

Lawful Evidence Derived by Unlawful Means in Algerian Law

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Abstract:

Evidence underpins criminal adjudication, and its lawfulness turns on both content and method of collection. Algeria’s 2020 Constitution and the 2025 Code of Criminal Procedure (No. 25-14) mandate safeguards—especially for electronic investigations and digital searches—to protect privacy and ensure lawful proof. Although no express rule governs derivative evidence, constitutional and procedural principles imply courts cannot rely on unlawfully obtained proof. Judicial freedom to assess evidence is bounded by legality, while the doctrine of causal independence preserves evidence not directly produced by a void act. Algerian law thus seeks to balance individual freedoms with the effectiveness of criminal justice.

Keywords: lawful evidence; exclusion/invalidity; Law No. 25-14; Constitution 2020.

1. INTRODUCTION

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Evidence in criminal matters constitutes one of the foundational pillars upon which criminal justice rests, serving as the means by which the judge forms a conviction regarding the occurrence of the offence and its attribution to the accused. Yet the importance of evidence does not end with the mere disclosure of truth; it extends to the imperative of respecting the means and procedures by which proof is obtained, so that the scales of justice remain balanced between society's right to punish the offender and the individual's right to have his liberty and dignity protected from arbitrariness or violation.

Through the 2020 Constitution, the Algerian legislature entrenched the principle of protecting individual rights and freedoms and mandated respect for legality at every stage of criminal proceedings. This has been reaffirmed in the amended provisions of the Code of Criminal Procedure, particularly by Law No. 25-14 of 3 August 2025, which laid down precise safeguards for electronic investigations and digital searches, in order to protect private life and to guarantee the lawfulness of criminal evidence¹.

The principal difficulty lies in the fact that certain pieces of evidence are derived from procedures that contravene the law or are tainted by nullity—for example, the interception of telephone calls or the search of a dwelling without judicial authorisation. This raises a fundamental question: may such evidence be relied upon before the

1- Abdelkader Ben Issa, *The Concise Guide to the Algerian Code of Criminal Procedure*, 5th ed., Dar Houma, Algiers, 2023, p. 145.

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courts despite the illegality of the means by which it was obtained? And may a court found its decision on evidence that is substantively sound but is the product of a void procedure?

This issue directly implicates both the principle of procedural legality and the principle of judicial conviction. A broad acceptance of evidence gathered by unlawful means may encroach upon personal freedom and the rights of the defence, whereas excluding such evidence absolutely may result in offenders escaping punishment. Legislator and judiciary alike therefore confront a delicate balance between effectiveness in combating crime and adherence to the guarantees of justice.

Accordingly, the central question gives rise to a set of subsidiary questions:

- To what extent may evidence be considered lawful if it is derived from an unlawful procedure?
- Should the judge exclude such evidence outright, or does he possess a discretionary power to assess the degree of its independence from the void procedure?
- What position do the Algerian legislature and national courts adopt on this issue in light of recent amendments?

The purpose of this research is not merely to catalogue texts, but to provide a precise analysis of the concept of procedural legality in the context of proof, by clarifying the legal nature of unlawfully obtained evidence and examining scholarly and judicial trends concerning it,

while also elucidating the extent to which the Algerian stance accords with comparative systems.

To achieve these aims, the subject will be addressed through an analytical methodology, dividing the study into two principal parts:

- Part One: The theoretical framework of lawful evidence and its relationship to unlawful procedures.
- Part Two: The Algerian legal and judicial position on the probative value of evidence obtained by unlawful means.

2. The theoretical framework of lawful evidence and its relationship to unlawful procedures.

2.1. The Concept of Lawful Evidence and its Legal Basis

Lawful evidence is any means of proof obtained in accordance with the provisions of the law and with due respect for the guarantees afforded to the accused, such that the procedure by which it was produced is lawful in both form and substance. It does not suffice that the means be correct in its outcome; rather, it must be derived from an act that is itself legally sound.

