

وزارة التعليم العالي والبحث العلمي  
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مقياس المصطلحات القانونية الانجليزية

**English legal terminology**

موجه لطلبة السنة 1 ماستر (قانون البيئة والتنمية المستدامة/قانون الإدارة الإلكترونية)

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## I) Definition of law.

### تعريف القانون

Law aims at organizing individuals in a society, protects also **liberties** and **private interests** of individuals. The term "Law" means:

- A body of **general rules** that governs individuals in a society, which persons must **obey**.
- The **principles** and **regulations** established in a community by **authority** and applicable to its people, whether in the form of **legislation** or of **custom** and **policies recognized**.
- Any written or **positive rule** or collection of rules prescribed by the competent authority of **state** or **nation**, regulated by **constitution**.

### Legal terms:

law = القانون

liberties = الحريات

private interest = المصالح الخاصة

general rules = قواعد عامة

obey = يخضع

principles = المبادئ

regulations = التنظيمات / اللوائح

authority = السلطة

legislation = التشريع

custom = العرف

policies recognized = السياسات المعترف بها

positive rule = القواعد الوضعية

state = الدولة

nation = الأمة

constitution = الدستور

## II) The hierarchy of legal norms

### تدرج القواعد القانونية

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 the Constitution, international treaties and laws.

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 Court** in Algeria).

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.

**1- 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).

**2- The conventional bloc:** 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 Court, in addition, must be **approved** by Parliament, for example: the International Convention to Combat Corruption.

**3- 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 140 of the constitution (**absolute majority, compliance control of the law to the Constitution**).

**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 139 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, it is called a **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: "Ordinances **not adopted** by Parliament shall **lapse**".

**4- The 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- Executive decrees:** this type of decree **allows** taking concrete measures **to enforce** laws that don't provide all the details of their concrete application.

**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.

### Legal terms :

**hierarchical ranking** = ترتيب هرمي

**norms** = القواعد

**conflict** = تنازع

**consistency** = تناسق

**rigor** = دقة

**to prevail** = تسود

**carried out** = تُمارس

**dispute** = نزاع

**supremacy** = السُّمو

**constitutional bloc** = الكتلة الدستورية

**conventional bloc** = الكتلة الاتفاقية

**constitution** = دستور

**constitutional court** = المحكمة الدستورية

**treaties** = معاهدات

**conventions** = اتفاقيات

ratified	= مُصادق عليها
organic law	= قانون عضوي
ordinary law	= قانون عادي
ordinance	= أمر
legislative field	= مجال التشريع
regulatory field	= مجال التنظيم
fundamental law	= التشريع الأساسي
set of principles	= مجموعة من المبادئ
treaties	= معاهدات
conventions	= اتفاقيات
rights	= الحقوق
freedoms	= الحريات
conformity	= مطابقة
compulsory	= وجوبي
approved	= يوافق عليها
infra-constitutional	= التحت دستورية
supra-legislative	= الفوق تشريعية
to supplement	= تكمل
deemed	= تُعتبر
organization	= تنظيم
functioning	= سير
the constituent	= المؤسس الدستوري
specific procedure	= إجراءات خاصة
absolute majority	= الأغلبية المطلقة
compliance control of the law to the Constitution	= مراقبة مطابقة القانون للدستور
ordinary laws	= القوانين العادية
initiative	= مبادرة
simple majority	= الأغلبية البسيطة
emanate	= تصدر

submitted = تُعرض

State's Council = مجلس الدولة

bill = مشروع قانون

proposed legislation = اقتراح قانون

Ordinances = أوامر

issued = صادر

vacancy = شغور

intervenes = يتدخل

out of session period of Parliament = العطلة البرلمانية

not adopted = غير موافق عليها

lapse = تُلغى

regulatory field = مجال التنظيم

presidential decrees (autonomous regulations) = المراسيم الرئاسية (اللوائح المستقلة)

executive decrees = المراسيم التنظيمية

allows = يسمح

to enforce = تطبيق

decisions = القرارات

### III) GENERAL THEORY OF UNILATERAL ADMINISTRATIVE ACT

#### النظرية العامة للقرار الإداري

The **power** of **unilateral action** is presented as the property of administrative action. If this power is a **privilege** of the administration, it does not mean that it can not be found in the **private reports**.

