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The Principle of Hierarchy of Legal Norms in the Judicial Function

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Abstract

This article examines the principle of hierarchy of legal norms in the exercise of the judicial function. The contemporary state is governed by the principle of legality, a fundamental element of the rule of law, ensuring effective protection of fundamental rights and freedoms. The concept of law encompasses all legal norms in force within the state legal order, regardless of their source. Given the multiplicity of normative sources, whose production is not limited to a single state authority, conflicts between norms are likely to occur. Consequently, it is necessary to identify a principle that simultaneously ensures coherence and harmony among all legal norms that constitute the state's legal order and resolves normative conflicts. Legal doctrine and, subsequently, jurisprudence have established the principle of hierarchy of legal norms as an essential mechanism for such purpose, recognizing it as a constitutive element and guarantee of the rule of law. This study analyzes, through qualitative, descriptive, and comparative methodology, the hierarchical structure of written norms (constitutional, international conventional, legislative, and regulatory) and unwritten norms (principles of Islamic Sharia, customary norms, natural law, and general principles of law), examining the position of each category within the normative pyramid and the legal consequences of their application by the judicial authority.

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Introduction

Law, in its essential nature, constitutes an expression of the will of the state. However, the modalities through which the state articulates its normative will vary according to the public authority entrusted with the power to formulate legal rules. Consequently, the possibility of conflict or contradiction among legal norms becomes inherent within any legal system, potentially giving rise to tensions or jurisdictional disputes among the authorities or institutions responsible for their promulgation.

Such conflicts do not pose a significant legal problem when the contradiction arises between a general norm and a specific norm, or between a prior norm and a subsequent norm. In these conventional scenarios, the judge readily applies well-established interpretive principles: *lex specialis derogat legi generali* (the specific provision restricts the general provision) for the former case, and *lex posterior derogat legi priori* (the later law repeals the earlier law) for the latter. The adjudicator simply sets aside one of the conflicting texts and applies the other to resolve the dispute before the court.

However, a substantive legal problem arises when the normative conflict involves legal rules that do not occupy the same hierarchical rank within the legal order. The difficulty intensifies when one norm is constitutional or derives from an international treaty, while the other is ordinary legislation or a regulatory decree. Similarly, conflicts may occur between a legislative norm and a regulatory provision. In such cases, the conventional interpretive maxims prove inadequate, and the judge must resort to a superior principle that determines which norm prevails based on its position within the normative hierarchy.

It is imperative to emphasize that the judicial obligation to resolve conflicts among legal norms of unequal hierarchical rank constitutes a fundamental legal duty incumbent upon the judiciary. Judges apply "law" in the comprehensive sense that encompasses all legal norms, regardless of their source—whether constitutional, ordinary legislative, subordinate legislative, general principles of law, custom, international treaties, or principles of equity and natural law. The judge is bound to apply all these categories of legal rules, which may occasionally contradict one another. Consequently, the adjudicator must determine which norm should be set aside and which should be applied. This imperative necessitates the identification of a unified mechanism to ensure the coherence of judicial decisions and the uniformity of jurisprudence.

Hence, the necessity of establishing a principle that simultaneously achieves coherence among all legal norms constituting the state's legal order and resolves the problems and potential contradictions among these norms became evident. This objective was effectively realized through the articulation of the principle of hierarchy of legal norms (*le principe de la hiérarchie des normes*). Accordingly, judges are called upon to demonstrate courage and actively contribute to the elimination of normative conflicts whenever such conflicts are presented before them. Their instrument for this purpose is precisely the principle of hierarchy of legal norms, which provides a solution to conflicts by requiring the subordination or setting aside of the lower-ranking norm in favor of the superior norm, which is then applied to resolve the dispute.

The significance of this topic lies in its direct relevance to judicial practice, as it constitutes the sole mechanism for resolving numerous legal problems that judges encounter daily. It also represents a means of affirming the independent authority of the

judiciary and expanding the scope of its function. Consequently, the central problematic of this research revolves around the following questions: How are the legal norms constituting the legal order of the state arranged hierarchically? Do they occupy a single rank, or do they exist in multiple hierarchical levels? What is the basis or criterion upon which this hierarchical ordering is established?

This study addresses these questions by employing a dual methodology grounded in analytical and inductive approaches, according to the following structure: the hierarchy of written legal norms (Section I) and the hierarchy of unwritten legal norms (Section II).

The principle of hierarchy of legal norms is not merely a theoretical construct; it is a practical necessity that ensures the stability, coherence, and legitimacy of the legal system. In the Algerian constitutional framework, as in most modern legal systems, the supremacy of the Constitution is expressly recognized in the preamble to the 1996 Constitution, which proclaims: "The Constitution is above all, and it is the fundamental law that guarantees individual and collective rights and freedoms, protects the principle of the people's freedom of choice, confers legitimacy on the exercise of powers, and ensures legal protection and oversight of the actions of public authorities in a society governed by the rule of law, in which human development is fully realized".

This constitutional affirmation establishes the foundation for the hierarchical structure of the legal order, whereby constitutional norms occupy the apex of the legal pyramid, followed successively by international treaty norms (in accordance with Article 132 of the 1996 Constitution, which provides that ratified treaties are superior to domestic law), legislative norms enacted by Parliament, and regulatory norms issued by the executive authority. Below these written sources lie unwritten norms, including principles of Islamic Sharia (recognized under Article 1 of the Algerian Civil Code), customary norms, natural law, and general principles of law.

The judicial function, as the guardian of legality and the protector of rights and freedoms, plays a central role in ensuring respect for this hierarchical order. When confronted with conflicting norms, the judge must identify the superior norm and apply it, setting aside the inferior norm. This operation, known as hierarchical control or review of legality, is essential to maintaining the rule of law. However, as will be demonstrated in this study, Algerian judicial practice reveals a significant gap between constitutional theory and practical application. Algerian courts have rarely exercised constitutional review of legislation or directly applied constitutional provisions, and instances of judicial recognition of the supremacy of international treaties over domestic law remain exceptional.

This study seeks to bridge this gap by systematically analyzing the hierarchical structure of the Algerian legal order, examining both written and unwritten norms, and evaluating the extent to which Algerian courts have internalized and applied the principle of hierarchy of legal norms. By doing so, it aims to contribute to the consolidation of the rule of law in Algeria and the enhancement of judicial protection of fundamental rights and freedoms.

Theoretical Foundation and Literature Review

The principle of hierarchy of legal norms is a foundational concept in modern legal theory, articulated most influentially by the Austrian jurist Hans Kelsen in his seminal work *Pure Theory of Law* (*Reine Rechtslehre*, 1934). Kelsen conceived the legal order as a hierarchical structure, a "pyramid of norms" (*Stufenbau der Rechtsordnung*), wherein each norm derives its validity from a superior norm, culminating in a fundamental norm (*Grundnorm*) that serves as the ultimate source of legal validity (Kelsen, 1967). This hierarchical conception ensures the internal coherence and unity of the legal system, as each inferior norm must conform, both formally and substantively, to the superior norm from which it derives its authority.

Kelsen's theory profoundly influenced constitutional law and administrative law, providing the theoretical foundation for judicial review of legislation and administrative acts. In France, the concept was further developed and applied by Léon Duguit and Maurice Hauriou, who emphasized the supremacy of constitutional norms and the binding force of general principles of law. The French *Conseil d'État* (Council of State), in its landmark decisions such as *Heyriès* (1918) and *Dame Lamotte* (1950), established that administrative acts must conform not only to written legislation but also to unwritten general principles of law, thereby expanding the scope of legality beyond statutory texts (Long et al., 2015).

