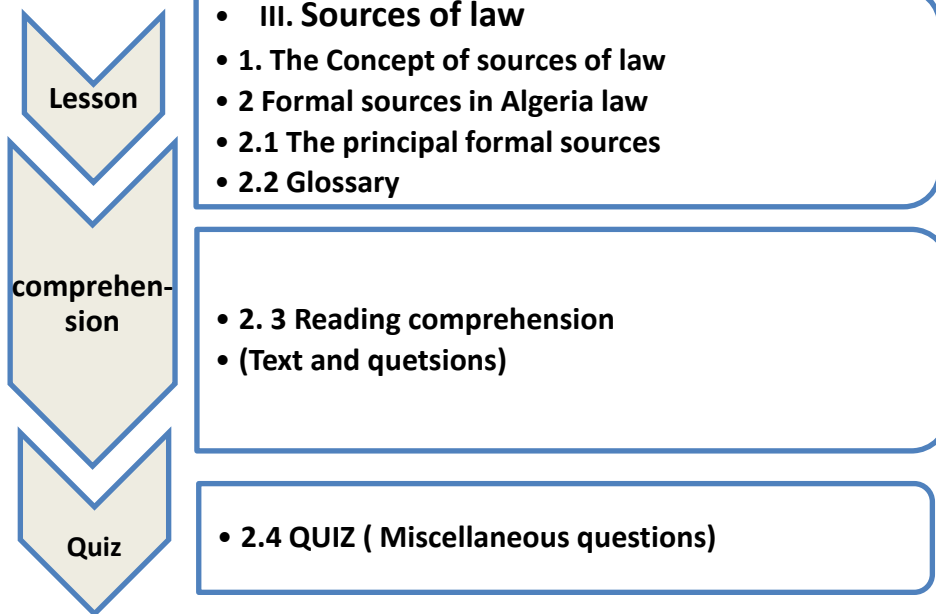


# LESSON N°3



### III. Sources of law

#### 1. The concept of the source of law

We must differentiate, on the one hand, between “formal and informal sources of law” and, on the other hand, between the latter and “material sources of law”.

By the term “**material sources of law**”, we mean the origin of the legal rule. This means everything that contributes, or has contributed, to creating a set of legal rules applicable in a state at a given time. In other words, these sources embrace all social phenomena that contribute to forming the substance of law.

By **formal sources**, we mean direct sources; they are the obligatory forms that give birth to the rules of law, that is, the forms that the law must take in order to have the character of a compulsory rules. Moreover, they are the sources that the judge must take into account, while “**informal sources**” are just a source of inspiration.

The formal or informal sources are different from one country to another.

يشير مصطلح "المصادر المادية للقانون" إلى أصل القاعدة القانونية. يعني أي شيء يساهم ، أو ساهم ، في إنشاء مجموعة من القواعد القانونية السارية في دولة ما في وقت معين. هي المصادر التي تحتضن جميع الظواهر الاجتماعية والتي تسهم في تكوين جوهر القانون.

نقصد بالمصادر الرسمية ، المصادر المباشرة التي هي الشكل الذي يعطي للقاعدة الطابع الالزامي، فهي المصادر التي يعتد بها في دولة ما ويجب على القاضي أن يأخذها في عين الاعتبار، في حين أن "المصادر الغير رسمية" هي مصادر تفسيرية يلجأ إليها القاضي كمصدر إلهام فقط، تختلف المصادر الرسمية أو المصادر غير الرسمية من بلد إلى آخر

#### 2. Formal Sources in Algerian Law

The formal and informal sources of Algerian law are divided into three categories:

<input type="checkbox"/> The principal formal sources	<input type="checkbox"/> المصادر الرسمية الأصلية "الاساسية"
<input type="checkbox"/> Subsidiary formal sources	<input type="checkbox"/> المصادر الرسمية الاحتياطية
<input type="checkbox"/> Informal sources “interpretive”	<input type="checkbox"/> المصادر الغير رسمية "تفسيرية"

##### 2.1 The principal formal sources "المصادر الرسمية الأصلية "الاساسية"

Legislation is the primary source of Algerian law. The judge must first observe “legislative texts”. Legislation in Algeria is divided into three categories according to their classification in the hierarchy of laws:

التشريع يعد المصدر الرسمي الأول للقانون الجزائري، معنى هذا أن القاضي يجب أن ينظر إليه أولاً.  
التشريع في الجزائر، ينقسم ويتدرج من حيث أهميته إلى :

### ***A. The constitution: The fundamental legislation***

In states that adopt a formal constitution “codified constitution”, the constitution is the supreme norm, the highest law upon which all other laws are constructed.