The Algerian legislature has laid down a set of principles governing the lawfulness of evidence, foremost among them the principle of procedural legality set out in Articles 40 and 55 of the 2020 Constitution, which guarantee the inviolability of private life and the right of defence. Added to this are the provisions of the Code of Criminal Procedure that restrict the powers of the judicial police and oblige them to respect search warrants and

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prior oversight².

The Code of Criminal Procedure, as amended by Law No. 25-14 of 3 August 2025, further affirms that electronic investigations—such as the interception of communications or access to digital data—are lawful only pursuant to a reasoned judicial authorisation issued by the Public Prosecutor or the Investigating Judge for a specified, time-limited period³.

The lawfulness of evidence is also manifested in the duty of investigative authorities to adhere to the principles of justice and fairness: no means may be used that would impair human dignity or violate personal liberty. Accordingly, a confession extracted under duress or by inhuman means is void—even if it accords with reality—because the means of obtaining it were unlawful⁴. From the jurisprudence of the Supreme Court it is likewise understood that lawfulness pertains not only to the means employed, but also to the surrounding circumstances. In its Criminal Chamber judgment of 12 December 2022, the Court held that “any evidence obtained in the absence of defence counsel, or without respect for the accused’s right to silence, is contrary to law and cannot be relied upon, even if it is substantively correct.”

2.1.1. The Legal Nature of the Lawfulness of Evidence

Scholarly opinion is divided over how to characterise the legal nature of evidential lawfulness. Some consider it a rule of public order, breach of which entails absolute nullity without the need for the aggrieved party to invoke

2- Algerian Constitution of 2020, *Official Journal*, No. 82, 30 December 2020, Arts. 40 and 55.

3- Code of Criminal Procedure as amended by Law No. 25-14 of 3 August 2025, *Official Journal*, No. 49, 2025, Art. 114.

4- Mohamed Bouamama, *Criminal Procedure Law – A Theoretical and Practical Study*, Dar al-Ma‘rifa, Algiers, 2022, p. 178.

it; others view it as a relative rule that may be cured if no prejudice to the accused has resulted⁵. The former view appears the stronger in light of the constitutional status acquired by the legality principle after the 2020 Constitution. Article 55 provides that “any infringement of the secrecy of correspondence or private life may take place only in accordance with the law and under judicial supervision”, which renders any evidence resulting from a breach of this principle unlawful as a matter of law.

2.1.2. The Relationship Between the Lawfulness of Evidence and Judicial Conviction

A significant practical issue concerns the extent to which procedural nullity affects the judge’s conviction. In the Algerian system, the criminal judge enjoys broad freedom to form his conviction under Article 212 of the Code of Criminal Procedure; however, this freedom is not absolute, but must be exercised within the bounds of fundamental procedural rules⁶. Judicial conviction cannot be grounded on evidence obtained clandestinely or through a violation of constitutional rights, for such evidence loses both its legal and ethical value⁷.

2.2. Unlawful Evidence and Its Distinction from Void Evidence

“Unlawful evidence” refers to any means of proof obtained in breach of a peremptory legal rule, whether during the stage of inquiry, investigation, or trial. By contrast, “void evidence” is the result of a procedurally defective act—formal or substantive—without affecting the essence of the right of defence. Accordingly, every

5- Supreme Court, Criminal Chamber, No. 175054, hearing of 12 December 2022, *Judicial Review*, special issue, p. 45.

6- Abd al-Fattāh Ukkāsha, *The Theory of Nullity in Criminal Procedure – A Comparative Study*, Dar al-Nahda al-Arabiyya, Cairo, 2018, p. 90.

7- Abd al-Razzāq Mansūr, *General Rules of Evidence in Criminal Matters*, Dar al-Fikr al-Jāmiī, Alexandria, 2017, p. 155.

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unlawful evidence is void, but not every void evidence is unlawful⁸.

This distinction is of great importance in determining the extent to which the contested evidence may be relied upon, as it allows the judge to exclude that which is the product of an explicit violation of fundamental rights, whilst retaining that which has not impinged upon the core of those rights. In this regard, the Supreme Court, in its decision of 17 April 2023, distinguished between “curable procedural nullity” and “nullity affecting constitutional rights”, holding that the latter entails the exclusion of all evidence emanating therefrom⁹.