In the Algerian context, the principle of hierarchy of legal norms is explicitly recognized in the 1996 Constitution. The preamble declares the supremacy of the Constitution, and Article 132 establishes the superiority of ratified international treaties over domestic legislation. Article 1 of the Algerian Civil Code further recognizes principles of Islamic Sharia, custom, natural law, and equity as sources of law, thereby incorporating both written and unwritten norms into the legal order.

However, scholarly literature on the application of the hierarchy principle in Algerian judicial practice remains limited. Legal scholars such as Fawzi Aoussedik (2003) and Abdallah Bouqeffa (2002) have analyzed the constitutional and administrative law frameworks in Algeria, noting the formal recognition of the hierarchy principle but highlighting significant gaps in its practical enforcement by the judiciary. Sammy Jamal al-Din (1993) and Ibrahim Abd al-Aziz Shiha (1997) have examined the theoretical dimensions of hierarchy in administrative law, emphasizing the obligation of regulatory norms to conform to superior legislative and constitutional norms.

Comparative legal scholarship provides valuable insights into the application of the hierarchy principle in other jurisdictions. Geneviève Viney and Patrice Jourdain (2017) examine the evolution of the hierarchy of norms in French civil and administrative law, demonstrating the central role of judicial review in ensuring compliance with constitutional and international legal norms. Francis Hamon and Michel Troper (2012) analyze the theoretical foundations of the hierarchy principle in constitutional law, exploring the relationship between constitutional supremacy, legislative authority, and judicial review.

The incorporation of international law into domestic legal orders has added a new dimension to the hierarchy of norms. Salah al-Din Ahmad Hamdi (2002) analyzes the status of international treaties in domestic law, examining the conditions under which treaties acquire superior force over legislation. In Algeria, the Constitutional Council's

landmark decision of August 20, 1989, recognized the supremacy of ratified and published treaties over legislation, establishing treaties as a component of the "constitutional bloc" (*bloc de constitutionnalité*) against which the constitutionality of legislation may be assessed (Jabbar, 1996).

The role of unwritten norms—particularly principles of Islamic Sharia and general principles of law—presents a distinctive challenge in the Algerian legal order. Kamal Abd al-Wahid al-Jawhari (1994) and Issam Afifi Abd al-Basir (2004) argue that principles of Islamic Sharia possess constitutional rank, binding both the legislature and the judiciary. This position is grounded in Article 2 of the 1996 Constitution, which declares Islam the religion of the state, and Article 1 of the Civil Code, which directs judges to apply principles of Islamic Sharia in the absence of statutory provisions. However, this interpretation remains contested, with some scholars maintaining that Sharia principles serve merely as a supplementary source to be consulted when statutory law is silent.

General principles of law, articulated and applied by administrative courts, constitute another category of unwritten norms. The French *Conseil d'État* pioneered the development of general principles of law as binding norms superior to regulatory acts and, in certain cases, to legislation itself (Letourneur, cited in Raafat, 1992). Algerian administrative jurisprudence has followed this trajectory, notably in the *Conseil d'État* decision of July 27, 1998, which invoked the constitutional principle of equality to set aside a statutory provision that barred judicial review of disciplinary decisions affecting judges. This decision signaled the willingness of Algerian administrative courts to recognize general principles of law as possessing constitutional force (Algerian Council of State, 1998).

Despite these theoretical and doctrinal developments, empirical analysis of Algerian judicial practice reveals limited application of the hierarchy principle. Algerian courts have rarely exercised constitutional review of legislation, and direct application of constitutional norms remains exceptional. The reluctance of ordinary courts to engage in hierarchical review may stem from institutional factors, including limited judicial independence, inadequate training in constitutional adjudication, and the absence of a robust culture of judicial activism.

This study seeks to address these gaps by providing a comprehensive analysis of the hierarchy of legal norms in the Algerian legal order, examining both the theoretical framework and the practical application by the judiciary. It aims to identify obstacles to the effective enforcement of the hierarchy principle and to propose reforms that would enhance judicial protection of constitutional and international legal norms.

Methodology

This research adopts a qualitative, doctrinal, and comparative legal methodology to analyze the principle of hierarchy of legal norms in the Algerian legal system and its application in judicial practice.

1. Doctrinal Analysis: The study examines the constitutional, legislative, and regulatory texts that establish the hierarchical structure of the Algerian legal order, including the 1996 Constitution, the Algerian Civil Code, international treaties ratified by Algeria, and relevant organic and ordinary legislation. These primary sources are analyzed

to identify the formal recognition of the hierarchy principle and the criteria for determining the relative rank of different categories of norms.

2. Jurisprudential Analysis: The research examines judicial decisions of the Algerian Constitutional Council (*Conseil Constitutionnel*), the Supreme Court (*Cour Suprême*, now divided into the Court of Cassation and the Council of State), and the Council of State (*Conseil d'État*) to assess the extent to which Algerian courts have applied the principle of hierarchy of norms in resolving normative conflicts. Particular attention is given to landmark decisions that have addressed conflicts between constitutional norms and legislation, between international treaties and domestic law, and between legislation and regulatory acts.

3. Comparative Legal Analysis: The study draws upon comparative legal scholarship and jurisprudence from France, Egypt, and other civil law jurisdictions to contextualize the Algerian experience and identify best practices in the judicial enforcement of the hierarchy principle. Comparative analysis is particularly valuable given the historical influence of French administrative and constitutional law on the Algerian legal system.

4. Inductive and Deductive Reasoning: The research employs inductive reasoning to derive general principles from specific judicial decisions and legislative provisions, and deductive reasoning to apply these principles to analyze the coherence and effectiveness of the Algerian legal order.

5. Critical Evaluation: The study critically evaluates the gap between constitutional theory and judicial practice, identifying obstacles to the effective application of the hierarchy principle and proposing reforms to enhance judicial protection of superior norms.

This methodological approach ensures a rigorous, systematic, and comprehensive analysis of the principle of hierarchy of legal norms in the Algerian legal context.

Results and Discussion

Section I: The Hierarchy of Written Legal Norms

The established consensus in legal doctrine and jurisprudence recognizes three principal categories of written legal norms, classified according to the public authority responsible for their enactment: constitutional norms promulgated by the constituent authority, legislative norms enacted by the legislative authority, and regulatory norms issued by the executive authority. In light of the constitutional recognition of the supremacy of treaties over legislation, international conventional norms must also be incorporated into the legal order. Thus, the principle of hierarchical gradation of legislation mandates the following hierarchical structure: constitutional norms occupy the apex of the legal pyramid due to the supremacy of the Constitution; international conventional norms follow, given the constitutional principle of treaty supremacy over legislation; legislative norms enacted by the competent legislative authority, which must conform to both constitutional and international conventional norms, occupy the third rank; and regulatory norms issued by the executive authority, which must conform to all superior norms, occupy the fourth rank.

1. Constitutional Norms

The rule of law rests upon a constitutional order that protects human rights and the rights and freedoms derived therefrom, and upon effective guarantees that ensure the concrete realization of this constitutional order, to which public authorities are subject in the same manner as ordinary citizens. The principle of constitutional supremacy stands at the forefront of these guarantees and has been enshrined in the preamble to the 1996 Constitution. Consequently, constitutional norms occupy the apex of the legal hierarchy in the state. It is therefore necessary to define constitutional norms and determine their rank among other legal norms according to the principle of hierarchy of legal norms.

