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## Rule of law دولة القانون

Introduction :

The concept of the rule of law or the sovereignty of law first emerged in the German positivist legal school in the 19th century as an alternative to the police state that prevailed in Germany during that period. The rule of law gradually asserted itself over all states, including Algeria, especially after the constitutional amendment of 1989. This amendment introduced several fundamental principles to entrench the rule of law, such as political pluralism (freedom to establish political parties). This was culminated with the enactment of the Political Parties Law in 1997, reshaping the Algerian political landscape. However, the events in Algeria in the 1990s disrupted the political trajectory, leading to a constitutional amendment in 1996. This amendment followed a similar path to the previous constitution but added additional principles and guarantees to strengthen the rule of law. These included the establishment of a second chamber in the Algerian Parliament - the Council of the Nation - and the separation of the ordinary judiciary from the administrative

judiciary through the creation of the Council of State and the establishment of the Dispute Court, among other measures.

Subsequent amendments to the constitution in the years 2002, 2008, 2016, and 2020 further expanded rights and freedoms, providing necessary guarantees for their preservation. The preamble of these amendments emphasized the separation of powers, the independence of the judiciary, legal protection, and the oversight of the actions of public authorities in a society governed by legitimacy.

مصطلح **دولة القانون** أو سيادة القانون ظهر لأول في المدرسة الوضعية الألمانية في القرن 19 كبديل عن الدولة البوليسية التي سادت في ألمانيا تلك الفترة، حيث فرضت دولة القانون نفسها تدريجيا على جميع الدول ومن بينها الجزائر بداية خاصة بعد صدور التعديل الدستوري 1989 ، الذي جاء بالعديد من المبادئ الأساسية لتكريس دولة القانون مثل : التعددية الحزبية (حرية إنشاء الأحزاب السياسية) والذي توج بصدور قانون الأحزاب السياسية لسنة 1997 وأعاد تشكيل المشهد السياسي الجزائري إلى الواجهة، غير أن الأحداث التي شهدتها الجزائر في فترة 1990 عطلت المسار السياسي ، ليتم بعدها تعديل الدستور سنة 1996 ، الذي اتجه في نفس المسار الذي جاء به الدستور السابق مع إضافة مبادئ وضمانات أخرى لتعزيز دولة القانون منها : استحداث غرفة ثانية في البرلمان الجزائري- مجلس الأمة- ، تكريس فصل القضاء العادي عن الإداري عن طريق انشاء مجلس الدولة و تأسيس محكمة التنازع ..... الخ . ولما عدل دستور 1996 في سنوات 2002 ، 2008 ، 2016 ، 2020 اضاف المزيد من الحقوق والحريات وتوفير الضمانات اللازمة للحفاظ عليها ، كما نص في ديباجته على الفصل بين السلطات واستقلال العدالة والحماية القانونية ، ورقابة عمل السلطات العمومية في مجتمع تسوده الشرعية.

## 1. Rule of law: definition

ما هي دولة القانون؟ 🤔 What is a rule of law?

The concept of **the rule of law** refers to an institutional system in which **the State sees its powers**, i.e. public authority, **framed by hierarchical rules of law**.

In other words, the rule of law is a state subject to a set of legal norms that opposes its power to **establish the protection of fundamental freedoms and rights**. Roughly, the rule of law responds to the formula: "No one is above the law".

Conceptually, it is possible to distinguish **3 types of states** :

- **The police state**: A state in which **the law is drawn up and implemented by the state itself**. The government exercises its power in an authoritarian and arbitrary way, without legal framework .
- **The legal state**: A system in which the state is subject to the law passed by a **Parliament that has no authority superior to it**. The legislator conceives the law without any hindrance, the possible arbitrariness no longer emanates from the executive but from the legislative power. For example, the French State under the Third Republic.
- **The rule of law**: The State is governed by **LEGAL NORMS developed in accordance with higher principles, implemented by a constitutional court**.

يشير مفهوم دولة القانون إلى نظام مؤسسي ترى فيه الدولة سلطاتها، أي السلطة العامة، مؤطرة بقواعد هرمية للقانون. بعبارة أخرى، سيادة القانون هي دولة تخضع لمجموعة من المعايير و مبادئ لقانونية التي تعارض سلطاتها لتأسيس حماية الحريات والحقوق الأساسية "لا أحد فوق القانون"

## 2. Rule of law: conditions

What are the characteristics of the rule of law?

The rule of law is implemented under 3 conditions:

- Compliance with the hierarchy of standards
- Equality of citizens before the law
- The **separation of powers** and the **independence** of judges

### **Compliance with the hierarchy of LAW**

Theorized by the famous **Hans Kelsen**, the hierarchy of standards is **one of the main guarantees of the rule of law**.

Precisely, the hierarchy of standards implies that each legal standard is designed **in accordance with the law that is superior to it**. These same standards make it possible in particular to define and limit the competence of state bodies.

### **Equality before the law**

Second characteristic of the rule of law, **equality before the law** (or isotomy) implies that each subject of law is **subject to the same law**, everyone has **the same rights and duties**.

the principle that all individuals, regardless of their status or background, should be treated equally by the legal system. It emphasizes the idea that everyone is subject to the same laws and should receive equal protection and treatment under those laws.

Thus, each individual or organization has the option **to challenge the application of the law** in a trial when a legal

standard does not comply with a higher standard. This right was strengthened by the introduction of the Priority Question of Constitutionality during the 2016 constitutional review.

Equality before the law also applies to the State that **must not benefit from a privilege of jurisdiction** or a regime derogating from common law.

## **The separation of powers and the independence of justice**

The last condition of the rule of law and pillar of democracy, **the separation of powers** is a power development technique that **opposes all powers being concentrated** in the hands of the same individual.

As stated by **Montesquieu**: "Everything would be lost if the same man, or the same body exercised these three powers: that of **making laws**, that of **executing public resolutions**, and that of **judging crimes** or disputes of individuals".

### **Activity :**

**What is Standard value of law ? ما معنى القيمة المعيارية ؟ للقانون.**

**ما هي مرتبة المرسوم التشريعي ؟**

**Dr Zaki LOUNAOUCI**