في الدول التي تتبنى دستوراً من حيث الشكل " دستور مقنن"، يكون فيها الدستور القانون الأعلى والذي تبنى عليه جميع القوانين الأخرى.

### ***B. International treaties (conventions)***

Treaties ratified by the president of the republic under the conditions provided for by the constitution are superior to the law. Article 154 of the Constitution, last amendment, on December 30, 2020.

المعاهدات التي يصادق عليها رئيس الجمهورية، حسب الشروط المنصوص عليها في الدستور، تسمو على القانون. المادة 154 من الدستور، تعديل 30 ديسمبر 2020.

### ***C. The laws***

The laws are divided into two categories:

Organic laws and ordinary laws.

#### **❑ Organic laws:**

They complement the provisions of the Constitution and fall between the categories of constitutional and ordinary laws. They are established by special procedures and address issues of importance because:

- ✓ They generally regulate the functioning of state bodies,
- ✓ They are adopted by an absolute majority of deputies and members of the Council of the Nation,
- ✓ They are subject to a compliance check with the constitution by the constitutional court.

❑ **القوانين العضوية :** هي قوانين أساسية تأتي تكملة لأحكام الدستور وتقع بين فئتي القوانين الدستورية والعادية وتوضع بإجراءات خاصة وتتناول مسائل ذات أهمية وذلك لأنها:

- ✓ تحدد بشكل عام أداء أجهزة الدولة.
- ✓ تتم المصادقة عليها بالأغلبية المطلقة للنواب وأعضاء مجلس الأمة.
- ✓ تخضع لفحص المطابقة لدستور من قبل المحكمة الدستورية.

#### ❑ **Ordinary laws:**

Ordinary laws often regulate the areas that are not regulated by constitutional or organic laws; sometimes they are a complement to them.

#### *C. Legislation by ordinances "حالة الضرورة"*

According to the Algerian constitution, the parliament is the primary legislative body. On the other hand, the President of the Republic may exceptionally legislate by ordinance.

Legislation by ordinance is mentioned in Article 142 of the Constitution, amendments of March 7, 2016 and December 30, 2020.

The President of the Republic may, on urgent issues and after consulting the Council of State, legislate by ordinance in the following cases:

- ✓ In the event of a vacancy in the National People's Assembly,
- ✓ During parliamentary recess,
- ✓ In the event of a state of exception, defined in Article 107 of the Constitution, Amendment of March 7, 2016, and Article 98 of the Amendment of December 30, 2020.

#### *E. The regulations (الوائح الفرعي)*

Regulations are issued by the executive power; they are either implementing regulations or autonomous regulations.

#### ❑ **Implementing regulations :** اللوائح التنفيذية

These regulations come from the executive power in order to implement a law or to provide details, in other words, to clarify it and allow its application. Ex. executive decree.

#### ❑ **Autonomous regulations** اللوائح المستقلة

There are two types:

##### ➤ **The organizational regulations**

They come from the executive power; they are autonomous because they do not come to implement a law but rather to settle and regulate questions that have not been addressed by the laws.

مصدرها السلطة التنفيذية ، وهي مستقلة لأنها لا تأتي لتطبيق قانون بل لتنظيم مسائل لم تتناولها القوانين.

According to Art. 91, Paragraph 6, this power is granted to the president of the republic:  
"Matters other than those observed by law fall within the regulatory power of the President of the Republic."

➤ **Police regulations : لوائح الضبط**

They mean those rules established by the executive authority for the purpose of maintaining public order, such as regulations for traffic regulation, public health, public markets, etc.