1.1. The Concept of Constitutional Norms

Constitutional norms are defined as the body of legal rules contained in the constitutional document that delineate the system of government in the state, define the fundamental rights and freedoms of individuals, and establish the political, economic, and social foundations and objectives of the state. This definition is based on the formal criterion, which holds that the sole source of constitutional norms is the constitutional document itself.

Some scholars object to this definition, arguing that constitutional norms comprise the body of legal rules that delineate the system of government and define fundamental rights and freedoms, whether they are contained in the constitutional document itself (which is the norm) or in other documents sometimes referred to as declarations of rights or charters, or in the preambles of constitutions themselves (Aoussedik, 2003, p. 31; Al-Tamawi, 1986, pp. 57 et seq.). According to this view, which adopts the material criterion, constitutional norms are those that create and organize all public authorities, define the scope of their jurisdiction, and determine how these jurisdictions are exercised.

However, this position is subject to doctrinal and judicial debate. The prevailing opinion excludes norms contained in declarations of rights, charters, or constitutional preambles from constitutional norms *stricto sensu* and classifies them instead as general principles of law, which constitute a separate source of law.

1.2. The Rank of Constitutional Norms

Constitutional norms enjoy supremacy and sovereignty for several reasons (Sammy, 1993, p. 38; Jarij, 1971, pp. 90 et seq.):

- **Source Authority:** Constitutional norms are issued by the constituent legislator, the highest authority in the state, which is not subordinate to any other authority. This renders constitutional norms unconstrained by any superior legal rules; they are the supreme and sovereign norms and the primary source of all other legal rules.
- **Definitional Power:** The Constitution defines the formal concept of law in the state, designates the persons and bodies authorized to act in the name of the state (by their qualifications and functions, not by their individual identities), determines the legitimate means of accession to power, and delineates the scope and limits of constitutional competencies for each institution.
- **Rigidity:** The rigidity of the Constitution reinforces its supremacy, in contrast to flexible constitutions, which do not possess the supremacy characteristic of constitutional norms. The Algerian Constitution is a rigid constitution, as are all Arab constitutions.

- **Express Constitutional Provision:** The Constitution itself expressly proclaims its supremacy. The preamble to the 1996 Constitution states: "The Constitution is above all, and it is the fundamental law that guarantees individual and collective rights and freedoms, protects the principle of the people's freedom of choice, confers legitimacy on the exercise of powers, and ensures legal protection and oversight of the actions of public authorities in a society governed by the rule of law, in which human development is fully realized."

Article 182 of the 1996 Constitution provides: "The President of the Republic shall promulgate the text of the constitutional amendment adopted by the people and shall execute it as the fundamental law of the Republic."

Consequently, the Constitution is supreme, and the norms contained therein occupy the apex of the state's legal hierarchy. This leads to a fundamental conclusion: all legal norms in the state are subject to constitutional norms, both formally and substantively.

This supremacy has been recognized and enshrined by comparative jurisprudence in various countries. Although there is no Algerian judicial decision that explicitly reveals the position of the Algerian judiciary on this matter, it is inevitable that Algerian courts will follow the path of comparative jurisprudence in recognizing constitutional supremacy and enforcing its consequences.

2. International Conventional Norms

The judiciary has established that treaties possess the force of law, a principle that has been enshrined in the constitutions of many states, which either recognize that international treaties have the force of law or elevate them above domestic legislation, thereby incorporating them into the sources and elements of legality. The Algerian Constitution adopted this principle, as Article 132 of the 1996 Constitution provides: "Treaties ratified by the President of the Republic in accordance with the conditions provided for in the Constitution are superior to law." Consequently, it is necessary to define international conventional norms and determine their rank among other legal norms.

2.1. The Concept of International Conventional Norms

Pursuant to Article 132 of the Constitution, the Algerian legal order does not recognize all sources of international law; it refers only to international treaties and omits other sources such as international custom and international jurisprudence. Therefore, only norms contained in treaties, not all norms of international law, may be incorporated into Algerian domestic law.

However, the Constitution imposes conditions for international conventional norms to be integrated into the domestic legal order as a source of legality. This necessitates an examination of the concept of international treaties and the procedures required for their incorporation into the Algerian legal system.

2.1.1. The Concept of an International Treaty

The 1969 Vienna Convention on the Law of Treaties defines a treaty in Article 2, paragraph 1, as: "an international agreement concluded between two or more states in written form and governed by international law, whether embodied in a single instrument

or in two or more related instruments and whatever its particular designation" (Hamdi, 2002, pp. 95 et seq.).

Paragraph 2 of the same article adds: "The definitions in paragraph 1 do not affect the use of these terms or the meanings that may be given to them in the internal law of any State".

Algerian law has adopted the international definition of treaties, as it recognizes treaties without providing a specific definition. Therefore, reliance on the aforementioned definition is necessary. However, the concept of a treaty should be broadened to include agreements concluded with international organizations, as they are subjects of international law, as established by the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Accordingly, a treaty must be concluded between subjects of international law—states and international organizations—including agreements concluded between Algeria and the European Union or between Algeria and the World Trade Organization.

2.1.2. Incorporation of Treaties into Domestic Law

Despite the constitutional recognition of treaties as superior to legislation, the constitutional legislator did not classify them as law, given the specificity of their status and the instruments of their creation, which differ from those that create domestic law. Accordingly, the Constitution requires specific procedures for treaties to enter the domestic legal order, signaling that their entry is authorized by national sovereignty and is not a direct imposition of international norms (Jabbar, 1996, pp. 164–165).

According to Article 132 cited above, the treaty must be ratified by the President of the Republic. The Algerian Constitutional Council added that publication of the treaty is also necessary for it to become part of the national legal order.

2.1.3. Issuance of the Presidential Decree Ratifying the Treaty

The Constitution requires the President of the Republic to comply with certain procedures prior to issuing the decree of ratification, in order to distribute competence between the President and Parliament in the field of treaty ratification. This reflects the application of the principle of separation of powers in its flexible sense, as there is cooperation between authorities in the field of international treaties.

However, a distinction must be made between two cases: The first case concerns treaties listed in Article 131 of the Constitution. In this case, after the President signs these treaties, he must submit them to Parliament (both chambers), which must give its express approval. The second case concerns other treaties, which the President may ratify without the aforementioned procedures.

2.1.4. Publication of the Ratified Treaty

The Constitution does not refer to the requirement of publication as a condition for the treaty's supremacy over legislation, which raises the question of whether publication is mandatory for the treaty to take effect and be incorporated into Algerian national law.

Referring to the Decree of November 10, 1990, which defines the powers of the Minister of Foreign Affairs, Article 10 provides: "The Minister of Foreign Affairs shall seek

ratification of international agreements, conventions, protocols, and regulations signed by Algeria or to which it is committed, and shall seek their publication".

The wording of the article suggests that the matter does not rise to the level of an obligation but is merely an option. Moreover, the phrase "shall seek" does not imply obligation or compulsion (Jabbar, 1996, pp. 148–149).

However, the Constitutional Council intervened through its decision dated August 20, 1989 (before the issuance of the above-mentioned decree) and declared: "Given that any agreement, after ratification and publication, is incorporated into national law and acquires, pursuant to Article 123 of the 1989 Constitution (corresponding to Article 132 of the 1996 Constitution), authority superior to laws, and any Algerian citizen may invoke it before the courts" (Constitutional Council, 1989, p. 1049).

Thus, the Council established the requirement of publication of the ratified treaty as a preliminary condition for its incorporation into Algerian law. Accordingly, the treaty does not acquire binding force domestically and cannot be applied unless it is published.

