



University of Mohamed Lamine Debaghine, Setif2



Faculty of law and political science

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Text: 10

Criminal liability

Definition of criminal liability: Criminal liability is the obligation to bear the legal consequences resulting from the presence of the elements of the crime, and the subject of this obligation is to impose a penalty or precautionary measure specified by the legislator in the event that any person is held responsible.

Criminal liability is also defined as: a person's obligation to bear the consequences of his criminal actions¹.

The basis for establishing criminal liability in Algerian legislation: The Algerian legislator established criminal liability on the basis of freedom of choice². The evidence for this is that he excluded criminal liability in cases where freedom of choice was absent. Article 47 of the Penal Code states: "No punishment shall be imposed on anyone who was in a state of insanity at the time of committing the criminal act." Article 48 states: "No punishment shall be imposed on anyone who was forced to commit a crime by a force that he was unable to repel." Article 49 states: "Only protective and educational measures shall be imposed on a minor who has not completed the age of thirteen"

All these articles express the impossibility of criminal liability due to the loss of freedom of choice, but the legislator has restricted the scope of this freedom by adopting the middle school. In this context, he has decided on security measures for the insane person despite the impossibility of his responsibility to protect society from the dangers of his actions, as Article 74 has indicated the application of the provisions of the second paragraph of Article 21 with regard to judicial detention in a psychiatric institution. He has also adopted the mitigated liability when freedom of choice is diminished in the second paragraph of Article 49: "A minor who has reached the age of 13 to 18 years shall be subject to protection or educational measures or to mitigated penalties."

¹Suwailem Muhammad Ali, Criminal Responsibility in Light of Criminal Policy, University Publications House, Alexandria, 2007, p 8

²Faraj Reda, Explanation of the Algerian Penal Code, General Section, 2nd ed., National Publishing and Distribution Company, Algeria, 1976, p. 105

Exclusion of criminal liability: The Algerian legislator has determined the factors for exclusion of criminal liability as personal factors, which he mentioned in Articles 47 to 51 under the chapter on criminal liability.

Firstly: Impediments to liability due to lack of awareness: Capacity is absent due to lack of awareness in two cases (madness and young age)

Madness: Article 47 states: “No punishment shall be imposed on anyone who was in a state of madness at the time of committing the crime.”

Madness: The Algerian legislator did not define the madness (insanity).

it is agreed upon that madness is a disorder in the mental faculties that causes a person to lose the ability to distinguish and control his actions. In general, when doubt surrounds the mental state of the accused, the judge resorts to mental expertise (the specialist doctor)³.

madness generally includes all deficiency in mental abilities, such as dementia and imbecility. madness may be continuous or intermittent, and other forms of nervous and psychological diseases that strip a person of perception fall under insanity. In this context, drunkenness and drugs are not included among the obstacles to responsibility, and therefore are punished with the prescribed penalties. In fact, drunkenness and drugs are sometimes considered aggravating circumstances of the crime, as in the case of murder or crimes of negligence⁴.

Effects of madness: madness results in the absence of responsibility, so the insane person is not punished and only therapeutic measures are taken regarding him. Conditions of insanity that does not lead to responsibility: the following conditions are required for this type of madness:

-That the madness be contemporaneous with the commission of the crime: This is what is inferred from the ruling of Article 7 “at the time of committing the crime.” madness is not taken into account if it occurred before or after the commission of the crime. However, madness that occurs after the commission of the crime results in some consequences, as follows:

-If madness occurs before the judgment is issued, the case against the accused is suspended and his trial is suspended if he is in the process of being tried.

³Omar Al-Saeed Ramadan, Explanation of the Penal Code - General Section - Dar Al-Nahda Al-Arabiya, Cairo, 1998, p 222

⁴Article 290 of the Algerian Penal Code.

Therefore, if madness occurs during the initial investigation before the investigating judge, it is likely to suspend the investigation against the accused due to his inability to defend himself

-If madness occurs after the judgment is issued, the punishment must be postponed until he recovers (placed in a mental hospital). As for all other punishments, the afflicted person remains subject to them, as is the case with the fine⁵.

-That the madness be complete: it means that the madness is so serious that there is no feeling, and this is an objective matter that is left to the judges of the subject matter to assess following medical expertise.

Young age: It is accepted that a child is born helpless, devoid of awareness and perception, and legislation differs in setting a specific age. After reaching maturity, a person is considered responsible for his criminal acts. According to most legislations, the child is initially devoid of discernment and therefore is not held accountable for any act he commits. At a later stage, he becomes discerning and here he is held accountable with reduced responsibility. This stage extends until he reaches adulthood, and then he is held accountable with full responsibility. According to the text of Article 49 of the Penal Code, the legislator has distinguished between three stages of criminal responsibility.

First stage: Boy under 13: Referring to the text of the first paragraph of Article 49, the boy at this stage is not considered responsible by law, but this does not prevent him from being subjected to protection or educational measures

The second stage: A minor between the ages of 13 and 18. Here he becomes a lesser liability. If he commits a crime after reaching the age of 13 and before 18 (the age of criminal majority), the law allows him to be subjected to protection or educational measures or to reduced penalties.

The third stage: It is the stage of criminal maturity, which means reaching the age of 18, when his awareness is complete, his mental and psychological faculties mature, and he becomes fully responsible for his actions⁶.