Subsection A: Forms of Unlawful Evidence in Algerian Law

Among the most salient forms of unlawfully obtained evidence in Algerian legislation are:

1. Interception or recording without judicial authorisation;
2. Searches of dwellings or seizure of correspondence without the presence of the owner or his lawyer;
3. Confessions extracted under coercion or torture;
4. Use of technical means without prior authorisation from the prosecution or the judiciary.

Law No. 25-14 of 2025 has emphasised the nullity of any evidence resulting from the use of a technical means without a written, reasoned judicial warrant, in order to protect the inviolability of private life and digital data¹⁰.

Subsection B: Effects of the Nullity of Unlawful

8-Ismail Ammar, *The Principle of Legality in Criminal Procedure*, Dar al-Ulūm Publishing, Algiers, 2020, p. 125.

9-Supreme Court, Criminal Chamber, 17 April 2023, *Judicial Review*, No. 2, 2023, p. 132.

10-Law No. 25-14 of 3 August 2025, Arts.114.

Evidence. The nullity of unlawful evidence results in its exclusion from the case file and the prohibition of relying upon it for conviction. A difficulty arises, however, where such evidence has led to another item of evidence that is ostensibly lawful. This will be examined later, in Part Two, when studying the principle of the causal independence of evidence. The Supreme Court adopted this approach in its decision of 25 May 2024, considering that “the nullity of the procedure does not extend to evidence independent of it, once it has been established that the latter was not the direct result of the void procedure”¹¹.

3. The Algerian Legal and Judicial Position on the Probative Value of Evidence Obtained by Unlawful Means

The position adopted by the legislature and the judiciary on unlawfully obtained evidence is a genuine measure of the State’s respect for the principles of constitutional justice. Criminalisation and punishment alone do not suffice to guarantee justice; judgments must be founded upon sound and lawful evidence obtained within the framework of the law. Nevertheless, debate persists in the Algerian system as to whether reliance may be placed on evidence that is correct in itself if it is the offspring of a void procedure especially in the absence of an explicit provision regulating this matter

3.1. The Position of the Algerian Legislature on the Probative Force of Unlawfully Obtained Evidence

The Algerian Code of Criminal Procedure does not expressly prescribe a rule for evidence derived from an unlawful procedure—neither accepting nor excluding it. A reading of its provisions, however, indicates that the

11-Supreme Court, Criminal Chamber, 25 May 2024, *Judicial Review*, No. 2, 2024, p. 88.

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legislature tends to reject such evidence whenever a direct link is established between it and a breach of the law or an infringement of the rights of the defence. Article 212 of the Code of Criminal Procedure grants the judge freedom in assessing evidence, but circumscribes this freedom by the condition that the evidence be obtained by lawful means. Likewise, Article 65 bis 5, added by Law No. 25-14 of 2025, affirms that surveillance and interception operations are valid only pursuant to a reasoned judicial authorisation for a defined period¹². In the same amendment, the legislature entrenched the protection of digital privacy by providing that any electronic inquiry conducted beyond legal limits is void and entails the nullity of any evidence resulting therefrom¹³.

This legislative tendency underscores that the Algerian legislator links the lawfulness of the procedure to the lawfulness of the evidence—within what may be termed the “doctrine of the consequences of nullity.”

3.1.1 Absence of an Explicit Provision and Its Practical Effects

The absence of a clear statutory rule regarding unlawfully obtained evidence has left the criminal judge as the sole point of reference for determining the lawfulness of the evidence. Practically, this has led to divergent judicial practices from one court to another: some judges adopt a strict approach, excluding any evidence tainted by nullity, while others incline towards flexibility where independent evidence exists that corroborates the facts. The legislature is criticised for not drawing upon comparative experiences, particularly

12-Code of Criminal Procedure, Art. 212, as amended by Law No. 25-14, *Official Journal*, No. 49, 2025.