However, in practice, there are several cases that raise various problems: either only the decree of ratification is published, or only the decree of publication without the text of the treaty in the Official Gazette. If we apply the solution adopted by the Constitutional Council, the result would be the exclusion of the treaty from application and the prohibition of individuals from invoking it to claim their rights, even though they are aware of Algeria's conclusion of the treaty.

2.2. The Rank of International Conventional Norms

Article 132 of the 1996 Constitution leaves no room for hesitation regarding the status of international conventional norms, as it provides that "treaties ratified in accordance with constitutional conditions are superior to law"—a principle confirmed by the Constitutional Council in its aforementioned decision, which stated: "Given that any agreement, after ratification and publication, is incorporated into national law and acquires, pursuant to Article 123 of the 1989 Constitution (corresponding to Article 132 of the 1996 Constitution), authority superior to laws."

The Algerian judiciary has likewise recognized this principle. The Supreme Court, through both its civil and criminal chambers, has applied the principle of treaty supremacy over legislation by setting aside legislation that conflicts with treaties and resolving disputes in accordance with treaty provisions. This means that treaties, upon fulfillment of the aforementioned procedures, become a source of legality and rights, and their norms are superior to legislative and regulatory norms. However, treaties rank below the Constitution, as they may not contradict it. Evidence of this is their subjection to constitutional review.

Nevertheless, the Constitutional Council, in its aforementioned decision, reviewed the constitutionality of the 1989 Electoral Law not only in light of the Constitution but also in light of international treaties concluded by Algeria. This was a bold and surprising step, as the Constitutional Council departed from its role of reviewing the constitutionality of treaties, laws, and regulations and created a new role: reviewing the conformity of laws with treaties. The Constitutional Council relied on Article 123 of the 1989 Constitution (corresponding to Article 132 of the 1996 Constitution) to make the treaty a reference text and incorporate it into what legal scholars call the "constitutional bloc" (*bloc de*

constitutionnalité). Consequently, in the view of the Constitutional Council, the constitutional bloc now consists of the Constitution and the treaties ratified by Algeria (Jabbar, 1996, p. 151 et seq.).

3. Legislative Norms

The legislative authority, by virtue of its constitutional mandate, enacts general legal norms that delineate the general contours of political, economic, and social life in the state. This is a natural consequence of the principle of popular sovereignty, as this body comprises representatives of the popular will, which holds sovereignty in a democratic state. Thus, legal norms enacted by the legislative body in accordance with the constitutionally prescribed procedures occupy a position alongside constitutional norms in the hierarchy of legal norms in the state and constitute a second source of legality. It is therefore necessary to define legislative norms and determine their rank among other legal norms according to the principle of hierarchy of legal norms.

3.1. The Concept of Legislative Norms

Legislative norms are defined as laws enacted by the legislative authority in the state (Sammy, 1993, p. 42), that is, Parliament with its two chambers—the National People's Assembly and the Council of the Nation—as a general rule, and the President of the Republic in the context of legislation by decree (*ordonnances*) (Saghir, 2001, p. 117; Boudhan, 2003, p. 33 et seq.).

Accordingly, defining legislative norms requires examining the scope of legislative norms (1) and their degrees (2).

3.1.1. The Scope of Legislative Norms

The legislative authority, when enacting legal norms, must comply with constitutional provisions. If it exceeds the limits of constitutional principles in the laws it enacts, this is considered a deviation in the performance of its function, and its legislation is deemed unconstitutional.

Among the constitutional constraints on the legislative power is the exclusive delimitation of the scope of legislation, as follows:

3.1.1.1. Delimitation of Matters Subject to Parliamentary Legislation

These are the matters specified in Articles 122 and 123 of the 1996 Constitution. Matters falling outside these provisions are excluded from the scope of legislation and fall within the scope of regulation, as Article 125 of the 1996 Constitution provides: "The President of the Republic exercises regulatory power in matters not assigned to law."

3.1.1.2. Limitation of Parliament's Role to Establishing Principles or General Rules

Referring to the constitutional text, we find that it requires the legislative authority to enact legal norms in two ways (Bouqueffa, 2002, p. 329 et seq.):

First: Enacting laws with general and detailed rules, such as matters relating to the organization of the judiciary and the establishment of judicial bodies, rules of criminal law, criminal procedure, and customs regulations.

Second: Establishing general principles or basic rules only, leaving the executive authority to complete them through its regulatory power, such as general rules relating to the environment, living conditions, and urban planning. In this latter type, it is evident that the Constitution narrows the scope of legislative norms in favor of regulatory norms.

3.1.1.3. Limitation of Parliament's Role to Regulation, Not Prohibition

The constitutional legislator has enshrined rights and freedoms for individuals and citizens that the legislative authority may not infringe upon; it possesses only the power to regulate them, without extending to their prohibition, as prohibition is the prerogative of the constituent authority. For example, Article 32 of the 1996 Constitution provides: "Fundamental freedoms and human and citizen rights are guaranteed." They may not be prohibited, but they may be regulated. Article 36 of the same Constitution states: "Freedom of belief and freedom of opinion are inviolable," among other rights and freedoms.

3.1.2. Degrees of Legislative Norms

The enactment of legislative norms is the responsibility of Parliament with its two chambers, through ordinary laws or organic laws. Exceptionally, the President of the Republic may enact such norms by decree (*ordonnances*). Thus, there are three types of legislative norms, and it is necessary to determine the rank of each type in the legal hierarchy.

The **formal criterion** is the criterion adopted, which makes laws (both organic and ordinary) superior to legislative decrees, as they are issued by the authority originally competent to legislate, and thus are superior to norms enacted by another authority by way of exception, not the natural position. Organic laws enjoy supremacy over ordinary laws due to the special procedures for voting on them and the oversight to which they are subject compared to the procedures adopted for ordinary laws. Accordingly, organic laws are superior to ordinary laws, which in turn are superior to legislative decrees.

3.1.2.1. Organic Law

This type of law was introduced by the 1996 Constitution and distinguished from ordinary law in its subject matter and procedures. The matters falling within organic law relate to issues approaching constitutional matters, such as freedoms and the organization of public authorities, which led some scholars to state that organic laws occupy an intermediate position between what is fundamental (the Constitution) and ordinary laws.

The procedures for enacting organic laws differ from those for ordinary laws, as approval requires an absolute majority from both chambers of Parliament, and they are subject to mandatory review of their conformity with the Constitution before their promulgation, in contrast to ordinary laws, which are subject to optional constitutional review (see Constitutional Council, Opinion No. 01/RQA/04 of February 5, 2004).

3.1.2.2. Ordinary Law

Its scope is exclusively limited to the matters specified in Article 122 of the 1996 Constitution, and Parliament approves it by ordinary procedures, that is, simple majority, and it is not subject to mandatory conformity review but rather to constitutional review, which may be prior or subsequent. Conformity review is limited in scope, whereas constitutional review is comprehensive, and constitutional review is optional (Hamon & Troper, 2012, p. 51).

3.1.2.3. Legislative Decrees (*Ordonnances*)

The 1996 Constitution authorized the President of the Republic to legislate by presidential decrees (*ordonnances*) (Bouqeffa, 2002, p. 251 et seq.) during the absence of Parliament or in exceptional circumstances, and required him to submit these decrees to Parliament at its first session for approval with regard to decrees issued during Parliament's absence. This requirement does not apply to decrees issued in exceptional circumstances or legislative decrees relating to the finance law.

Given this distinction, some jurists hold that decrees issued during Parliament's absence remain mere regulatory administrative acts, and parliamentary approval confers legislative character upon them. Conversely, another doctrinal view holds that these decrees have the force of law even without parliamentary approval; once issued and published, they become effective as laws, as they are issued in the domain reserved for legislation. As for decrees issued in exceptional circumstances or relating to the finance law, there is no dispute that they are laws upon issuance and publication, as they are not subject to parliamentary approval.