Secondly: Abstention from responsibility due to lack of will (coercion): the Penal Code stipulates that there is no punishment for someone who was forced

⁵Abdullah Suleiman, Explanation of the Algerian Penal Code, General Section, Part One, "Crime," Office of University Publications, Algeria, 1998, pp. 312-313

⁶The same reference, pp 315- 318

to commit a crime by a force that he is unable to repel⁷. Unlike insanity, which causes loss of consciousness and discernment, coercion is a psychological cause that negates freedom of choice. Coercion is of two types: material and moral.

Physical coercion: the presence of a physical force that robs a person of his will and pushes him to do an act prohibited by law.

Physical coercion forms: There are several forms of this type:

-It may be a violent force of nature: a flood that prevents the witness from reaching the scene to give his testimony.

-It may also result from the action of an animal: such as an animal running wild with its rider and injuring a passerby. It may also result from the action of a human, such as someone grabbing the hand of another person to sign a forged contract, or someone threatening a bank teller with a firearm and forcing him to hand over the money deposited in it⁸.

Characteristics of physical coercion: There are several characteristics of physical coercion, which are:

Unpredictability of force: That is, the force must be sudden, such as someone surprising a cashier and threatening him with a firearm to force him to hand over the deposited money

Impossibility of repelling force: it means that the perpetrator is in a position where it is impossible for him to do anything other than commit the crime⁹.

Moral coercion: If physical coercion is characterized by physical force, then moral coercion is characterized by a moral force that weakens the will of the coerced person in a way that makes him lose his choice, so the person threatened by it commits the crime because he sees that its harm is less severe for him than the occurrence of the harm threatened, such as someone who threatens a person with killing his son or burning his shop if he does not commit the crime. Thus, it was decided in France that moral coercion that removes criminal liability requires an external act with respect to the perpetrator¹⁰.

Thirdly: The state of necessity: In this context, we will discuss the following:

⁷Article 48 of the Algerian Penal Code

⁸Abdullah Suleiman, previous reference, pp 319-322

⁹The same reference, p 323

¹⁰Habbas Abdelkader, Coercion and its Impact on Criminal Responsibility, A Comparative Study between Maliki Jurisprudence and Algerian Criminal Law, A Study of Coercion Models, Master's Thesis, Faculty of Humanities and Islamic Civilization, University of Oran, Algeria, 2006-2007, pp. 80-81

1- **Definition of the state of necessity:** state of necessity is a state in which someone cannot protect himself or others from an imminent evil except by committing a crime against innocent people. An example of this is when a person tries to steal food to save himself from death, or when a doctor performs an abortion on a pregnant woman to save her life. Jurisprudence has been divided between those who say that it is an obstacle to criminal liability or a reason for permissibility. It is worth noting that Algerian law did not refer to a state of necessity, and its neglect is not justified, as this issue must be decided upon¹¹.

The Algerian Penal Code stipulates that there is no punishment for anyone who is forced to commit a crime by a force that he is unable to resist¹².

2- **The case of necessity and legitimate defense:** The case of necessity and legitimate defense are similar in that the perpetrator (the perpetrator of the crime of necessity or the defender in legitimate defense) in both cases performs his work to prevent a current danger, but there are fundamental points of difference between them, which are:

-The source of danger in the case of legitimate defense is the human being, while the non-human being is the source of danger in the case of necessity. -The danger emanating from the human being (the act of attack) in legitimate defense is a crime.

-the act of defense is directed to stop this crime, while the danger emanating in the case of necessity is not considered a crime, such as floods, and the act of necessity is directed to get rid of this danger by attacking an innocent person.

-In the case of legitimate defense, the aggressor against whom the act of defense is committed may not use the right of legitimate defense, However, in the case of necessity, the person who is subjected to the act of necessity may use the right of defense against the perpetrator of the necessity.

-Legitimate defense erases the crime, so it is not permissible to demand civil compensation, However, in the case of necessity, it is permissible to demand civil compensation¹³.

3- **State of necessity and moral compulsion:** The state of necessity meets moral compulsion in the following points:

¹¹Abdullah Ouhaibia, Explanation of the Algerian Penal Code, General Section, Dar Houma Publishing House, Algeria, 2009, p. 170

¹²Article 48 of the Algerian penal code

¹³Abdullah Suleiman, previous reference, p 327

- The will of the agent is not erased in both cases
 - The will of the agent is stripped of freedom of choice in both cases
 - The criminal incident is directed against an innocent person in both cases
- The state of necessity differs from moral coercion in several aspects, which are:
- Moral coercion by human action, unlike the case of necessity by an act of nature
 - The crime that occurs in a state of moral coercion aims to ward off harm that threatens the perpetrator personally, while in a state of necessity the danger may be to the person, his property, or others (broader in scope)
 - In the case of moral coercion, freedom of choice is limited, while in the case of necessity, the actor usually has more than one course of action.

4-Conditions of a state of emergency: A state of emergency requires the presence of two elements: danger and a reaction to it.

a- Danger: There are several conditions for a danger that could be a cause of a state of necessity, which are:

- That the danger exists: It is not permissible to use a non-existent danger as an excuse to say that a state of necessity has occurred. However, if the perpetrator imagines that the danger exists and his imagination is based on reasonable reasons, then his action on this basis is not considered a crime, but rather a state of necessity.

- The danger must be serious: it affects the will because it threatens irreparable harm.

- To be present: that is, about to happen or that it has started but not finished

- That the will of the perpetrator has no role in the occurrence of the danger: that is, that the danger does not arise from the perpetrator himself. This condition was stipulated by the Egyptian legislator, and accordingly, the person who intentionally sets fire to a place is not exempted from criminal accountability if the fire surrounds it and he is forced to kill or injure a person while he is trying to escape.

