocco – and of social rights in particular – is characterized by the multiplicity of judicial bodies involved. Among them, the Constitutional Court of Morocco occupies a central position through the various mechanisms of constitutional review it exercises, alongside the administrative and ordinary courts.

A priori constitutional review entails the mandatory verification of the conformity of organic laws with the Constitution. It may also extend to ordinary legislation under Article 132 of the Constitution, provided that the matter is referred to the Court prior to promulgation by the King, the Head of Government, the President of either Chamber, one-fifth of the members of the Chamber of Representatives, or forty members of the Chamber of Councillors.

A posteriori constitutional review is a newly introduced mechanism known as the "exception of unconstitutionality." It allows litigants, in the context of a case brought before a court, to challenge the constitutionality of a law invoked in the dispute if they consider that the law infringes upon the rights and freedoms guaranteed by the Constitution, in accordance with Article 133. In such cases, the Constitutional Court has exclusive jurisdiction to rule on the constitutionality of the contested provision.

Constitutional jurisprudence on the protection of social rights in Morocco remains relatively limited, due to two main reasons: first, the absence of constitutional provisions requiring the enactment of organic laws directly related to these rights – with the exception of the right to strike – has restricted the Constitutional Court's ability to intervene through *a priori* constitutional review. The Court only recently issued a decision on the draft organic law governing the right to strike (March 2024), thereby limiting opportunities for judicial enforcement of these rights through regulatory scrutiny. Second, the organic law governing the exception of unconstitutionality has not yet entered into force. This continues to hinder the implementation of the *a posteriori* mechanism of

constitutional review, which would allow the Constitutional Court to assess whether existing laws are incompatible with constitutionally guaranteed social rights.

Consequently, the absence of these two fundamental legislative frameworks limits the Constitutional Court's ability to effectively oversee the protection of these rights, despite their explicit recognition in the constitutional text. This highlights a significant difference between the Moroccan constitutional framework and the other legal systems in the roles played by the constitutional judiciary in safeguarding social rights. The activation of the exception of unconstitutionality constitutes a strong and effective safeguard that enables citizens to demand respect for their social rights. Strengthening the application of this mechanism in the future would impart new momentum to the Moroccan Constitutional Court.

In the meantime, the jurisprudence of the Court of Cassation offers numerous examples illustrating the intervention of the ordinary judiciary – particularly the administrative courts – in the protection of social rights. These courts have adjudicated fundamental issues such as employer-employee relations (the right to work), the right to health, and the right to health coverage. These areas are generally governed by detailed legislative and regulatory provisions, which have given rise to a rich and nuanced body of case law that has effectively contributed to strengthening the protection of social rights.

A notable example in this regard is a series of judgments of the Court of Cassation, which sought to strike a balance between a doctor's right to resign and the constitutional imperative of safeguarding citizens' right to health. This approach is reflected, in particular, in (Decision No. 249/2023, 2023) of 9 March 2023 and (Decision No. 647/2019, 2019) of 16 May 2019.

The Court also examined the State's responsibility to ensure equitable access to healthcare under Article 31 of the Constitution, as reflected in (Decision No. 3/1550, 2019) of 17 October 2019. It also issued rulings affirming the right to strike as a constitutional right, while emphasizing that it must not be exercised in an excessive or abusive manner, as stated in (Decision No. 266/2023, 2023), (Decision No. 267/2023, 2023) of 07 March 2023, and (Decision No. 126/2023, 2023) of 25 January 2023.

4. The results of comparative analysis

The comparative analysis highlights the diversity of constitutional models for the recognition and protection of social rights. In Morocco, the constitutionalization of social rights has evolved progressively. While liberty-type (negative rights), have been enshrined since the earliest constitutions – without controversy, as in the European systems examined – the main divergence concerns positive social rights requiring State intervention and public resources. In Morocco, most of these rights were constitutionally recognised only in 2011, considerably later than in the European systems under comparison.