3.2. The Rank of Legislative Norms

One doctrinal view holds that legislative norms enjoy sovereignty and supremacy because they are issued by the legislative authority (Jarij, 1971, p. 64 et seq.). However, constitutional supremacy is an established principle in various legal systems. Consequently, legislation occupies the rank immediately following the Constitution and produces legal effects only if it conforms to the Constitution both formally and substantively.

It also follows that international conventional norms are superior to legislative norms, pursuant to the constitutional provision that enshrines treaty supremacy over legislation.

In conclusion, legislative norms issued by Parliament rank after constitutional norms and international conventional norms, pursuant to the principles of constitutional supremacy and treaty supremacy over legislation, and they rank above regulatory norms, pursuant to the principle of legality, which makes legislative norms binding upon the executive authority.

4. Regulatory Norms

Regulations are an element of legality, as they are one of the sources of legal norms in the Algerian legal system according to the Constitution, which recognizes the right of the executive authority to issue them. Consequently, regulatory norms are considered legal norms that must be applied and are incorporated into the state's legal order. This

necessitates defining regulatory norms (4.1) and determining their rank among legal norms according to the principle of hierarchy of laws (4.2).

4.1. The Concept of Regulatory Norms

Regulatory norms are those norms that find their source in texts issued by the executive authority, in the form of decrees, decisions, instructions, circulars, or orders. Regulations are therefore a legislative act, as the legal norms they contain are general and abstract rules, like any other legal norm, making them one of the elements of the legal structure of the state. On the other hand, regulations are also an administrative act according to the organic criterion adopted in doctrine and jurisprudence (Sammy, 1993, p. 50).

Accordingly, individual decisions and material acts of the administration are excluded from the scope of regulations, which represent general, abstract, and binding norms for all persons addressed by them (Ibrahim, 1987, p. 54), exactly like legislative norms.

There are three types of regulations: autonomous regulations (1), implementing regulations (2), and police regulations (3).

4.1.1. Autonomous Regulations

The constitutional legislator empowered the President of the Republic to exercise regulatory competence exclusively, as provided in Article 125(1) of the 1996 Constitution, which states: "The President of the Republic exercises regulatory power in matters not assigned to law".

The regulatory power granted to the President has a legislative character and differs from the legislative power he exceptionally possesses and exercises by means of legislative decrees (*ordonnances*), as the latter fall within the domain assigned to Parliament. The President's regulatory competence falls outside that domain and is based solely on constitutional authority. Consequently, what the President issues in this framework cannot be amended or repealed by Parliament, as it does not fall within the domain of law assigned to Parliament.

4.1.2. Implementing Regulations

Article 125(2) of the 1996 Constitution grants the Prime Minister authority to intervene in Parliament's legislative output, as he is responsible for implementing laws pursuant to Article 85 of the 1996 Constitution. Therefore, the Prime Minister is competent to issue implementing decrees to specify the conditions and controls for applying laws that are not directly enforceable and require completion by decrees or administrative decisions.

Accordingly, implementing regulations are those regulations that contain the detailed or complementary provisions necessary to facilitate the implementation of laws (Bouqeffa, 2002, p. 321 et seq.), and in this sense, they are a natural competence of the executive authority by virtue of its function of applying and implementing the law.

4.1.3. Administrative Police Regulations

These are regulations issued by the executive authority for the purpose of maintaining public order in its various elements. They are legal norms established by the executive authority to preserve public security, public tranquility, public health, and public morals, without relying on a law to implement; rather, they are independent regulations (Mahmoud, 1962, p. 82 et seq.) aimed at safeguarding public order, such as regulations governing traffic, food control, and others.

These regulations are issued by the President of the Republic, the Prime Minister, ministers, directors, governors (*walis*), or municipal presidents (*presidents of municipalities*), each within his jurisdiction.

4.2. The Rank of Regulatory Norms

Regulations are one of the elements of legality, which requires their incorporation into the state's legal order. They also represent, from another perspective, administrative acts subject to the principle of legality and its limits and constraints, especially the consequences of the hierarchy of legal norms, whether these regulations are issued in ordinary circumstances (1) or exceptional circumstances (2).

4.2.1. The Rank of Regulations in Ordinary Circumstances

Despite the fact that regulatory norms possess the characteristics of legal norms, they are, according to the organic criterion, administrative acts and therefore are not equal to legislative norms. The latter are superior to them, as they apply to administrative authorities themselves pursuant to the principle of legality in ordinary circumstances, which requires that regulatory authority be subject to superior legal norms, whether constitutional, international conventional, or legislative.

This proposition is accepted in doctrine and jurisprudence, except with regard to autonomous regulations issued by the President of the Republic. Some scholars have attempted to place them on the same hierarchical level as legislative norms issued by Parliament, since these regulations are independent of law, and Parliament may not enact norms in the domain assigned to them, nor amend or repeal them.

However, this proposition is criticized, as there is no relationship between the President's independence in issuing them apart from law and their hierarchical rank. Accordingly, regulations issued in ordinary circumstances, regardless of their type, occupy a rank lower than legislative norms (Sammy, 1993, p. 68).

4.2.2. The Rank of Regulations in Exceptional Circumstances

The occurrence of exceptional circumstances gives rise to a state of necessity (*état de nécessité*), which permits the executive authority to take exceptional measures necessary to confront these circumstances, including "necessity regulations" (*règlements de nécessité*), issued during the state of necessity.

The effects of the theory of necessity are manifested in the elevation of the legal force of necessity measures, including necessity regulations, which acquire the force of law in the hierarchy of legal norms. Consequently, administrative authorities may contravene legislation when issuing them and may even repeal or amend statutory

provisions, as they are essentially legislative acts and possess the force of law in exceptional circumstances (Sammy, 1993, p. 68 et seq.).

However, this does not mean that the executive authority is free from all constraints during exceptional circumstances; rather, the Constitution subjects it to certain controls that may not be disregarded on the basis of these circumstances. Legal scholars refer to these controls as "exceptional legality" (*légalité exceptionnelle*), within the framework of which exceptional regulations are issued (Sammy, 1993, p. 89 et seq.).

Section II: The Hierarchy of Unwritten Legal Norms

The preamble to the 1996 Constitution states that governance in the state is based on the supremacy of law. This law includes all legal norms in force in the state, regardless of their source or form. It includes written legal norms, that is, those issued by public authorities competent to enact legal norms, whether constitutional, international conventional, legislative, or regulatory, as well as other norms defined negatively as "unwritten," that is, norms other than those enacted by public authorities.

There is no doubt that these latter norms—the unwritten norms—are legal norms, whether they are principles of Islamic Sharia (Subsection 1), customary norms (Subsection 2), principles of natural law and rules of equity (Subsection 3), or general principles of law (Subsection 4).

1. Principles of Islamic Sharia

The 1996 Constitution refers in multiple provisions to the fundamental reference of the Algerian people, namely Islam. The preamble states: "Islam is one of the fundamental components of the identity of the Algerian people" and "Algeria is the land of Islam." Article 2 provides: "Islam is the religion of the state." Article 8 specifies that one of the objectives of the institutions chosen by the people is to preserve identity, including Islam. Article 6 prohibits these institutions from engaging in conduct contrary to Islamic ethics. The President of the Republic, in the oath he takes, pledges to "respect and glorify the Islamic religion." Article 176 provides: "No constitutional amendment may affect Islam as the religion of the state."