#### 1- The identification of unilateral administrative act

The administrative act is the power of the administration to impose rights and obligations on subjects of law without their **consent**.

There is no single criterion for isolating the unilateral administrative act. It is then necessary to examine an **organic criterion** (author of the act), a **formal criterion** (presentation of the act), and **material criterion** (implementation of an administrative power).

#### 2- The characteristics of unilateral administrative act

The unilateral administrative act may be characterized by its **author**, its **content** or its **form**:

##### a- The author of the act

In principle the author of the administrative act is a **public person** but in a certain number of cases it can be a **private person**.

**a-1- Public persons:** If in principle the author of an administrative act is a public person, not all the acts of all the public persons are administrative acts. Thus, Conseil d'Etat **excluded** from the category "administrative act", **legislative acts** and **judicial acts**. Moreover, certain acts of administrative authorities are not considered as an administrative act by the judge. These are **acts of government**.

**a-2- Private persons:** The situation here is exactly the opposite. Exceptionally their actions may be administrative. In the first instance, Conseil d'Etat recognized that persons who were neither public nor private could issue administrative acts in so far as they were **entrusted** with a public service mission. Subsequently, Conseil d'Etat admitted that the act of a private person carrying out a public service mission involving the prerogatives of a public authority is an administrative act. Finally, the act of a private person managing a



public service of an industrial and commercial nature is an administrative act if it relates to the organization of the service (CE 15 janvier 1968, époux Barbier).

### **b- The content of the act**

In principle, the administrative act is **normative**, but these standards can be general or individual.

**b-1- Regulatory acts:** Some acts are general and impersonal: they are regulatory acts. These acts specify, for example, the organization of services or set **the statutory rules** of a public function body. Since these rules are general and impersonal, the regulatory act has a multitude of unspecified **recipients** which may be the whole of the administered or only a category of them.

**b-2- Individual acts:** On the contrary, individual acts are addressed only to persons named by name. Whether it is one person or several. The typical example is the act of **appointing an official**, but it can also be an act granting an authorization or refusing it to that person.

### **c- The form of the act**

The unilateral administrative act is characterized by its general form and by that of its various elements.

**c-1- Explicit and implicit decisions:** **Explicit** decisions are the most common acts, they express in writing the will of their author. This is the case of decrees, ministerial decrees or notes, in short all formal acts, that is to say almost all the acts of the administration. Conversely, the administration's silence for two months amounts to an **implicit** decision of **rejection**. But, some implicit decisions can also have a positive effect which means accepting an application. This is the case for building permits.

**c-2- The elements of the act:** Administrative acts contain certain elements which play an important role: **the visas** (the texts by virtue of which the act is taken) and the **reasons** (the facts which justify the decision).

### **3- The legal regime of unilateral administrative act**

Specific conditions are in place for its **elaboration**, **entry into force**, **execution** and **disappearance** in order to make it **lawful**.

### a- Elaboration

The author of the act, the administrative authority which draws up an act must also be responsible for its disappearance and modifications.

The person responsible for the act must impose his signature, he must be competent. Three cases of **incompetence** should be noted:

- **Rationae Materiae**: where an administration intervenes in a matter which doesn't concern it.
- **Rationae Loci**: where the administration deals with matters not covered by its territory.
- **Rationae Temporis**: when the authority took a decision when it was not yet competent.
- \*\* **The limits: Substitution** or acting allows another authority to compensate for the absence or incapacity of the competent authority (the latter is not always in a position to exercise the act). Indeed, one authority may substitute for another.

Finally, a system of powers **delegation** is also possible if it is authorized by a text:

- Delegation of authority (legal transfer of competence); • Delegation of signature (the delegate retains his **attributions**).

\* **The formalism of the act** there are many formalities of the act; we are going to mention them as follow:

- **The obligation to state reasons**: all decisions must have **grounds**, that is to say, the reasons for the facts and the rights of its elaboration, acts must now be motivated by adverse individual decisions and administrative decisions which **derogate** from regulations and laws.