13-Law No. 25-14, Art. 114-115.

French law, which explicitly states in Article 427 of the French Code of Criminal Procedure that the judge may base his decision only on evidence obtained by lawful means¹⁴. In the absence of a comparable provision in Algerian legislation, the operative criterion in practice becomes the extent to which the defective procedure infringed the rights of the defence or the inviolability of private life: where such infringement is established, the evidence is excluded; where it is not, the judge may accept it within the bounds of his discretionary power.

3.1.2. The Relationship Between Nullity and the Lawfulness of Evidence

The relationship between the nullity of the procedure and the nullity of the evidence turns on the notion of a causal link between them. If the evidence is the direct product of a void procedure, it must be excluded; if it can be shown that the evidence is independent of that procedure, it may be admitted. This principle—known in legal scholarship as the causal independence of evidence—has been adopted by the Supreme Court in several subsequent decisions. In its decision of 28 June 2024, the Court confirmed that “the independence of the evidence from the void procedure is measured by the possibility of obtaining it by another lawful means without recourse to the unlawful method”¹⁵. This contemporary approach strikes a balance between the protection of legality and the effectiveness of justice, preventing the exploitation of legal violations without paralysing evidentiary functions.

3.2. Judicial and Scholarly Trends Concerning Evidence Obtained by Unlawful Means

14-Jean Pradel, *Droit pénal et procédure pénale*, Cujas, Paris, 2020, p. 275.

15-Supreme Court, Criminal Chamber, 28 June 2024, *Judicial Review*, No. 3, 2024, p. 211

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The Algerian judiciary has played a notable role in shaping and refining the concept of unlawfully obtained evidence through its successive decisions, to the point that two principal and distinguishable trends may now be identified: a conservative exclusionary trend and a flexible evaluative trend. These trends, though analytically distinct, should be understood as occupying points along a single continuum of judicial reasoning that seeks to reconcile the protection of constitutional guarantees with the practical imperatives of criminal adjudication.

3.2.1. The Conservative Exclusionary Trend

Rooted firmly in the principle of procedural legality, the conservative trend maintains that any evidence procured in violation of the law must be excluded absolutely, irrespective of its substantive probative value. The animating premise is that the protection of rights and freedoms outweighs the interest in punishment: the criminal process must not be permitted to legitimise the fruits of illegality, for to do so would erode the very guarantees that distinguish a system of justice governed by the rule of law.

In a decision dated 2 March 2025, the Supreme Court held that “recording telephone calls without prior judicial authorisation renders the recordings void, and they may not be relied upon as a means of proof, even if they establish the facts forming the subject of the prosecution”¹⁶. This pronouncement encapsulates the doctrinal maxim frequently invoked by adherents of this approach: what is built on nullity is itself null. In other words, the evidential value of an item is not severable

16-Supreme Court, Criminal Chamber, 2 March 2025, *Judicial Review*, No. 1, 2025, p. 57.

from the lawfulness of the process by which it was obtained; illegality at the source vitiates the derivative product at the point of adjudication.

This trend has found support in Algerian legal scholarship. Authors such as Mohamed Bouamama and Ismaïl Ammar argue that any leniency towards unlawfully obtained evidence risks opening the door to systemic violations of the accused's fundamental rights, thereby undermining both the legitimacy and the fairness of criminal proceedings¹⁷. For these scholars, the exclusionary rule is not a mere technicality; it is a structural safeguard that disciplines investigative authorities and preserves public confidence in judicial outcomes.

3.2.1. The Flexible Evaluative Trend

By contrast, the flexible evaluative trend—emerging both in judicial practice and in doctrinal writings—counsels against the categorical exclusion of unlawfully obtained evidence. It urges sensitivity to the exigencies of justice and the effectiveness of procedure, especially in complex and serious forms of criminality. The core analytic move here is a distinction between the nullity of the procedure and the nullity of the evidence derived from it. Where it is possible to separate the evidential item from the unlawful act—demonstrating that the former does not owe its existence, in a decisive causal sense, to the latter—the evidence may remain extant and admissible.

