

Fourth lecture

- 1- The Custom:** According to the classification of many jurists, custom occupies second place after legislation and is therefore an important source of law in the Latin Germanic system. It is an unwritten law or a set of legal rules that arise from the repetition of people's behavior on a specific issue and around a specific matter in a specific manner and the sum of prevailing customs in the world. A specific environment that people have become acquainted with, and they have tried for a certain period to follow it while being convinced and feeling the necessity of respecting it, as they believe that following this behavior has become legally binding for them, as the judge resorts to it in the absence of a written text or in the case of ambiguity of the text.

Custom is based on two basic elements: a material element, which is the repetition of behavior, consistency, and the continuation of following the behavior it imposes, and a moral element, which appears in the general feeling of respect for it.

Jurisprudence distinguishes between supplementary custom that fills and fills the gap in legislation, which provides us with the basis to begin with for organizing a

situation for which there is no legislative text, so custom regulates it and its function is to fill the gap in legislation, and auxiliary custom that is used to understand legislation as it plays an important role in shaping the law. Because the legislator formulates the rule in a flexible manner that leaves room for opinion when applying it, Custom that contravenes legislation is that which is not applied unless it contravenes a complementary legislative rule, provided that it does not contravene public order and public morals. As a general principle, it is not permissible for a customary rule to contravene a peremptory legislative rule. Custom can also be general or specific, and it can be local or local. Nationally.

The prevailing trend in this family sees custom as lower in rank and less valuable than legislation, especially French, Italian, and Austrian jurisprudence, while German jurisprudence tends to consider jurisprudence and legislation as equal, placing it in the rank of law, and Swiss and Greek jurisprudence is in line with this trend.

It is just a theoretical jurisprudential difference and nothing more. The pioneers of the social school believe that custom plays a fundamental role in shaping the law on the basis that the legislator and jurist are inevitably influenced by the customs of society until they intervene to decide the legal rule, while the jurists of the positivist school go to reduce the role of custom after the emergence of the codification movement.

As for the level of legislation, some of them equate custom with legislation, such as German and Swiss law, while French law places it in second place after legislation, while some countries, such as Austria, do not apply custom unless legislation explicitly refers to it, and some Arab and Islamic countries put it ahead of Islamic law, placing it in the It ranks second after legislation, as is the case in Iraq and Syria, while other countries rank it third after legislation and Islamic law, such as Algeria, Jordan, and Libya.

The role of legislation has expanded at the expense of the scope of custom, especially in the current era, but this does not negate the great role that custom plays as an assistant and assistant to legislation in many cases, as legislation benefits greatly when enacted, by deriving from it appropriate solutions as it reflects the social, political and economic environment. Both the judiciary and jurisprudence also benefit from it when implementing laws.

The status of custom also varies according to the laws, as its role is more prominent and plays an effective role in the field of international law (public international, private international, commercial international), where it is formulated in international treaties and agreements in cooperation between states, international organizations and associations, while its role in other laws such as civil law is reduced to That almost ends in criminal law.

2- Jurisprudence: Both jurisprudence and jurisprudence constitute one of the sources of law in the Latin legal system, and they have a great role and

importance in making the rules of law, as will be explained later.

Jurisprudence: No one can deny the prominent role of jurisprudence in developing the law, as jurists carry out the task of explaining and analyzing legal texts and judicial rulings in a practical manner and then evaluating the results that resulted from its application, and extracting general legal principles that guide the judge before every application of the law, as he often relies on Eliminating the opinions of jurisprudence, because the application of the law is fundamentally linked to its interpretation, and jurisprudence has played a fundamental role in this framework.

The legislator himself also benefits from the writings of jurisprudence, its directives, and his opinions, which the legislator is guided by before every amendment to the law.

Accordingly, it contributes to amending the law and correcting its shortcomings through constant research and comparative study between the shortcomings in the law and the amendments that it needs to ensure greater efficiency and effectiveness. Thus, it is a guide for the legislator and judge alike in developing appropriate solutions for various situations.

Despite the great importance that jurisprudence enjoyed as a source of law, especially during the era of Roman jurists, where it played an important role in making and drafting legal texts, this role declined, and with it its rank declined from an official source to an interpretive source, and then it became a mediator by issuing opinions, explanations, and comments. On relevant legal texts.

Judiciary: Judicial jurisprudence is known as the body of law in the Latin Germanic system as the set of judicial rulings issued by various judicial bodies in cases brought before them by applying the law enacted and established by the legislator when deciding the disputes presented to them. If the texts of the legislation are ambiguous, the judge resorts to interpretation.