- The law does not require the actor to bear the risk: An example of this is that some jobs impose risks on the actor, as a firefighter bears the consequences of his profession resulting from fires¹⁴.

¹⁴Abdullah Suleiman, previous reference, pp 328-330

Conditions of the act of necessity: If the danger meets the previously mentioned conditions, the perpetrator may repel it by an act of necessity, which are:

- That the act of necessity be directed to avert the danger: If the act of necessity deviates from its goal, it is considered a crime and the perpetrator receives its punishment¹⁵.
- That the act be the only means of getting rid of the danger: If there are multiple means of getting rid of the danger, he is not permitted to follow the act that leads to committing the crime¹⁶.

¹⁵Ben Sheikh Al-Hussein, Principles of General Criminal Law, Dar Houma, Algeria, 2005, p. 112

¹⁶Akram Nashat Ibrahim, General Rules in Comparative Penal Law, University House, Beirut, 1999, p 255

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Text N°11

international treaties (Part 1)

Treaties are one of the main **sources** of **international law** which means an **international agreement** concluded between **States** in written form and governed by **international law**, whether embodied in a single **instrument** or in two or more related instruments and whatever its particular designation .

Means of expressing consent to be bound by a treaty:

The consent of a **State** to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Consent to be bound by a treaty expressed by signature:

1-**The consent** of a State to be bound by a treaty is **expressed** by the **signature** of its **representative** when:

A-the treaty provides that signature shall have that effect.

B-it is otherwise established that the negotiating States were agreed that signature should have that effect.

C-the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

Signing the Treaty: the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed.

the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty:

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

1-the instruments provide that their exchange shall have that effect.

2-it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Consent to be bound by a treaty expressed by ratification, acceptance or approval:

1-The consent of a State to be bound by a treaty is expressed by ratification when:

A-the treaty provides for such consent to be expressed by means of ratification.

B-it is otherwise established that the negotiating States were agreed that ratification should be required.

C-the representative of the State has signed the treaty subject to ratification.

D-the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation .

2-The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Consent to be bound by a treaty expressed by accession:

The consent of a State to be bound by a treaty is expressed by accession when:

A-the treaty provides that such consent may be expressed by that State by means of accession.

B-it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession.

C-all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Exchange or deposit of instruments of ratification, acceptance, approval or accession:

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

a-their exchange between the contracting States.

b-their deposit with the depositary.

c-their notification to the contracting States or to the depositary, if so agreed.

Consent to be bound by part of a treaty and choice of differing provisions

1-Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2-The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Obligation not to defeat the object and purpose of a treaty prior to its entry into force:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

A-It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

b-it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Legal terms:

International treaties	المعاهدات الدولية
International law	القانون الدولي
International agreement concluded	التفاق الدولي المبرم
A single instrument	صك واحد
Means of expressing consent to be bound by a treaty	وسائل التعبير عن الرضا بالالتزام بالمعاهدة
The consent of state	رضا الدولة
Signature	التوقيع
Exchange of instruments	تبادل الصكوك
Ratification	التصديق
Acceptance	القبول
Approval	الموافقة
Accession	الانضمام
The negotiating states	الدول المتفاوضة
Agreed	اتفق
Negotiation	المفاوضات
if so agreed	إذا تم الاتفاق على ذلك
The treaty subject to ratification	المعاهدة الخاضعة للتصديق
Exchange or deposit of instruments	تبادل أو ايداع الصكوك
their notification to the contracting States or to the depositary,	اخطار الدول المتعاقدة أو جهة الايداع
Consent to be bound by part of a treaty and choice of differing provisions.	التعبير عن الرضا عن الالتزام بجزء من المعاهدة والاختيار بين نصوص مختلفة
Without prejudice	دون الاخلال

<p>Obligation not to defeat the object and purpose of a treaty prior to its entry into force</p>	<p>الالتزام بعدم تعطيل موضوع المعاهدة وهدفها قبل دخولها حيز النفاذ</p>
<p>A State is obliged to refrain from acts which would defeat the object and purpose of a treaty</p>	<p>الدولة ملزمة بالامتناع عن اي عمل من شأنه تعطيل موضوع المعاهدة وهدفها</p>

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Text N°11

International treaties (Part 2)

The term *treaty* is used generically to describe a variety of instruments, including conventions, agreements, arrangements, protocols, covenants, charters, and acts. In the strict sense of the term, however, many such instruments are not treaties. The key distinguishing feature of a treaty is that it is binding. For example, whereas the United Nations (UN) Charter (1945) created a binding agreement and is thus a treaty, the Charter of Paris (1990), which established the Organization for Security and Co-operation in Europe (formerly the Conference on Security and Co-operation in Europe), is not a binding document as such and thus is not officially a treaty. Treaties are expected to be executed in good faith, in keeping with the principle of *pacta sunt servanda* (Latin: “agreements must be kept”), arguably the oldest principle of international law. Without this principle, which is explicitly mentioned in many agreements, treaties would be neither binding nor enforceable.

A treaty is normally negotiated between plenipotentiaries provided by their respective governments with the “full power” to conclude a treaty within the scope of their instructions. A country’s signature is often sufficient to manifest its intention to be bound by the treaty, especially in the case of bilateral treaties. In multilateral (general) treaties, however, a country’s signature is normally subject to formal ratification by the government unless it has explicitly waived this right. Apart from such an express provision, the instrument does not become

formally binding until ratifications have been exchanged. Multilateral treaties bind only those states that are parties to them and go into effect after a specified number of ratifications have been attained. After the time specified for states to sign the treaty has passed, states may become parties to the treaty through a process known as accession.