The Supreme Court endorsed this line of reasoning in its decision of 25 May 2024, holding that “a confession made by an accused after being confronted with an

17-Mohamed Bouamama, *Criminal Procedure Law – A Theoretical and Practical Study*, Dar al-Marifa, Algiers, 2022, p. 180; Ismaïl Ammar, *The Principle of Legality in Criminal Procedure*, Dar al-Ulūm, Algiers, 2020, p. 140.

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unlawful recording does not lose its value, provided it is established that the confession was not the product of pressure or coercion arising from the void recording”¹⁸. The judgment does not condone illegality; rather, it insists that admissibility turns on independence and voluntariness, not merely on chronological sequence. Thus, if intervening factors—such as the accused’s free and informed will—break the causal chain, the resultant confession may be treated as legally autonomous.

From a doctrinal perspective, ‘Abdelkader Ben ‘Issa has argued that this approach achieves a workable equilibrium between fidelity to legality and the need to prevent impunity, particularly in cases involving terrorism or organised crime, where investigative challenges are acute and the social stakes are high¹⁹. Significantly, recent legislative reforms—most notably those expanding judicial oversight over investigative measures—appear to implicitly accommodate this evaluative posture: they tighten ex ante controls without foreclosing the possibility that evidential products lawful in themselves may be used, provided their derivation is independent.

3.3.3. Towards Entrenching the Principle of the Causal Independence of Evidence

Bridging the foregoing positions is an increasingly prominent middle path founded upon the principle of causal independence of evidence. Its central proposition is straightforward: exclusion is warranted only where the impugned evidence is the direct product of the void procedure. Conversely, where the causal nexus can be

18-Supreme Court, Criminal Chamber, 25 May 2024, *Judicial Review*, No. 2, 2024, p. 88.

19-Abdelkader Ben-Issa, *The Concise Guide to the Algerian Code of Criminal Procedure*, Dar Houma, Algiers, 2023, p. 210.

severed—because the evidence would, in all likelihood, have been obtained by other lawful means, or because intervening factors purged the taint—the evidential item may be treated as lawful in its own right.

The Supreme Court adopted this principle explicitly in its decision of 28 June 2024, stating that “evidence which could have been obtained by other lawful means remains valid, even if it originally stemmed from a void procedure”²⁰. The test articulated by the Court is a counterfactual inquiry: could the authorities have procured the same evidence without resorting to the unlawful method? If the answer is yes—supported by concrete investigative pathways—the evidence may be deemed causally independent.

This development signals a methodological convergence with comparative jurisprudence, particularly that of the French Court of Cassation, which, since 2015, has elaborated a nuanced approach to evidential taint that avoids both rigid exclusion and uncritical inclusion. In the Algerian context, the entrenchment of causal independence carries several implications:

1. Normative clarity: It supplies a principled basis upon which courts may justify either exclusion or admission, thereby reducing arbitrary divergences in judicial practice.
2. Institutional discipline: Investigative authorities remain incentivised to comply with procedural rules, knowing that courts will scrutinise causation, not merely form.
3. Substantive fairness: Accused persons are protected where the rights-infringing act is the indispensable condition of the evidence; yet the

20-Supreme Court, Criminal Chamber, 28 June 2024, *Judicial Review*, No. 3, 2024, p. 213.

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community's interest in adjudicative truth is preserved where the evidence is genuinely independent.

In sum, the trajectory of Algerian jurisprudence reveals a dynamic rebalancing: the conservative exclusionary stance safeguards foundational rights; the flexible evaluative stance preserves adjudicative efficacy; and the principle of causal independence furnishes a coherent doctrinal framework within which courts can navigate hard cases—excluding what is the immediate fruit of illegality, while admitting what stands on an independent legal footing.

4. Conclusion

The in-depth analytical study demonstrates that lawful evidence derived through unlawful means lies at the heart of the tension between two foundational principles of criminal justice: first, the principle of procedural legality, which protects individual freedoms and guarantees a fair trial; and second, the principle of judicial effectiveness, which seeks to combat crime efficiently and uncover the material truth. This persistent tension renders the subject of the present research of significant practical and scholarly importance within the Algerian legal system.