## 2.2 Glossary: Terms used in lesson

Absolute majority	أغلبية مطلقة
Algerian law	قانون جزائري
Amendment	تعديل
Autonomous regulations	لوائح مستقلة
Codified constitution	دستور مقنن
Compliance check	رقابة مطابقة
Constitution	دستور
Constitutional court	محكمة دستورية
Constitutional laws	قوانين دستورية
Council of the Nation	مجلس الأمة
Deputies	نواب
Executive authority	سلطة تنفيذية
Executive decree	مرسوم تنفيذي
Formal sources of law	مصادر رسمية للقانون
Hierarchy of laws or norms	تدرج القوانين
Informal sources of law	مصادر غير رسمية للقانون
International treaties	معاهدات دولية
Implementing regulations	لوائح تنفيذية
Judge	قاضي
Legislation	تشريع
Legislative texts	نصوص تشريعية
Legislation by ordinances	تشريع بمراسيم
Material sources of law	مصادر مادية للقانون
Members	أعضاء
Ordinary laws.	قوانين عادية
Organic laws	قوانين عضوية
Organizational regulations	لوائح تنظيمية
Parliament	برلمان
Police regulations “Règlements de police”	لوائح الضبط الإداري
President of the republic	رئيس الجمهورية
Presidential decree	مرسوم رئاسي
Provisions of the Constitution	أحكام الدستور
Procedures	إجراءات
Public health	صحة عمومية
Public markets	أسواق عمومية
Regulations	تنظيمات -لوائح-
State	دولة
State bodies	أجهزة "هيئات" الدولة
Supreme norm or law	قاعدة، القانون الأعلى
Traffic regulation	تنظيم المرور

## 2.3 Reading comprehension

In modern times, legislation is considered as the most important source of law. The term “legislation” derived from the Latin word *legis* which means “law” and *latum*<sup>1</sup> which means “to make” or “set”. Therefore, the word “legislation” means the making of law'.

The importance of legislation as a source of law can be measured from the fact that it is backed by the authority of the sovereign, and it is directly enacted and recognized by the State. The expression “legislation” has been used in various senses. It includes every method of law-making. In the strict sense it means laws enacted by the sovereign<sup>2</sup> or any other person or institution authorized by him<sup>3</sup>.

### Questions:

1. Give a title to this text.
2. Take an argument from this text that demonstrates why legislation is so important.
3. What can remind you of the term sovereign?
4. What's the narrow sense of legislation?

### Answers

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<sup>1</sup> The author doesn't provide a reference for what he claims. We find that the origin of the word legislation is the Latin word “legislatio”, which means “making law”, according to the LAROUSSE DICTIONARY and "TOUPECTIONNAIRE", and also according to the Latin Dictionary Online, the word used is “legislatio and legislationis”, which means “giving of law”, the information is available online, URL : <https://latin-dictionary.net/search/latin/legislatio> , Acceded November 10, 2023.

<sup>2</sup> Possessing supreme or ultimate power.

<sup>3</sup>Marin Petkov and Dragomir Krastev, THE “Source Of Law” Category Article in IJASOS- International E-journal of Advances in Social Sciences · August 2018 DOI: 10.18769/ijasos.455676, p.483.





### Question3:

Legislation by ordinance, granted to the President of the Republic, is limited by conditions and procedures

Select one:

- ☐ True
- ☐ False

### Question4:

What do you think of this order of norms in Algeria, true or false?

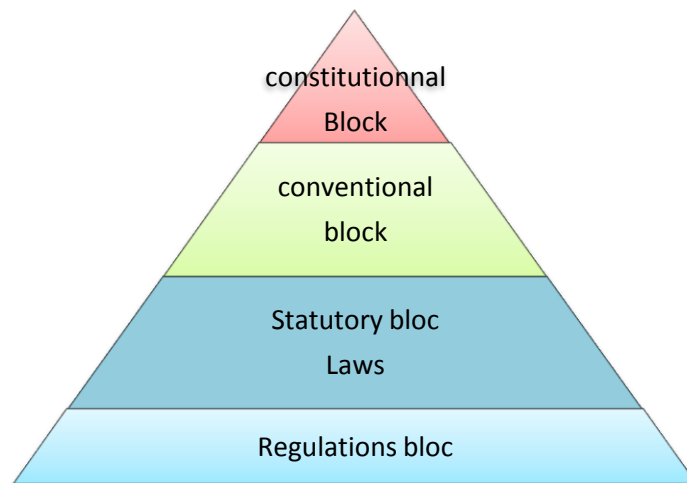


Figure 1 Hierarchy of norms pyramid<sup>4</sup>

Select one:

- ☐ True
- ☐ False

### Question5:

In Algeria, organic laws are adopted by an absolute majority of deputies and members of the Council of the Nation.

Select one:

- ☐ True
- ☐ False

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**Question6:**

Treaties ratified by the president of the republic under the conditions provided for by the constitution are superior to the constitution.

Select one:

- ☐ True
- ☐ False

**Question7:**

Regulations issued by the executive power are either implementing regulations or autonomous regulations.

Select one:

- ☐ True
- ☐ False