The use of multilateral treaties has increased dramatically since the early 20th century (e.g., the 1919 Treaty of Versailles and the 1945 UN Charter). Such treaties have proved to be effective in establishing new rules of international law—particularly where there is a need to respond quickly to changing circumstances or where the issue in question is unregulated. An example of the former kind of treaty is the Convention on the Law of the Sea which is signed in 1982 and came into force 12 years later. Examples of the latter kind of treaty include a range of environmental treaties, such as the Geneva Convention on Long-Range Transboundary Air Pollution (1979) and the Vienna Convention for the Protection of the Ozone Layer (1985) as well as their succeeding protocols; the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (both of which were adopted in 1992); and the Kyoto Protocol (1997)—the first addition to the UNFCCC—which was superseded by the Paris Agreement on climate change in 2015. In addition, human rights protections have been expanded tremendously through a series of international conventions and regional agreements, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the European Convention on Human Rights (1950), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), and the Inter-American Convention on Human Rights (1969).

Treaties do not need to follow any special form. A treaty often takes the form of a contract, but it may be a joint declaration or an exchange of notes. Important treaties, however, generally follow a fixed plan. The preamble provides the names and styles of the contracting parties and is a statement of the treaty's general objectives. It is usually followed by the articles containing the agreed-upon stipulations. If the treaty is concluded for a definite period, a statement of the period follows; or, if it is in perpetuity, there may be a provision inserted that either party may "denounce" (give notice to terminate) the treaty. Any reservations, which alter the treaty's provisions for the concerned state, may then appear; they are followed by an article that provides for the treaty's ratification and for the time and place for the exchange of ratifications. The treaty usually ends with a clause stating that "in witness whereof the respective plenipotentiaries have affixed their names and seals," below which are the signatures and indications of the signatory and the date. "Additional articles" often are appended and signed by the plenipotentiaries, with the declaration that they have the same force and value as if they had been included in the body of the treaty or convention.

International jurists have classified treaties according to a variety of principles. In addition to the distinction between multilateral and bilateral treaties, there is also the distinction between treaties representing a definite transaction (e.g., a cession of territory) and those seeking to establish a general rule of conduct (e.g., the "renunciation of war"). Treaties also have been classified according to their object, as follows: (1) political treaties, including peace treaties, alliances, territorial cessions, and disarmament treaties; (2) commercial treaties, including tariff, consular, fishery, and navigation agreements; (3) constitutional and administrative treaties, such as the conventions establishing and regulating international unions, organizations, and specialized agencies; (4) treaties relating to criminal justice, such as the treaties defining international crimes and

providing for extradition; (5) treaties relating to civil justice, such as the conventions for the protection of human rights, for trademarks and copyright, and for the execution of the judgments of foreign courts; and (6) treaties codifying international law, such as the procedures for the peaceful settlement of international disputes, rules for the conduct of war, and definitions of the rights and duties of states. In practice it is often difficult to assign a particular treaty to any one of these classes, and the legal value of such distinctions is minimal.

Legal terms:

Treaty	معاهدة
Instruments	صكوك، وسائل
Conventions	اتفاقيات
Agreements	اتفاقات
Arrangements	تنظيمات، اجراءات
Protocols	بروتوكولات
Covenants	عهود
Charters	موثيق
Its Binding	طابعها الملزم
United nations charter	ميثاق الامم المتحدة
The organization for security and cooperation in Europe	منظمة الامن والتعاون في اوربا
Good faith	حسن النية
Pacta sunt servanda	العقد شريعة المتعاقدين (عبارة لاتينية)
Negotiated	المتفاوض بشأنها
Plenipotentiaries	المفوضين
Full power to conclude a treaty	الصلاحيه الكامله في ابرام الاتفاقيه
To be bound by the treaty	الالتزام بالمعاهده
Formal ratification	التصديق الرسمي

Bilateral treaties	المعاهدات الثنائية
Multilateral treaties	المعاهدات المتعددة الأطراف
Rules of international law	قواعد القانون الدولي
Conventions on the law of the sea	اتفاقية قانون البحار
Came into force	دخلت حيز النفاذ
Environmental treaties	المعاهدات البيئية
The UN framework convention on climate change	اتفاقية الامم المتحدة الاطار حول التغير المناخي
International conventions	الاتفاقيات الدولية
Regional agreements	الاتفاقات الاقليمية
The convention on the prevention and punishment of the crime of genocide	اتفاقية منع ومعاقبة جريمة الابادة
The European convention on human rights	الاتفاقية الاوروبية لحقوق الانسان
International convention on the elimination of all forms of racial discrimination	الاتفاقية الدولية للقضاء على كل اشكال التمييز العنصري
The international covenant on civil and political rights	العهد الدولي للحقوق السياسية والمدنية
The international covenant on economic social and cultural rights	العهد الدولي للحقوق الاقتصادية والاجتماعية والثقافية
The inter-american convention on human rights	الاتفاقية الامريكية لحقوق الانسان
The preamble	الدباجة
The convention of the elimination of all forms of discrimination against woman	اتفاقية القضاء على كل اشكال التمييز ضد المرأة) سيداو
The contracting parties	الاطراف المتعاقدة
The statement of the treaty's general	بيان الاهداف العامة للمعاهدة

