The third lecture

The third requirement: The sources of the Latin Germanic system

The word "source" carries many meanings, including: obtaining, occurrence, emergence, emergence, origin, and the plural of source. "Masdar" means places, i.e. place, source, origin or cause.

Legally, sources mean the primary material that constitutes the law, such as facts and incidents that embody the origin of that rule. They are called real or material sources, which mean the method or means by which facts and facts are poured into it as templates and rules, and they are called official and formal sources.

Accordingly, the sources of law vary and are numerous depending on the major legal schools of thought, such as the doctrine of natural law and the doctrine of positive law. Legislation is the basic source of law in the Latin Germanic system, followed by custom or custom, then jurisprudence and jurisprudence in third place.

The first section: legislation

The supremacy of legislation, which occupies the forefront in the rank of legal sources in this system, is due to the fact that it expresses the will of the people through their representatives in Parliament who are elected by the people themselves. Legislation is also the guarantor of the rights and freedoms of individuals, as it defines them and facilitates them to know them, as they know in advance what they are. They have rights and duties, which is consistent with democratic thought.

Accordingly, legislation in all its types and forms (constitution, legislation, international agreements, regulation in all its forms, and everything issued by public authorities with authorization from the law) plays the primary role in this family, forming its primary source, according to the degree of its arrangement in the basic legislative pyramid in the state issued by the parliamentary authority or About the people according to the regulations, and it means all written legal rules, whether issued by the legislative authority in the form of a law or the executive authority in the form of regulation of its various types, including decrees, decisions, regulations, and instructions.

Legislation is characterized as a source of law in that it is written and subject to the principle of gradualism of laws. This is due to the spread and completion of technologies, especially in the 19th century, and the necessity of confronting the various developments faced by modern countries in line with the policies they pursue economically and socially to achieve the public interest, preserve public order, achieve equality, and promote human rights.

Legislation is considered the best means of achieving justice, whether they are constitutions originating from the constituent authority, laws originating from the legislative authority, or regulations and regulations originating from the executive authority, as will be explained successively.

1- **The Constitution:** The Constitution, in its broad sense, ranks among the laws of the Latin-Germanic system in terms of its strength, as it surpasses other legislation and is found in the highest ranks of legislation. It is superior to the rest of the other legislative texts in formal and substantive form due to the stability of its rules.

The Constitution derives its superiority from the submission of laws to constitutional control by monitoring the extent of their constitutionality. Laws, in methods that differ from one country to another, whether through political oversight by the Constitutional Council or through judicial oversight by the Constitutional Court, with differences in the composition of the body in charge of oversight, its powers, and the methods of notifying it, as in some countries it is possible for these bodies or individuals, even if they are citizens. It is normal to submit a request regarding the constitutionality of a particular law.

2- **The Ordinary legislation:** It is called the law in its precise sense, and it is the set of legal rules that regulate relations between people and issued by the legislative authority in accordance with the procedures specified by the constitution, such as civil,
commercial, and others.

The legal rule in this system is the basis of legal construction, and is characterized by the characteristics of generality and abstraction. It is abstract in its origin and general in its application. It is a speech that includes the command to do or abstain from a specific act, directed to the general public, where violating it results in the imposition of the appropriate penalty, taking into account considerations of justice. ethics, political, social and economic conditions of society,

The legal rules are divided into peremptory rules, which the parties may not agree to violate, and any agreement based on violating the content of this type of rule is invalid. They are complementary, and the parties may agree on what contradicts their content. They become applicable in the event that the parties remain silent about the issue that is the subject of the rule. They also branch out into substantive rules. It deals with the origin of the right, its subject matter, and other procedural matters that regulate the procedures and stages of the proceedings and the methods of appealing the rulings issued therein.

The international agreements that have been ratified are also considered part of internal legislation, as some countries (France, Netherlands) consider them higher than ordinary legislation, while other countries (Germany) consider them at the same level of ordinary legislation.

In this system, the judge is obligated to find a solution to the dispute derived from the text of the legislation. If the text is not clear, the judge must investigate the intention of the legislator by resorting to interpreting the text. He does not have the right to refrain from applying the law, otherwise he will be considered committing the crime of denying justice.

Subsidiary legislation: In addition to legislation, there are general and abstract rules issued by the executive authority in its field of jurisdiction, and they are called subsidiary legislation to distinguish them from ordinary legislation. In some countries, they are called decrees, systems, or regulations, as they are subject to judicial oversight with the aim of ensuring their respect for the principle of legality, with differences The judicial authority competent to exercise this oversight from one country to another according to the prevailing judicial system in the country.

Some legal systems in the Roman-Germanic family delegate the power to issue subsidiary legislation to the President of the Republic in accordance with his

regulatory authority, as well as the power he enjoys to legislate by orders in special circumstances. This authority is also delegated to other members of the executive authority according to different conditions and procedures.

Some believe that other sources of legislation are almost negligible or modest, and their role is insignificant and secondary, because the task of jurists is limited to searching for a solution that matches the will of the legislator, which must be reached and determined.

This is an exaggerated idea, according to the opinion of others, resulting from the confusion into which the Mahshayyin school fell, as it did not differentiate between law as an expression of justice and legislation as an expression of the will of the legislator of each state, as the jurists in this group always prefer to rely on legislation and its texts to justify their positions and the solutions presented to their problems at hand.

However, truth and reality confirm the importance and role of other sources, especially the judiciary in France, where the French Council of State played an important and undeniable role in the development of the law, and the same applies to the German judiciary.

Although the other majority agreed on the necessity of resorting to other sources besides legislation, they disagreed about the second source, between custom and jurisprudence.