In doing so, we use the preparatory work of the legal texts to determine the purpose and wisdom of the legislator. He can also resort to analogy or inference to the concept of the violation or to resort to the general principles of the law. This would allow the judge to contribute to the development of the law, respecting the principle of separation of powers adopted by constitutional systems in countries belonging to the Latin-Germanic system, according to which the legislative authority enacts laws while the judicial authority is responsible for applying it to the disputes before it, as it should not amount to Its role in the field of interpretation is similar to that of the legislator, but it remains less than that in the Latin Germanic system.

Although the judiciary contributes to the formation of the rules of law in this system, its importance does not rise to the same status and importance as the judiciary

in the Anglo-Saxon system.

Judicial precedents in this system do not have the same importance as their counterparts in the Anglo-Saxon system and do not have binding legal force. However, they enjoy general authority that differ from one country to another according to controls determined by law.

Judicial precedent in this system does not have binding force unless it is issued by the Supreme Court from the chambers gathered in the consultation room. The ruling in this system only binds the parties to the case at hand and not others, as it is related to a specific case in particular, and the judge issuing the ruling is not obligated to abide by it in any case. Subsequent similar cases are presented to him, just as other judges are not obligated to do so. Unless the Supreme Court overturns the contested ruling and returns it to the court that issued it to rule on it again, with another formation, which confirms that the judiciary in this system occupies a secondary position compared to legislation in this system.

Although an aspect of jurisprudence weakens the position of the judiciary as a source of law in this system, there are those who deny that the judiciary is considered a source of law according to this system, justifying this by the fact that the judge's function is limited to applying the law, and when he interprets the ambiguous legal rule, he does not create a new text. Rather, it is revealed from the folds of legislation, based on the principles of natural law and the rules of justice.

While the second approach responds to it by saying that the judge's job is not limited to applying the law, but rather he can interpret it in the event of its ambiguity, which makes the latter lead to an expansion of the scope of its application to accommodate new cases not stipulated by the law, thus filling the gap in it, and the continuation in applying that judicial interpretation leads to give it the status of a legal rule in terms of generality and abstractness, despite the fact that it was created by the judge and not the legislator.

The judicial system in this family is also subject to the idea of grading and specializing judicial bodies, and is based on the principle of judicial duality, as it consists of the ordinary judiciary, which is divided into first-level bodies and higher judicial bodies. There are courts of first instance, councils, and supreme courts, and a graduated administrative judiciary, independent of each other, as is the case in France, Germany, Austria, the Netherlands, while in other countries there is a system of administrative chambers such as Belgium, Switzerland, Spain, and some Afro- Francophone countries.

However, in some countries that have adopted this organization, there is no independent administrative judiciary, but rather they have adopted a special method that makes the administrative judiciary exceptional and subordinate to the judiciary.

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- **The Grand Court of Cassation:** It consists of a presiding judge, two assistant judges, and a public prosecutor. It considers civil matters whose value exceeds ten thousand euros, and also decides on some criminal matters.
- **Commercial Court:** is concerned with adjudicating disputes related to the application of commercial law, with rulings that can be appealed before the Court of Appeal.
- **Labor Court:** looks into labor relations disputes.
- **Social Security Affairs Court:** It decides on disputes that arise between the insured and the social security bodies, and between the social security bodies among themselves.
- **Disability Disputes Court:** It decides disputes of a medical nature, such as disability and lack of rehabilitation.
- **Criminal judicial bodies of the first degree:** They are composed of the following judicial bodies:
 - **The Neighborhood Court:** The jurisdiction of this court, in addition to its civil jurisdiction, was expanded to also include criminal matters related to violations up to the fourth degree, in accordance with the law of 01/26/2005, where the judge only rules fines.
 - **Police Court:** It looks into fifth-degree violations, as well as customs violations.

- **The Corrective Court:** adjudicates misdemeanors of various kinds, with the exception of juvenile misdemeanors and those committed by the President of the Republic and members of the government on the occasion of and during the performance of their duties.
- **Criminal Court:** It adjudicates felonies and is composed of three professional judges and nine popular judges.
- **Supreme judicial bodies: It consists of the following bodies:**
 - **The Court of Appeal:** It decides all civil and criminal disputes that are not subject to the jurisdiction of courts of first instance, with the exception of felonies, and it consists of a number of chambers.
 - **The Criminal Court of Appeal:** is responsible for adjudicating appeals filed against the Criminal Court. It was established according to the law dated 06/15/2000.
 - **The National Disability Court:** It considers appeals filed against the rulings of the Disability Disputes Court and decides on disability disputes that the latter does not have jurisdiction over.
 - **Court of Cassation:** This court is the highest in the hierarchy of regular judicial bodies, as it is composed of a number of chambers and looks into the proper application of the law.