objectives	
Give notice to terminate	الاشعار بالانهاء
Reservations	التحفظات
Seals	الاختام
Additional articles	المواد الاضافية
appended and signed	المرفقة (الملحقة) والموقعة
International jurists	خبراء القانون الدولي
treaties representing a definite transaction	المعاهدات التي تتضمن معاملة محددة
a general rule of conduct	قاعدة عامة للسلوك
the "renunciation of war"	نبيذ الحرب
political treaties	المعاهدات السياسية
peace treaties, alliances, territorial cessions, and disarmament treaties	معاهدات السلم، التحالف، التنازل عن الإقليم ومعاهدات نزع التسليح
Commercial treaties	المعاهدات التجارية
tariff, consular, fishery, and navigation agreements	اتفاقات التعريفية الجمركية، المصائد والملاحة
Constitutional and administrative treaties	المعاهدات الدستورية والادارية
the conventions establishing and regulating international unions, organizations	الاتفاقيات التي تنشئ وتنظم الاتحادات والمنظمات الدولية
specialized agencies	الوكالات المتخصصة
treaties relating to criminal justice	المعاهدات المتعلقة بالعدالة الجنائية
The treaties defining international crimes	المعاهدات التي تحدد الجرائم الدولية
and providing for extradition the conventions	معاهدات تسليم المجرمين

treaties relating to civil justice	المعاهدات المتعلقة بالعدالة المدنية
The convention for the protection of human rights, for trademarks and copyright	اتفاقية حماية حقوق الانسان، العلامات التجارية و حقوق النشر
the execution of the judgments of foreign courts	تنفيذ أحكام المحاكم الأجنبية
treaties codifying international law	معاهدات تقنين القانون الدولي
the procedures for the peaceful settlement of international disputes	اجراءات التسوية السلمية للنزاعات الدولية
rules for the conduct of war	قواعد سلوك (ادارة) الحرب
definitions of the rights and duties of states	تحديد حقوق وواجبات الدول
Legal value	القيمة القانونية

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Text N°12

Geneva Convention

Geneva Convention relative to the Protection of Civilian Persons in Time of War

Article 1: The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2: In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4: Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5: Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Administrative control

Administrative control is a fundamental concept in administrative law that reflects the role of public authorities in maintaining public order and ensuring the proper functioning of society. It represents one of the most important instruments through which the State intervenes in daily life, not to punish wrongdoing, but to prevent disturbances and guarantee stability.

1. Definition of Administrative Control

Administrative control (also referred to as administrative police) can be defined as the set of legal and regulatory measures taken by public authorities to preserve public order. It is a preventive activity aimed at avoiding disturbances before they occur, rather than repressing violations after they happen. These measures may take the form of regulations, individual decisions, or material actions intended to ensure safety, peace, and order in society.

Public order traditionally includes three main elements: public security, public health, and public tranquility. In modern legal systems, this concept has expanded to include environmental protection and public morality, reflecting the evolving needs of society.

2. Types of Administrative Control

Administrative control can be classified according to several criteria.

First, **according to the level of authority**, it is divided into:

- **Central administrative control**, exercised by national authorities such as the president of the republic, the Prime Minister or the Minister of Interior, who issue general regulations applicable throughout the territory.
- **Local administrative control**, exercised by local authorities such as governors or mayors, who deal with specific issues within their territorial jurisdiction.

Second, **according to its scope**, it may be:

- **General administrative control**, which concerns maintaining overall public order in society.
- **Special administrative control**, which applies to specific sectors such as health, construction, transportation, or environmental protection.

3. Characteristics of Administrative Control

Administrative control has several distinctive characteristics:

First, it is **preventive in nature**, meaning that it aims to prevent disturbances before they occur rather than punish after the fact.

Second, it is **unilateral**, as administrative authorities impose decisions without requiring the consent of individuals.

Third, it is **subject to legality**, meaning that all administrative control measures must be based on law and cannot be arbitrary.

Fourth, it is **proportional**, which requires that any restriction on individual freedoms must be necessary and limited to what is strictly required to achieve public order.

Finally, administrative control is **subject to judicial review**, as administrative courts have the authority to examine the legality of administrative decisions and protect individuals against abuse of power.

4. Distinction between Administrative Control, Public Service, and Judicial Police

It is important to distinguish administrative control from other legal concepts such as public service and judicial police.

Administrative control differs from **public service** in its objective. While administrative control aims to maintain public order through preventive measures, public service is concerned with providing services that satisfy collective needs such as education, health, and transportation. In other words, administrative control regulates behavior, whereas public service delivers benefits.

Administrative control also differs from **judicial police**. Judicial police is a repressive activity that intervenes after an offense has been committed. Its purpose is to investigate crimes, identify offenders, and bring them before the courts. In contrast, administrative control is preventive and seeks to avoid violations before they occur.

Thus, the key distinction lies in timing and purpose: administrative control is preventive, while judicial police is repressive.

5. Objectives of Administrative Control

The main objective of administrative control is the preservation of public order in its broad sense. This includes ensuring safety, protecting public health, and maintaining social tranquility.

Beyond this general objective, administrative control also aims to:

- Protect individuals and property from risks and dangers.
- Ensure the smooth functioning of public life.
- Prevent conflicts and disturbances in society.
- Adapt public behavior to legal and regulatory standards.
- Safeguard fundamental rights while maintaining social order.