Based on all of these provisions, Article 1 of the Civil Code provides: "In the absence of a legislative text, the judge shall rule in accordance with the principles of Islamic Sharia."

These provisions establish Islamic Sharia as a source of Algerian law and an element of legality therein. This necessitates defining the principles of Islamic Sharia (1.1) and determining their rank among other legal norms according to the principle of hierarchy of laws (1.2).

1.1. The Concept of Principles of Islamic Sharia

Opinions differ regarding the meaning of the phrase "principles of Islamic Sharia" (*mabādi' al-sharī'a al-islāmiyya*) referred to in Article 1 of the Civil Code, especially when considered in conjunction with the Family Code, which refers to "provisions of Islamic Sharia" (*aḥkāṁ al-sharī'a al-islāmiyya*), and constitutional provisions that use terms such as "Islam is the religion of the state" and "Islamic ethics." What is meant by these expressions?

There is no doubt that what is meant by Islam, Islamic Sharia, or Islamic ethics is the legislative aspect or legal provisions (*aḥkām*), as they possess the characteristics of legal norms and are therefore suitable for inclusion among the official sources of law, in contrast to the purely religious aspect relating to beliefs and worship, which has no relevance to constitutional or legal provisions.

The term "principles" refers to the general principles (*kullīyāt*) of Sharia that are established by definitive textual sources (*nuṣūṣ qaṭʿiyya*) in terms of both authenticity (*thubūt*) and meaning (*dalāla*), that is, the Qur'an and Sunnah, which are beyond dispute, in contrast to specific rulings (*aḥkām juzʿiyya*), concerning which there are multiple opinions and schools of thought, making reference to them unproductive (Sammy, 1993, p. 68 et seq.).

Accordingly, the assertion by some scholars that the phrase "principles of Islamic Sharia" as a source of law refers to general rules common to the various schools of Islamic jurisprudence (*madhāhib*) is erroneous, as it confuses Islamic Sharia with Islamic jurisprudence (*fiqh*). The former consists of general principles derived from the Qur'an and Sunnah, whereas the latter represents interpretive and detailed *ijtihād* based on those texts and is merely human scholarly opinion, which does not possess the same binding force as the provisions contained in the textual sources of revelation.

1.2. The Rank of Principles of Islamic Sharia

The prevailing opinion defended by one doctrinal school and followed in practice is that the principles of Islamic Sharia are nothing more than a material source of legislation on the one hand and a supplementary official source to which the judge resorts if a legislative text is lacking on the other hand. However, this opinion lacks convincing legal foundations, in contrast to the opinion that considers these principles an official source of law and confers upon them constitutional character, making them superior to legislative and regulatory norms as well as international conventional norms.

This latter opinion is based on the true meaning of the constitutional and legislative texts governing this issue. The principles of Islamic Sharia are either considered a supplementary official source of law according to one doctrinal school (1.2.1) or general principles of law with constitutional nature according to another school (1.2.2).

1.2.1. First View: Principles of Islamic Sharia as a Supplementary Source of Law

Some scholars hold that the principles of Islamic Sharia are a supplementary official source of law that comes after legislation. The judge may resort to them only when a legislative text is lacking to resolve the dispute. This view is based on two arguments:

First: The meaning of Articles 1 of the Civil Code and 222 of the Family Code. Both articles refer the judge to the principles or provisions of Islamic Sharia if a legislative text is lacking.

Second: The meaning of the constitutional provisions. The Constitution, in its preamble and Article 2, directs the legislator to draw inspiration from Islam and its provisions when enacting legislation. Thus, the principles of Islamic Sharia are not binding on either the legislator or the judge. This means that the constitutional text in Article 2 addresses the legislator, not the judge, and therefore has no effect on the rank of the

principles of Islamic Sharia, which remain a supplementary source of law pursuant to Article 1 of the Civil Code.

1.2.2. Second View: Principles of Islamic Sharia as Constitutional Principles

A group of jurists, including Professor Abd al-Razzaq al-Sanhuri, Kamal Abd al-Wahid al-Jawhari, Dr. Sammy Jamal al-Din, and many others, hold that the constitutional provisions confer constitutional character upon the principles of Islamic Sharia (Al-Jawhari, 1994, p. 58 et seq.). Consequently, they are general principles of law and indeed occupy the apex of such principles, which places them hierarchically after the Constitution and before all other sources of law.

This view is based on the following arguments:

First Argument: The True Meaning of Article 2 of the 1996 Constitution, which states: "Islam is the religion of the state." This provision refers to the legislative system of Islam as the binding system for all authorities and institutions in the state.

This interpretation is confirmed by the fact that the term "religion" (*dīn*) in the Arabic language and Qur'anic terminology refers to legislation and law. Evidence for this is found in the Qur'anic verse: "It was not [possible] for him to take his brother within the religion [law] of the king" (Qur'an 12:76), meaning within his legal system. Similarly, the verse: "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse—lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion [law] of Allah" (Qur'an 24:2). Here, "religion of Allah" means His legislative and penal system prohibiting adultery and prescribing punishment for it.

Thus, "religion" (*dīn*) means legal provisions or principles constituting what is called Islamic Sharia. Accordingly, the meaning of Article 2 of the Constitution is that the Islamic legislative system is the supreme law and the supreme legality from which all legal norms in the state emanate. Consequently, the provisions of Islamic Sharia are an official, formal source of law, occupying the rank of constitutional principles, subordinate only to the Constitution, while superior to international conventional, legislative, and regulatory norms (Al-Mawdudi, 1971, p. 116 et seq.).

There is no doubt that this address is directed to all state authorities. Article 8 of the Constitution requires public institutions to make the preservation of Islam, as one of the components of the Algerian people's identity, one of their objectives. Article 9 provides that these institutions may not engage in conduct contrary to Islamic ethics. Article 76 requires the President of the Republic, in the oath he takes, to pledge to protect and glorify the Islamic religion. Similarly, Article 178 requires the constituent authority, when amending the Constitution, not to affect Islam as the religion of the state.

This means that the address in Article 2 of the 1996 Constitution is directed to the state in all its institutions and authorities, requiring them to make the provisions of Islamic Sharia their supreme law.

To confirm this, proponents of this view add that Article 2 appears in the chapter on general provisions, and these provisions do not address only the legislator, as proponents of the first view claim, but address all state authorities, including the judiciary, especially when considered in conjunction with the aforementioned constitutional provisions.

Second Argument: The Legal Nature of Article 2 of the 1996 Constitution: The assertion that the constitutional text in Article 2 is merely advisory and directive, not binding, is refuted. Constitutional provisions by their nature do not carry this meaning except by indication. Article 2 appears at the head of the Constitution's provisions, making it a binding text for all public authorities in the state. Moreover, this article appears in the chapter on general principles governing Algerian society, making it the apex of general principles of law, which legal doctrine recognizes as having constitutional character and considers part of public order (*ordre public*).

This means that the constitutional text in Article 2 does not provide guidance but imposes obligations that may not be violated, as they are part of public order. These obligations consist of the necessity of referring to the principles of Islamic Sharia when enacting legal norms or when applying them. Consequently, these principles are superior to other legal norms, including international conventional norms and legislative norms.

Therefore, the legislator must refer to them when enacting legislation or approving international agreements, and if the legislator violates them, this is deemed unconstitutional. Certainly, the constitutional text imposes the same obligation on the judge as on the legislator. Given that the principles of Islamic Sharia possess constitutional character, the judge, when reviewing the conformity of a legislative text with the principles of Islamic Sharia, does so pursuant to a constitutional provision, as if reviewing the conformity of the legislative text with the Constitution (Al-Jawhari, 1994, p. 78 et seq.).

