

CHAPTER : 5

Sources of Law.

The Algerian legislator dealt with the sources of the law and arranged them for us according to their importance according to the first article of the Civil Code: ((The law applies to all issues that its texts address in their wording or content. If there is no legislative text, the judge will rule in accordance with the principles of Islamic law, and if there is none, then in accordance with custom. If it does not exist, then in accordance with the principles of natural law and the rules of justice.

From the above, it becomes clear to us that there are official sources, which are divided into original sources, which are legislation, and backup sources, which are the principles of Islamic law, custom, the principles of natural law, and the rules of justice. There are also unofficial sources, which are represented in jurisprudence and jurisprudence.

- ✚ **Official Sources of The Law.**
- ✚ **Unofficial Sources of The Law.**

1. Official Sources of The Law :

a. The original sources of the law

Legislation is the original and first official source of Algerian law, and is divided into three types:

- **Basic legislation:** It is the constitution and is considered the highest law. It defines a set of general basic rules that show the form of the state and the system of government existing in it. It also defines the public authorities (legislative, executive, judicial). It guarantees basic rights, individual and collective public freedoms, and duties.^[1]

The first constitution was in September 1963 after a popular referendum, which established the socialist orientation of Algeria and approved the status of a single party, the National Liberation Front. Finally, the 2020 constitution.

- **Ordinary legislation :** Ordinary law means those legal rules issued by the competent authority in the state in accordance with the provisions of the Constitution, and it is customary for ordinary legislation to be called (law).^[2]
- **Subsidiary legislation (regulation):** It is legislation enacted by the executive authority, within the limits set by the Constitution. It is its inherent jurisdiction because it does not replace the legislative authority, and it is a lower level than ordinary legislation.

The regulations are divided into three types, which are: Executive regulations, organizational regulations, control or police regulations.^[3]

b. Back-up sources of the law:

- **Principles of Islamic Sharia :** It is considered the second official source of Algerian law after legislation and the first reserve source according to Article 1 of the QC, and it can be defined as all the provisions that God Almighty has legislated for His servants that came either through the Holy Qur'an or the Sunnah.^[4]
- **Custom :** It is an unwritten law whose source is an implicit agreement concluded by members of society who voluntarily subjected themselves to a certain behavior, over a period of time, which gave it the force and authority of the law.^[5]

1- ديباجة دستور الجمهورية الجزائرية الديمقراطية الشعبية. ج ر عدد 82، مؤرخة في 30 ديسمبر سنة 2020، ص 05.

2- يحي قاسم علي، المدخل لدراسة العلوم القانونية (نظرية القانون، نظرية الحق)، طبعة 01، كوميت للتوزيع، القاهرة، 1997، ص 96.

3 - محمدي فريدة-زواوي-، المدخل للعلوم القانونية (نظرية القانون)، الجزائر، ب س ط، ص 58.

4- علي فيلالي، مقدمة في القانون، موفم للنشر، الجزائر، 2010، ص 163.

5- Ferrière, Dictionnaire de droit et de pratique, édition 1969, tome 1, ve, coutumes,

Custom consists of two basic elements ;

- ✓ The material pillar: This means that people are accustomed to following a certain behavior, and the necessity of adhering to it has settled in the collective conscience.^[1]
- ✓ The moral pillar: the belief that the followed behavior has become binding and must be followed and that whoever violates it is exposed to a material penalty.^[2]
- **Principles of natural law and rules of justice:** It is considered a reserve source for Algerian law and its fourth official source. The principles of natural law represent the general principles of justice, and the rules of justice are a feeling that prompts the judge to choose the best solution to the dispute before him.^[3]

2. Unofficial Sources of The Law :

- a. **Jurisprudence:** is defined as a set of legal opinions issued by legal scholars, i.e. jurists, on the occasion of explaining and interpreting the law, and those opinions appear through literature and research.^[4]
- b. **Judiciary:** The set of rulings issued by the courts in disputes before them. It is also called the set of legal principles that are derived from the stability of judicial rulings^[5] rulings^[5]

1- حسن كيرة، المدخل إلى القانون (القانون بوجه عام النظرية العامة للقاعدة القانونية النظرية العامة للحق)، منشأة المعارف، الإسكندرية، 2014، ص 275.

2- محمدي فريدة-زواوي-، المرجع السابق، ص 77.

3- محمدي فريدة-زواوي-، المرجع السابق، ص 89.

4- محمد حسين منصور، المدخل إلى القانون (القاعدة القانونية)، الطبعة 1، منشورات الحلبي الحقوقية، بيروت-لبنان، 2010، ص 235.

5- محمد حسين منصور، المرجع السابق، ص 240.

Sources of Law schema

Official Sources of The Law

- The original sources of the law :
 - Basic legislation
 - Ordinary legislation
 - Subsidiary legislation (regulation)

 - Back-up sources of the law :
 - Principles of Islamic Sharia
 - Custom
 - Principles of natural law and rules of justice
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Unofficial Sources of The Law :

- Jurisprudence.
- Judiciary.

Sources of Law schema.