In modern states, administrative control also contributes to addressing new challenges such as environmental protection, urban planning, and public health crises, as seen during pandemics or natural disasters.

Conclusion

Administrative control is a cornerstone of administrative law, as it enables the State to maintain order and stability while respecting individual freedoms. It is a preventive, legal, and regulated power exercised by administrative authorities at both central and local levels. Its effectiveness depends on the principles of legality, proportionality, and judicial oversight. At the same time, its distinction from public service and judicial police helps clarify its specific legal nature and function. For law students, mastering this concept is essential to understanding the functioning of modern public administration and the rule of law.

Legal terms :

Administrative control	الضبط الاداري
administrative law	القانون الاداري
Public authorities	السلطات العمومية
maintaining public order	الحفاظ على النظام العام
the proper functioning	السير الحسن
the State intervenes	تتدخل الدولة

to punish wrongdoing,	معاقبة الاخطاء
to prevent disturbances	منع الاضطرابات
guarantee stability	ضمان الاستقرار
Administrative police	الشرطة (البوليس) الاداري
legal and regulatory measures	اجراءات قانونية وتنظيمية
to preserve public order	لحفاظ على النظام العام
A preventive activity	نشاط وقائي
avoiding disturbances	تجنب الاضطرابات
repressing violations	قمع (معالجة) الانتهاكات
regulations to	
individual decisions	القرارات الفردية
material actions	الاعمال المادية
To ensure safety and peace	ضمان الامان والسلم
public security	الامن العام
public health	الصحة العامة
public tranquility	السكينة العمومية
modern legal systems	الانظمة القانونية الحديثة
environmental protection and public morality	الحماية البيئية والاداب العامة
Central administrative control	الضبط الاداري المركزي
exercised by national authorities	الممارس من طرف السلطات الوطنية
The president of the republic	رئيس الجمهورية
the Prime Minister	الوزير الاول
the Minister of Interior	وزير الداخلية
To issue	اصدر (يصدر)
General regulations	تنظيمات عامة
Applicable	مطبق

The territory	الاقليم
Local administrative control	الضبط الاداري المحلي
exercised by local authorities	الممارس من طرف السلطات المحلية
governors or mayors	الولاية ورؤساء البلديات
Deal with	التعامل مع
specific issues	قضايا خاصة
territorial jurisdiction	الاختصاص الاقليمي
General administrative control	الضبط الاداري العام
Special administrative control	الضبط الاداري الخاص
preventive in nature	الوقائي بطبيعته
unilateral	احادي الجانب (بارادة منفردة)
administrative authorities	السلطات الادارية
impose decisions	فرض القرارات
requiring the consent of individuals	تتطلب رضا الافراد
subject to legality	تخضع للمشروعية
administrative control measures	اجراءات الضبط الاداري
must be based on law	يجب ان تستند الى القانون
cannot be arbitrary	لا يمكن ان تكون تعسفية
Is proportional, proportionality	متناسب (التناسب)
restriction on individual freedoms	تقييد الحريات الفردية
must be necessary	ان تكون لازمة وضرورية
To achieve public order	لتحقيق النظام العام
subject to judicial review	تخضع للمراجعة القضائية
administrative courts	المحاكم الادارية
The authority to examine the legality.	سلطة فحص المشروعية
administrative decisions	القرارات الادارية
protect individuals	حماية الافراد
abuse of power	تعسف السلطة

Judicial police	الضبط القضائي
Public service	المرفق العمومي
legal concepts	المفاهيم القانونية
preventive measures	اجراءات (تدابير) وقائية
providing services	تقديم الخدمات
a repressive activity	نشاط قمعي
offense has been committed	تم ارتكاب الجريمة
to investigate crimes	التحقيق في الجرائم
identify offenders	تحديد الجناة
To avoid violations	تجنب الانتهاكات
Protect individuals and property	حماية الافراد والملكية (الممتلكات)
Prevent conflicts and disturbances	منع النزاعات والاضطرابات
Ensure the smooth functioning	ضمان السير السلس
Adapt public behavior	تكييف السلوك العام
legal and regulatory standards	المعايير القانونية والتنظيمية
Safeguard fundamental rights	ضمان الحقوق الاساسية
enables the State	تمكن الدولة
Regulated power	السلطة (الصلاحية) التنظيمية
central and local levels	المستويين المركزي والمحلي
the effectiveness	الفعالية
Judicial oversight	الرقابة القضائية
A specific legal nature and function	طبيعة ووظيفة قانونية خاصة
modern public administration	الادارة العمومية الحديثة
the rule of law	سيادة القانون
Pandemic	الجائحة

Public Service

Public service is one of the most important institutions in administrative law, as it represents the core mission of the modern State: serving the public interest and satisfying collective needs. It reflects the evolution of the State from a simple guarantor of security to an active provider of essential services such as education, health, transportation, and social protection.

1. Definition and Origin of Public Service

Public service can be defined as any activity organized, directed, or controlled by a public authority in order to satisfy a general interest. This activity may be carried out directly by the State or delegated to private entities under administrative supervision, as long as the public interest remains the ultimate goal.

The concept of public service originated in French administrative law, particularly through the jurisprudence of the *Conseil d'État*, which established that administrative law is essentially the law of public services. Over time, this notion spread to many legal systems, including Algeria, where it became a fundamental pillar of administrative organization.