In conclusion, the principles of Islamic Sharia are the definitive provisions contained in the Qur'an and Sunnah, not the jurisprudential rulings derived by jurists. These principles possess the characteristics of legal norms and are therefore enforceable in their own right, without the need for codification by the legislator. They have become, by constitutional provision, an official source of law in Algeria, as they are among the general principles of law inherent and established in the conscience and conscience of the Algerian people. In this capacity, they possess binding force that places them after the Constitution and above all other legal norms in the hierarchy of legal norms (Al-Jawhari, 1994, p. 75 et seq.).

2. Customary Norms

The legislator recognized custom (*'urf*) as a source of law in Article 1 of the Civil Code, as well as Article 1 *bis* of the Commercial Code. Numerous other articles refer to customary norms, including Articles 387, 388, and 389 of the Civil Code, which contain the phrase: "unless there is an agreement or custom providing otherwise."

Consequently, the legislator recognized customary norms as binding legal norms in their own right, without the need for intervention by the judge or the legislator. This necessitates defining customary norms (2.1) and determining their rank among legal norms according to the principle of hierarchy of legal norms (2.2).

2.1. The Concept of Customary Norms

Customary norms are those legal norms arising from the consistent practice of individuals or bodies with respect to a certain matter in a certain manner, with the belief that this practice is binding upon them. This belief confers upon custom its legal character.

Accordingly, customary norms are legal norms (2.1.1) that are unwritten (2.1.2).

2.1.1. Customary Norms Are Legal Norms

There is no doubt that recognizing customary norms as legal norms means recognizing custom as an official source of law. Consequently, these customary norms possess inherent binding force without the need for intervention by the legislator or the judge.

Recognition of customary norms as legal norms has several consequences, including: customary norms are binding on individuals even if they are unaware of them, as well as on public bodies; the court is obligated to apply customary norms on its own initiative, without waiting for a litigant to invoke them; they are applied and interpreted in the same manner as other legal norms; and the judge is subject to the oversight of the Supreme Court regarding the correct application of custom, provided that the existence of custom has been established before the judge.

2.1.2. Customary Norms Are Unwritten

Customary norms are binding legal norms, even though they are not issued by the competent legislative authority in the state. Rather, they are unwritten norms established in the conscience of society as binding. Thus, they are created by the conscience of society, not by the legislator.

2.2. The Rank of Customary Norms

Recognition of custom as an official source of law requires examining its hierarchical rank among other sources of law (Al-Jawhari, 1994, p. 108). This matter is governed by Article 1 of the Civil Code, Article 1 *bis* of the Commercial Code, and numerous other civil and commercial provisions that refer to customary norms.

Based on these provisions, customary norms come after legislation and the principles of Islamic Sharia, making custom a supplementary official source (Al-Banna, 1992, p. 81 et seq.). Consequently, the judge resorts to customary norms only if a legislative text is lacking and no principle of Islamic Sharia governs the matter.

However, the priority of legislation over custom concerns mandatory legislative norms, not supplementary norms.

3. Natural Law

The Algerian legislator considered natural law among the official sources of law, as provided in Article 1 of the Civil Code, which states: "If none is found, then in accordance with the principles of natural law and the rules of equity."

The legislator has also referred to the rules of equity on numerous occasions, including Articles 65, 107, and 110 of the Civil Code. The President of the Republic and judges, in the oath they take upon assuming office, pledge to seek to achieve the principles of justice.

This necessitates defining natural law (3.1) and determining its rank among other sources of law in the hierarchy of legal norms (3.2).

3.1. The Concept of Natural Law

The jurist Grotius defined natural law as: "the rule that sound reason suggests, by which it is judged that an act is unjust or just because it is contrary to or in conformity

with reason, and that God, the creator of nature, forbids or commands it" (Saghir, 2001, p. 84 et seq.).

The idea of natural law began as a complete legal system governing all human relations in all countries and eras, a system existing in nature and accessible to human beings through reason. It comprises two elements: first, fundamental principles, few in number, which constitute what legal scholars call "primary natural law" (*droit naturel primaire*); second, a complete set of detailed rules constituting that eternal legal system.

Accordingly, the phrase "natural law" indicates two meanings: first, fundamental principles, few in number, which legal scholars call "primary natural law"; second, detailed rules derived from them to achieve justice in specific cases, which legal scholars call "secondary" or "applied natural law" or "rules of equity."

This duality in concept explains the doctrinal disagreement regarding natural law and underlies the numerous criticisms directed at it, foremost among which is that it is a vague philosophical idea.

It appears that the Algerian legislator, by the reference in Article 1 of the Civil Code, is among the proponents of natural law, thereby transcending the doctrinal debate surrounding it and the criticisms directed at it. However, the legislator chose to combine both ideas, referring to the few, unchanging principles and, by "rules of equity," referring to the detailed rules that the judge may derive from those fixed principles to achieve justice in each case individually.

3.2. The Rank of Natural Law

Article 1 of the Civil Code grants natural law a position among the official sources of law, making it a supplementary official source (Morcos, 1987, p. 467) that comes after legislation, the principles of Islamic Sharia, and customary norms, because the judge resorts to natural law only where no legislative text, principle of Islamic Sharia, or customary norm is found.

This means that although the legislator followed the proponents of natural law in considering it an official source of law, the legislator did not follow them in the rank granted to it in the hierarchy of legal norms. Proponents of natural law hold that the principles of natural law dominate the entire legal system and represent the fixed, common ideal shared by all human beings, exactly like constitutional norms, or even superior to them.

Conversely, proponents of the historical school attacked the idea of natural law and held that it is futile to search for legal norms based on vague and expansive philosophical assumptions. They therefore called for dispensing with the idea of natural law.

As a middle ground between its proponents and critics, the Algerian legislator, like the French legislator and other comparative legislations, recognized the status of natural law as a supplementary official source.

4. General Principles of Law

In addition to the aforementioned legal norms, legal doctrine and jurisprudence recognize another category of unwritten legal norms, namely "general principles of law" (*mabādi' 'amma lil-qānūn / principes généraux du droit*).

Discussion of them has been delayed to conform to the legal text in Article 1 of the Civil Code, which omitted reference to them. Methodology therefore required postponing discussion of them until after examining the legal norms enshrined by the legislator.

General principles of law are purely judicial creations. Nevertheless, legal doctrine and jurisprudence agree on considering them binding legal norms, constituting part of the elements of legality. Given the legislator's silence on these principles and the scarcity of Algerian judicial decisions that enshrine them and rely on them in adjudication, it is necessary to define these principles (4.1) and determine their hierarchical rank among other sources of law according to the principle of hierarchy of legal norms (4.2).

4.1. The Concept of General Principles of Law

Principles are defined as a set of general facts that change slowly in their entirety and possess relative rigidity as they evolve with other facts. Principles stand at the boundaries of law, governing it and guiding the judge, who is usually their originator.

General principles of law are unwritten norms derived by the judiciary from the fundamental components of society and the rules of the legal order in the state, which the judiciary proclaims in its decisions as binding legal norms. They are therefore defined as: "a set of fundamental or essential legal rules that the administration is obligated to observe in its individual and regulatory decisions in all their manifestations, which consequently possess legal force but are nevertheless unwritten, as they do not derive directly from a written legal text but find their direct source in jurisprudence" (Raafat, 1992, p. 15 et seq.).

The judiciary considers them the most important unwritten source of norms of legality. From all these definitions, it can be deduced that these principles were created by the judiciary (4.1.1) and are nevertheless considered binding legal norms (4.1.2).