Legislative analysis and judicial precedent clearly show that the Algerian legislator has not expressly declared unlawfully obtained evidence to be void. Nevertheless, the spirit of the texts—particularly the 2020 Constitution and the Code of Criminal Procedure as amended by Law No. 25-14 of 2025—implicitly confirms that any evidence derived from an act contrary to law cannot be regarded as lawful unless its complete independence from the unlawful act is established. This has enabled the crystallisation of a new judicial rule, known as the principle of causal independence of evidence, which the

Supreme Court affirmed in several decisions between 2023 and 2025.

A survey of judicial decisions indicates that Algerian courts have moved towards a balancing approach rather than absolute exclusion of unlawfully obtained evidence. Evidence is excluded only where it is the direct progeny of a void act or infringes the accused's constitutional rights; it may be admitted where its independence and objectivity can be proven. This development reflects an attempt by the Algerian judiciary to reconcile the protection of legality with the need to ensure the effectiveness of criminal justice in the face of technologically sophisticated offences.

On the other hand, the research shows that the absence of an explicit statutory rule determining the fate of unlawfully obtained evidence leads to divergent judicial outcomes and a lack of legal certainty, particularly in sensitive cases such as terrorism or cybercrime, where complex technical means are employed in investigations without unified standards. Although the legislator has introduced detailed provisions concerning electronic surveillance and interception, it has not yet established a legal criterion for distinguishing between lawful and unlawful evidence in this field, leaving judges with a broad discretion that may yield inconsistent results.

Principal Findings:

- The principle of the lawfulness of evidence has a constitutional character derived from Articles 40 and 55 of the 2020 Constitution, and constitutes a basic guarantee for the protection of individual freedoms during public prosecution.
- The Algerian legislator has not expressly invalidated unlawfully obtained evidence, but has implicitly done so by linking the lawfulness of evidence to compliance with the procedural rules

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governing its acquisition.

- Algerian jurisprudence has gradually adopted the principle of causal independence of evidence, allowing the admission of evidence that is not the direct result of a void procedure.
- The absence of explicit statutory provisions has produced variation among courts, with some adopting a strict stance and others a more flexible one.
- The judge's freedom to form his conviction under Article 212 of the Code of Criminal Procedure is not absolute; it is conditioned upon the legal lawfulness of the evidence relied upon.
- Modern technical means of proof—such as electronic surveillance and interception—necessitate a careful legislative review to protect digital privacy and ensure the integrity of criminal evidence.
- Recent Algerian judicial practice tends towards a balance between the protection of fundamental rights and the effectiveness of public prosecution.

Recommendations:

- Amend the Code of Criminal Procedure by adding an explicit provision that clearly regulates the fate of unlawfully obtained evidence and specifies the conditions for its admission or exclusion, akin to Article 427 of the French Code of Criminal Procedure.
- Codify the principle of causal independence of evidence in statutory texts to ensure uniform judicial practice, with precise criteria for assessing the causal relationship between the procedure and the resultant evidence.
- Strengthen judicial oversight of police powers by

requiring prior written authorisation for any inquiry that affects private life, together with a strict disciplinary accountability regime for violations.

- Institute an explicit exclusionary mechanism in criminal legislation whereby proof of nullity results in automatic exclusion of the tainted evidence without the defence having to invoke it.
- Develop professional training for judges and judicial police officers in digital evidence and human rights, given the direct impact on respect for procedural legality.
- Require reasoned decisions when admitting or excluding evidence, with detailed legal and constitutional grounds, to enhance judicial transparency.
- Encourage academic research on unlawfully obtained evidence—particularly in the context of cybercrime—by supporting specialised master’s and doctoral theses.
- Establish a permanent national committee within the Ministry of Justice tasked with evaluating the application of evidentiary rules in technically oriented cases and proposing periodic legislative reforms.

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