2. Importance of Public Service

Public service plays a crucial role in ensuring social stability and economic development. It guarantees equal access to essential services, promotes social justice, and reduces inequalities among citizens. It also contributes to the functioning of the State by ensuring continuity in key sectors such as education,

health, security, and infrastructure. Without public services, modern society would be unable to function effectively.

3. Public Service in Algeria

In Algeria, public service is a constitutional and legal principle that reflects the social nature of the State. The Algerian administration is responsible for providing a wide range of public services through ministries, local authorities, and public establishments. These services are designed to meet the needs of citizens and support national development policies.

Algeria has also adopted administrative reforms aimed at improving the quality and efficiency of public services, including decentralization and digitalization of administrative procedures. Public institutions and state-owned enterprises play a major role in managing essential services across the country.

4. Essential Elements of a Public Service

For an activity to be considered a public service, several essential elements must be present:

First, a **public interest objective**, meaning that the activity must aim to satisfy collective needs rather than private profit.

Second, **public authority involvement**, which may take the form of creation, regulation, or supervision by the State or local authorities.

Third, a **legal framework**, as public services must operate under administrative law rules that ensure accountability and transparency.

Fourth, **continuity of service**, since public services must operate regularly and without interruption to meet citizens' needs.

5. Types of Public Services

Public services can be classified in different ways.

According to their nature, they are divided into:

- **Administrative public services**, such as education, justice, and public administration.
- **Industrial and commercial public services (SPIC)**, such as transport, electricity, and water supply, which operate under a mix of public and private law rules.
- **Social public services**, such as healthcare and social security, which aim to ensure social welfare.

According to their scope, they may be:

- **National public services**, managed by the central government.
- **Local public services**, managed by local authorities such as municipalities and provinces.

6. Principles Governing Public Services

Public services are governed by fundamental principles that ensure their proper functioning:

The first principle is **continuity**, which requires that public services operate without interruption, as they are essential for daily life.

The second principle is **equality**, meaning that all users must be treated equally without discrimination, except in cases justified by objective differences.

The third principle is **adaptability**, which requires public services to evolve according to social, economic, and technological changes.

These principles ensure that public services remain efficient, fair, and responsive to the needs of society.

7. Methods of Managing Public Services

Public services can be managed in several ways:

The first method is **direct management**, where the State or local authorities operate the service themselves using public resources.

The second method is **public establishments**, which are autonomous administrative entities created to manage specific services with legal personality and financial independence.

The third method is **delegated management**, where the administration entrusts the operation of a public service to a private entity under a contract, such as concession or partnership agreements, while retaining regulatory control.

Conclusion

Public service is a cornerstone of administrative law and a fundamental instrument for achieving public welfare. It ensures that essential needs are met fairly and continuously, while promoting social justice and economic development. In Algeria, public services play a strategic role in national development policies and administrative reform. Understanding their definition, principles, types, and management methods is essential for law students to grasp the functioning of modern public administration and the role of the State in society.

Legal terms:

Public service(public facility = public utility)	المرفق العام
Institutions= establishments	المؤسسات
The modern state	الدولة الحديثة
Public interest	المصلحة العامة
Satisfying collective needs	اشباع الحاجات الجماعية
Guarantor of security	ضامن للامن
Active provider of essential services	مقدم نشط للخدمات الاساسية
An organized activity	نشاط منظم
Directed and controlled	موجه
General interest	مصلحة عامة
Carried out	تنفذ
Delegated	يفوض - مفوض
Private entities	كيانات خاصة
Administrative supervision	اشراف اداري
Jurisprudence	الاجتهاد القضائي
Legal systems	الانظمة القانونية
Administrative organization	التنظيم الاداري
Equal access to services	النفاذ المتساوي الى الخدمات
Promoting social justice	تعزير العدالة الاجتماعية
Inequalities	اللامساواة
Citizens	المواطنين
Functioning	السير
Ensuring continuity	ضمان استمرارية
Be unable	غير قادر

To function effectively	العمل او السير بفعالية
A constitutional and legal principle	مبدأ دستوري وقانوني
The social nature of the state	الطابع الاجتماعي للدولة
Ministries	الوزارات
Public establishments(institutions)	المؤسسات العمومية
To support	دعم
National development policies	سياسات التنمية الوطنية
To adopt administrative reforms	تبني الاصلاحات الادارية
Improving the quality	تحسين نوعية
The efficiency	الكفاءة
Decentralization	اللامركزية
Digitalization of administrative procedures	رقمنة الاجراءات الادارية
State-owned enterprises	الشركات الوطنية (العمومية)
Managing essential services	ادارة وتسير الخدمات الاساسية
A public interest objective	الهدف هو المصلحة العامة
Private profits	منافع خاصة
Public authority involvement	تدخل (اشراك) السلطة العامة
The form of creation	شكل الانشاء
Regulation and supervision	التنظيم والاشراف
Legal framework	الاطار القانوني
Administrative law rules	قواعد القانون الاداري
To ensure accountability and transparency	ضمان المساءلة والشفافية
Continuity of service	استمرارية المرفق
Regularly	بانتظام