Unlike the Spanish and Italian constitutions, which clearly identify each social right in separate provisions, Article 31 of the Moroccan Constitution consolidates several positive social rights within a single article, albeit located in the section on liberties and fundamental rights.

Moreover, although this article enshrines positive rights, their effectiveness is conditional upon the availability of resources, which gives the obligation the character of a 'means-based' duty. In contrast, the French and, particularly, the Italian constitutions articulate these rights in a much more direct manner, with greater force and a genuine obligation of result. This suggests that, in the Moroccan case, these rights primarily serve as guiding principles for public policy.

On this point, the Moroccan case is closer to the Spanish model, where the Constitution resolved the issue by distinguishing directly enforceable rights and liberties from the guiding principles of social and economic policies, which include positive rights. This distinction even structured the available remedies, whether constitutional or ordinary, before the Spanish courts. In contrast, the French Constitution, although it refers to the 1946 preamble containing positive rights (necessary principles), provides a much clearer and more direct recognition of these rights than Article 31 of the Moroccan Constitution. The Italian Constitution also distributes positive social rights across several sections – fundamental principles, social relations, and economic relations – but with a formulation that is clear, direct, and binding.

Regarding judicial protection, all the systems examined favour a concentrated review conducted by the constitutional court, in contrast to the diffuse, U.S.- inspired model. A gap nevertheless remains: the Moroccan Constitutional Court, under the classic review of the constitutionality of organic laws, has intervened only recently in examining the law on the right to strike. The review by way of an unconstitutionality exception has experienced significant delay and, since its establishment in 2011, has not yet been fully implemented. The importance of this remedial mechanism is crucial, as its availability to citizens could provide substantial protection of social rights.

By contrast, the review by way of an unconstitutionality exception is a characteristic feature of constitutional justice in Europe. Although it was introduced recently in France (2008), it now serves as an effective mechanism for the protection and enforcement of rights. In Italy, this mechanism is older and functions indirectly, insofar as it is the higher courts – as in France – that have the competence to refer questions of unconstitutionality to the Constitutional Court. In Spain, the older Amparo remedy allows the Constitutional Court to be petitioned concerning clearly defined rights and liberties, while ordinary courts handle other rights. Constitutional Amparo has both a subjective character and, in addition to this feature shared with the Moroccan and other European remedies, an objective character, since it is also accessible to certain state bodies in cases where fundamental rights are threatened.

In Morocco, due to the insufficiency of protection provided by the constitutional judges, ordinary courts and in particular administrative courts, actively assume this role of safeguarding social rights. This type of protection also exists in the compared systems to enhance the effectiveness of these rights, but it does not replace constitutional review.

Conclusion

The study highlights the potential for Morocco to draw on best practices of the compared systems for protecting social rights. To ensure broader effectiveness, in line with Morocco's international commitments, a series of reforms is needed, with the European models offering inspiration.

In light of Morocco's specific socio-economic context, the Italian model of social rights protection appears particularly relevant and offers significant inspiration for strengthening their effective protection. Notably, the Constitutional Court's development of the doctrine of the "essential core" of rights in response to economic and budgetary constraints provides a balanced approach that may be especially pertinent for developing countries. Moreover, the clarity and precision of the constitutional provisions concerning the recognition of social rights and the direct attribution of obligations to the State contribute to a coherent normative framework.

However, this assessment does not diminish the importance of the French and Spanish experiences. The French model has historically influenced the Moroccan legal system, while the Spanish one provides valuable guidance regarding the structuring of constitutional remedies and mechanisms of judicial protection.

Thus, in summary, in the event of constitutional revision, social rights should be enshrined in clear and structured provisions defining the State's obligations and the available remedies, while leaving implementation modalities to ordinary legislation. Meanwhile, the continued absence of the organic law on constitutional review by exception undermines rights protection, a delay that should be addressed through its robust and effective adoption. Ultimately, the effectiveness of social rights protection also depends on public policy measures, including strengthening social services and improving citizens' access to employment, housing, and healthcare, which would contribute to the foundations of a genuine social state.

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