



Door 2

THE HIERARCHY OF LEGAL NORMS

The hierarchy of norms is a hierarchical ranking of the set of norms that make up the legal system of the rule of law to ensure consistency and rigor. It is based on the principle that a norm must respect that of the higher level and implement it by detailing it. In a conflict of norms, it allows the higher norm to prevail over the norm that is subordinate to it. Thus, an administrative decision must respect laws, international treaties and the Constitution.

Formulated by *Hans Kelsen* (1881-1973), a legal theorist and author of "*The Pure Theory of Law*", the notion of a hierarchy of legal norms can only be meaningful if its respect is controlled by a court. The control can be carried out by exception in a specific dispute (ex: by a judge in the United States) or by action when referring a specific body (the constitutional Council in France).

The Constitution, which establishes and organizes the different organs composing the State, is generally considered to be the highest norm. Its supremacy can however compete with international rules. In Europe, this is the case with the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR), which give primacy to international commitments.

THE GENERAL SCHEME OF THE HIERARCHY OF NORMS

THE CONSTITUTIONAL BLOC: The constitution the most supreme norm.

THE CONVENTIONAL BLOC: Treaties and Conventions ratified.

THE LEGISLATIVE FIELD AND THE ENROLMENT OF THE LAW: organic laws, ordinary laws and ordinances.

THE REGULATORY FIELD: Presidential decrees, executive decrees, administrative acts (inter-ministerial decrees, ministerial decrees, Wilayas decrees, communal decrees, individual decisions) ancillary texts (circulares, instructions and administrative notices).

I- **THE CONSTITUTIONAL BLOC:** every state necessarily has a constitution. In the present legal order, the constitution is the supreme norm. This is the constitutional law; it is also called "fundamental law". The constitution is defined as the set of principles and rules governing the functioning of public bodies. In this sense, it is primarily an instrument for rationalizing State activity, since it determines the public organs of the State; it is also an instrument for the protection of the rights and freedoms of individuals; even if they fall under private law (defence right, security right, marriage right ... etc).

II- **THE BLOC OF CONVENTIONALITY:** the set of treaties, conventions ratified and signed between two or more countries, the entry into force of international treaties or conventions must be in conformity with the constitution, their constitutional control is compulsory by the Constitutional Council, in addition, must be approved by Parliament, for example: the International Convention to Combat Corruption.

III- **THE LEGISLATIVE FIELD AND THE ENROLMENT OF THE LAW:** there are organic laws, ordinary laws and presidential ordinances.

A- ORGANIC LAWS: constitute a particular category of laws between the constitution and the ordinary laws (infra-constitutional and supra-legislative). Their function is to supplement and specify the organization and functioning of public authorities in the cases specifically intended by the constitution or in fields deemed important by the constituent (ex: the Organic Law on Elections, Political Parties, etc.) and are voted by Parliament according to a specific procedure, the details of which are laid down in Article 123 of the constitution (qualified majority, constitutional review).

B-ORDINARY LAWS: are the acts voted by the parliament according to the legislative procedure established by the constitution (initiative, simple majority.. Etc) its thirty (30) fields are fixed by article 140 of the constitution. These laws, when they emanate from the government, are submitted by the State's Council before they are presented to parliament (when the law emanates from the government, it is called a **bill** and when the law provides from parliamentarian, of proposed legislation).

C-ORDINANCES: these are acts issued by the President of the Republic, for the rapid application of his policy, or during the vacancy or out of session period of Parliament; the President of the Republic intervenes in the thirty fields of law. These texts taken by the President, however, must be approved by both Houses of Parliament at their next session; this approval gives them legislative value (the value of the law). Article 142 of the Constitution provides that: "Decisions not adopted by Parliament shall lapse".

IV- REGULATORY FIELD : contains the following categories:

A-PRESIDENTIAL DECREES (AUTONOMOUS REGULATIONS): are taken from matters which are exclusively reserved to the president of the republic. In principle, apart from the thirty fields reserved by the constitution to the parliament, the rest of the matter falls under the exclusive competence of the president of the republic.

B- EXECUTIVES DECREES: this type of decree allows taking concrete measures to enforce laws that don't provide all the details of their concrete application. The law itself may provide that the government must issue decrees to supplement its provisions, but the government can also act ex-officio to fulfil its enforcement role. It is evident that these so-called regulations of application are subordinate to laws which complement and specify, and consequently can not contain provisions that are contrary to them.

C-DECISIONS: Below these texts, other authorities are the source of regulations. These are Ministers who make ministerial or inter-ministerial orders. The Walis and the PCA Presidents may also make orders to carry out their duties, as well as for administration or the public service in general; they use ancillary texts such as: circulars, instructions and administrative notices.

The following scheme describes the hierarchy of legal norms

GENERAL SCHEME OF HIERARCHY OF LEGAL NORMS

Text	Type	Function
constitution	fundamental law at the highest level of the hierarchy of norms	Approved by people, it establishes the rules of the organization and functioning of public authorities
Treaties	treaties and conventions	Are signed and ratified between the concerned countries and approved.
Organic laws	infra-constitutional and supra-legislative	Lay down the rules for the functioning of the State (Article 141 of the Constitution)
Laws	Ordinary laws	Are adopted and voted by the parliament in accordance with the legislative procedure laid down by the Constitution (Article 138)
	Ordinances	Emanate from the President of the Republic and after they are approved by the parliament they become of a legislative nature (art 142 of the constitution)
Regulatory acts	presidential decrees	Are taken by the President of the Republic and fall within the autonomous regulatory power (art 143 of the constitution)
	Executive decrees	Are taken by the Prime Minister, they are linked to the law they supplement (art 143 of the constitution)
	Inter-ministerial orders	Are taken by two or more Ministers
	Ministerial orders	Are issued by the Ministers as authorizing officers
	Wilayas orders	Emanate from the executive organs of the Wilaya
	municipal orders	Are taken by the municipal authorities
	Individual decisions	Concern the statutes of the persons concerned
Ancillary texts	circulars, instructions and administrative notices	It lays down the detailed rules for administrative

❖ QUESTIONS:

- TRANSLATE THE UNDERLINED TERMS INTO ARABIC.
- GIVE AN ABSTRACT (IN ARABIC) TO THE TOPIC.