- **Preliminary proceedings**: acts which can only be **enacted** after having followed a procedure (prior opinion of **an advisory body** or **joint administrative committee**). This procedure may remove some decision-making power because the authority must **comply** with the notice if it is mandatory (advisory opinions also exist).

### b- Entry into force

Unilateral acts enter to force generally after they must be a subject of notification, we are going to mention the different categories of acts and when they enter to force as follow:

**b-1- Regulatory acts:** These acts must have been **publicized** (decrees published in the official gazette ...).

**b-2- non-regulatory acts:** Individual acts shall be enforceable against their addressees only after they have been **notified** in a nominative manner to the latter. Notifications and publications are necessary to define the starting point for the **appeal** period in disputes.

### **c- Execution/ Disappearance**

We are going to see first the execution then the disappearance, as follow:

**1- The execution:** These acts are the subject of a **presumption** of legality. The recipients of the acts are supposed **to obey** these acts: it is the privilege of the public power of these acts.

Therefore, recourse to the judge, at the request of the citizen, has important consequences; in effect this appeal has **suspensory effect**, except in exceptional cases. The administration may also have the "enforcement" procedure if the addressee refuses to execute it. Possible procedure if provided by law, in case of emergency or impossibility of applying standard sanctions.

**2- The disappearance:** Their disappearance has effect only for the future or can put an end to the existence of the acts for the past of **retroactively**.

- **Repeal:** does not revoke the legal effects it may have had. For regulatory acts their abrogation is possible and even mandatory in certain cases. For individual acts which do not create rights: idem. For those creating rights, the release of force for the future is impossible.

- **Withdrawal:** the decision is **deemed** never to have existed. For **non-creative** acts, for individual decisions: withdrawal at any time. The regulations, withdrawn only for **excess of power** can only be abrogated. Acts creating a right: may only be withdrawn within the time limit for appeal. This is to protect the rights of the recipients of the act.

If the substantive conditions of an act have disappeared, Conseil d'Etat has recognized that the repeal of the act is **mandatory**.

**Legal terms:**

power = سلطة

unilateral action = عمل إنفرادي

privilege = امتياز

private reports = روابط القانون الخاص

consent = رضاء

organic criterion = المعيار العضوي

formal criterion = المعيار الشكلي

material criterion = المعيار المادي

characteristics of unilateral administrative act = خصائص القرار الإداري

author of the act = مُصدر القرار

public person = شخص عام

private person = شخص خاص

excluded = استبعد

legislative act = العمل التشريعي

judicial act = العمل القضائي

acts of government = أعمال الحكومة

entrusted = عُهد إليه

the content of the act = مضمون القرار

normative = معياري

regulatory act = القرار التنظيمي

statutory rules = القواعد القانونية الأساسية

recipients = المخاطبين

individual act = القرار الفردي

appointing an official = تعيين موظف

form of the act = شكل القرار

explicit = صريح

implicit = ضمني

rejection = رفض

elements of the act = عناصر القرار

the visas = التأشيرات

reasons = الأسباب

legal regime of of unilateral administrative act = النظام القانوني للقرار الإداري

elaboration = إعداد

entry into force = نفاذ

execution = تنفيذ

disappearance = نهاية

lawful = شرعي

incompetence = عدم الإختصاص

Rationae Materiae = الإختصاص الموضوعي

Rationae Loci = الإختصاص المكاني

Rationae Temporis = الإختصاص الزمني

limits = الحدود

substitution = الحلول

delegation = تفويض

attributions = صلاحيات

formalism of the act = شكلية القرار

obligation to state reasons = وجوب التسبيب

grounds = أسباب

derogate = يفوض

preliminary proceedings = الإجراءات التمهيدية

enacted = تصدر

an advisory body = هيئة استشارية

joint administrative committee = لجنة إدارية مشتركة

comply = يمتثل

entry into force = نفاذ

publicized = النشر

notified = التبليغ

appeal = استئناف

execution = تنفيذ

disappearance = نهاية

a presumption = افتراض

to obey = يطيع

suspensory effect = أثر موقوف

retroactively = بأثر رجعي

repeal = إلغاء

withdrawal = سحب

non-creative = غير ذات أثر

excess of power = تجاوز السلطة

mandatory = إلزامي