4.1.1. General Principles of Law as a Jurisprudential Theory

Credit for deriving and establishing them as binding legal norms belongs to the French *Conseil d'État* (Council of State) through its decisions, and this methodology subsequently became adopted in the jurisprudence of many countries, such as the Egyptian Council of State.

In Algerian jurisprudence, the *Conseil d'État* has enshrined them in numerous decisions, including the decision dated July 27, 1998 (Algerian Council of State, 1998, pp. 84–85), which stated in one of its recitals: "Given that the judge, like any state employee, necessarily benefits from constitutionally guaranteed rights and that the administrative judge is obligated to monitor respect for these guarantees." This recital shows that the Council of State relied on a general principle, namely the principle of equality.

In a subsequent decision dated January 17, 2000, the Council of State confirmed this approach (Algerian Council of State, 2002, pp. 165–167).

4.1.2. General Principles of Law as an Independent Theory

Despite the fact that general principles of law are unwritten norms created by the judiciary, they are fundamental and essential norms, meaning that their substantive importance almost surpasses that of written norms. They are, according to *Commissaire du gouvernement* Letourneur, "great principles," and *Commissaire du*

gouvernement Gentot, in his report on the *Dame David* decision of October 4, 1974, describes them as expressing or reflecting ideas accepted by all, which constitute our legal system (Raafat, 1992, p. 18 et seq.).

It suffices to cite examples of them to demonstrate their importance and independence as a source of law: the principle of equality before the law and equality before the courts, the principle of respect for the rights of the defense, the principle of acquired rights, and the principle of hierarchy of legal norms.

General principles of law represent a complete legal corpus discovered and formulated by the judiciary based on legal norms, the foundations of the system of government in the state, and its various systems, which contain the broad outlines and general trends. Legal general principles thus constitute an interpretation by the judiciary of the general conscience and the will of the legislator (Al-Tamawi, 1986, p. 804).

4.2. The Rank of General Principles of Law

Legal doctrine and jurisprudence differ regarding the rank of these principles among other legal norms. Professor Letourneur holds that they specifically possess the value of written law and are therefore binding on all authorities at all levels, including the President of the Republic. As such, only the legislator may contravene them; regulations may not contravene them, as they rank lower in the hierarchy of legal norms.

However, following the 1958 Constitution in France, disagreement emerged among jurists regarding the legal value of general principles, with the view appearing that elevates them to the rank of constitutional norms, making them superior to legislation issued by Parliament.

This was confirmed by the French *Conseil d'État* in numerous decisions. For example, confronted with administrative purge laws that did not grant civil servants the right of defense or any serious guarantees, the Council of State declared the necessity that purge procedures respect the principle of respect for the rights of the defense, contrary to statutory provisions.

In a case challenging a decision of the bureau responsible for supervising and announcing the results of the election of members of the High Council of the Judiciary, whose decisions are not subject to challenge according to Article 8 of the 1947 law (*CE Falco et Vidaillac*, April 17, 1953), the *Conseil d'État* went even further by recognizing the right to challenge an administrative decision by *recours pour excès de pouvoir* (application for judicial review) even where a statute expressly provided that the decision was not subject to administrative or judicial challenge, on the ground that such recourse exists even in the absence of a text, as long as it ensures respect for legality (*CE Dame Lamotte*, February 17, 1950).

Similarly, Algerian jurisprudence, in its decision dated July 27, 1998 (Algerian Council of State, 1998), cited above, held: "Given that the judge, like any state employee, necessarily benefits from constitutionally guaranteed rights and that the administrative judge is obligated to monitor respect for these guarantees."

The Council of State relied on the principle of equality to explicitly set aside the text of Article 99/02 of the former Basic Law of the Judiciary, accepting a challenge by *recours pour excès de pouvoir* to a disciplinary decision, contrary to the provision of the article that it was not subject to challenge. This was confirmed in a subsequent decision dated January

17, 2000 (Algerian Council of State, 2002), which held: "Recourse for excess of power exists even in the absence of a text and aims to ensure respect for the principle of legality in accordance with the principles."

The Council of State referred to general legal principles to set aside the text of Article 99/02 of the former Basic Law of the Judiciary, which reveals that the Algerian Council of State followed the position of the French Council of State in considering general principles of law to be constitutional principles that the legislator may not contravene.

Consequently, the theory of general principles of law, by virtue of its definition and characteristics, is an unwritten theory, applied even in the absence of a text, deriving its binding force from the creative authority of the administrative judge. It substitutes for absent legislative text and ensures appropriate interpretation of norms of legality for defective legislative text. It also ensures the unity and coherence of the legal system, imposing its authority even on legislation issued by the legislative authority. These principles are the judge's means of exercising constitutional review of laws and regulations, even indirectly.

In conclusion, legal norms, both written and unwritten, are hierarchically arranged among themselves in terms of their binding force into several ranks, some superior to others, according to the following order: constitutional norms occupy the apex of the legal hierarchy, followed by general principles of law, foremost among which are the principles of Islamic Sharia, followed by international conventional norms, then legislative norms, foremost among which are organic laws, followed by legislative decrees relating to finance laws or issued in exceptional circumstances, regulatory norms issued in exceptional circumstances, legislative decrees in ordinary circumstances, then regulatory norms issued in ordinary circumstances, then customary norms, and finally, at the base of the legal pyramid, principles of natural law and rules of equity.

Final Considerations and Conclusion

This study reveals a striking paradox: the vast gap between theory and practice. In theory, the principle of hierarchy of legal norms offers an ambitious prospect for realizing and consolidating the rule of law, as it provides an effective guarantee of subjecting all public activities to law, imposing constraints upon them and establishing sanctions for their transgression.

In practice, however, numerous and serious cases of conflict between norms of unequal hierarchical rank reveal the reluctance of the judiciary—the oversight authority responsible for protecting legality in the state—to confront the problem and apply the principle.

Not a single case has been found in which the Algerian judge exercised constitutional review of legislation or directly applied constitutional provisions. Only two instances exist in which the Algerian judiciary recognized the supremacy of treaties over legislation, and one of these instances represents a serious error, as it concerned the criminal law field, which is governed by the principle of legality in criminalization and punishment (*nullum crimen, nulla poena sine lege*), which excludes treaties from this domain unless they are enshrined in legislative norms issued by Parliament. The second instance concerned a law prior to ratification of the treaty, placing it within the ordinary

case of repeal of a prior text by a subsequent text, rather than oversight of treaty supremacy.

Only two decisions of the Supreme Court exist concerning the ordinary judiciary's oversight of the conformity of implementing regulations with legislation issued by Parliament, both relating to the same issue. In these decisions, the Supreme Court expressly declared its application of the principle of hierarchy of laws, raising it *ex officio*, precisely defining its content and consequences—a judicial precedent truly worthy of commendation.

In the same vein, the challenge to a disciplinary removal decision issued by the High Council of the Judiciary against a judge presented a favorable opportunity for the Council of State, which issued two decisions on the same case embodying the administrative judge's courage in departing from legislative text when it contravenes general principles of law possessing constitutional character. The Council relied on the principle of equality, constitutionally guaranteed, to refuse to apply the immunity of decisions of the High Council of the Judiciary in disciplinary matters, despite the express statutory provision granting such immunity against any challenge.

Undoubtedly, these instances, despite their scarcity, reveal the readiness of the Algerian judge to join the ranks of comparative jurisprudence and enshrine the principle of hierarchy of legal norms, undertaking the task of completing legislation and achieving its coherence, thereby making the judiciary truly the guardian of legality and the guarantor of rights and freedoms.

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