Without interruption	دون انقطاع
Administrative public services	المرافق العمومية الادارية
Industrial and commercial public services (SPIC)	المرافق العمومية الصناعية والتجارية
Social public services	المرافق العمومية الاجتماعية
Social welfare	الرفاه الاجتماعي
National public services	المرافق العمومية الوطنية
Central government	الحكومة المركزية
Local public services	المرافق العمومية المحلية
Municipalities and provinces	البلديات والولايات
Principles governing public services	المبادئ الناظمة للمرافق العمومية
The proper functioning	السير الحسن
Equality	المساواة
Users	المرتفقين
Treated equally	المعاملة على قدم المساواة
Without discrimination	دون تمييز
Adaptability	التكيف
Efficient, fair and responsive to the needs	كفاءة، عادلة ومسجتيبة للحاجات
Methods of managing public services	اساليب ادارة (تسيير) المرافق العمومية
Direct management	الاستغلال المباشر (الادارة المباشرة)
Public resources	الموارد العمومية
Public establishments	المؤسسات العمومية
Autonomous administrative entities	كيانات ادارية مستقلة
Legal personality	الشخصية القانونية
Financial independence	الاستقلالية المالية

Delegated management	الادارة المفوضة
To entrust	تعهد (صيغة فعل)
Under a contract	بموجب عقد
Concession	امتياز
Partnership agreements	اتفاقات الشراكة
Regulatory control	الرقابة التنظيمية
Achieving public welfare	تحقيق الرفاه العمومي
Economic development	التنمية الاقتصادية
The modern public administration	الادارة العمومية الحديثة

Characteristics of Labor Law

First: Labor (labour) law is a set of legal, regulatory, and contractual rules governing relationships arising from a natural person performing work for another person under private law (employee–employer relationship), under the employer’s management and supervision, in exchange for remuneration. It is a branch of private law concerned with regulating relationships between individuals.

Second: Characteristics of Labor Law:

Labor law is distinguished by several characteristics, which are:

A. A Protective Law: Given that the relationship between the employee and the employer is unequal—despite the principle of freedom of will—the state intervenes through the enactment of this law to ensure employment opportunities under conditions that respect the worker’s dignity. It intervenes in the formulation and application of labor law to protect the relationship arising between the worker and the employer.

B. A Realistic Law: The realistic nature of labor law lies in the fact that its rules are not general and abstract, detached from practical reality, but rather are derived from a specific social context. It is not possible to apply the provisions of a foreign labor law to a society that differs socially (e.g., socialist vs. capitalist systems). Labor law is capable of adapting to various changes and developments and applies under all circumstances, times, and places. For example, it distinguishes between working conditions of women and men and takes into account the physical constitution of the worker.

C. Mandatory Rules: Although the employment relationship originates from the will of the parties, manifestations of public authority appear in this law, limiting that will. These manifestations are reflected in its mandatory provisions that cannot be violated except in ways that increase benefits for the worker, such as wages, daily/weekly/monthly working hours, social protection, promotion, minimum working age, compliance with employee registration in social security institutions within legal deadlines, adherence to the guaranteed national minimum wage, and granting annual leave.

D. Autonomous Rules with Diverse Sources: In addition to legal texts, labor law relies on rules of a contractual nature. Collective agreements concluded between trade unions, professional associations, and employers are important and distinctive sources of labor law.

E. Tendency toward Internationalization: Labour law has been internationalized due to political, economic, and cultural factors, including the convergence of states, the spread and development of communication means, and the emergence of international organizations. These organizations have contributed significantly to labor law issues, such as the International Labour Organization and the Arab Labour Organization, which have played a major role in internationalizing labor-related legal rules through international agreements.

In addition, states are committed to aligning their national legislation with international principles and conventions.

Legal terms :

Labor(labour) law	قانون العمل
Regulatory and contractual rules	قواعد تنظيمية واتفاقية (تعاقدية)
Governing the relationships	التي تحكم العلاقة (العامل – رب العمل)

Employee-employer relationship	
The employer's management and supervision	ادارة واشراف رب العمل
A remuneration	الاجر
A protective law	قانون حمائي
Unequal	غير متكافيء، غير متساو
The principle of freedom of will	مبدأ حرية الارادة
Enactment (to enact)	سن (يسن)
Worker's dignity	كرامة العامل
Formulation and application of labor law	صياغة و تطبيق قانون العمل
A realistic law	قانون واقعي
General and abstract	عامة ومجردة
To apply the provisions of a foreign labor law	تطبيق أحكام قانون عمل أجنبي
To adapt	يكيف
Mandatory rules (provisions)	قواعد امرة (ملزمة)
Manifestations of public authority	مظاهر السلطة العامة
Wages	الاجور
Daily-weekly-monthly working hours	الحجم الساعي اليومي / الاسبوعي / الشهري
Social protection	الحماية الاجتماعية
Promotion	ترقية
Compliance with employee registration in social security institutions	احترام التصريح بالعامل لدى مؤسسات الضمان الاجتماعي
Legal deadlines	الاجال القانونية
Adherence to the guaranteed national minimum wage	الالتزام بالاجر الوطني الادنى المضمون

Guaranting annual leave	ضمان العطلة السنوية
Autonomous rules	قواعد مستقلة
Legal texts	نصوص قانونية
Contractual nature	الطبيعة التعاقدية (الاتفاقية)
Collective agreements concluded	الاتفاقات الجماعية المبرمة
Trade unions	النقابات
Professional associations	المنظمات (الاتحادات) المهنية
internationalization	التدويل
The emergence of international organizations	بروز المنظمات الدولية
Labor law issues	قضايا (مسائل) قانون العمل
International labour organization	منظمة العمل الدولية
The arab labour organization	المنظمة العربية للشغل
International agreements	الاتفاقات الدولية
States are committed to aligning their national legislation	الدول ملزمة بمواءمة تشريعها الوطني
International principles and conventions	المبادئ والاتفاقات الدولية