FORMAL STRUCTURE OF THE LEGAL TEXT TITLE

[1]LAROUSSI HALIM, [2] AMRI ABDELKADER
Rank: Assistant lecturer "A"
Specialization: Constitutional Law
Institution: University Yahia Fares - Medea (Algeria)
Email: laroussihalim@gmail.com

Rank: Assistant lecturer"A"
Specialization: International Criminal Law
Institution: University Yahia Fares - Medea (Algeria)
Email: avocat.amri@yahoo.fr

Abstract:
The legal drafting process is of paramount importance in fulfilling the inherent purpose of a legal text. A legal text serves as the primary vehicle through which the will of the legislator is conveyed to its audience, ensuring that it is both a binding instrument and a source of rights and obligations. Accordingly, meticulous attention must be paid to every component of its formulation, including its structural framework or what is conventionally referred to as its external form, adhering to rigorous scientific and objective standards to enhance its legal efficacy.
While the legal text constitutes a purposeful linguistic unit, it is characterized by a distinctive form that differentiates it from texts in other disciplines. This unique form plays a pivotal role in identifying the legal text, defining the procedural and formal requirements for its promulgation, and contributing to the precision and clarity of its substantive content.
This article seeks to analyze the principal characteristics discernible through an examination of the constitutions enacted in Algeria from independence to the present day.

Keywords: *Law, Drafting, Legal Text Title, Text Chronology, Legal Writing.*

INTRODUCTION:

Every text, regardless of its nature, has a specific title, which serves as the key that succinctly and expressively encapsulates its content. In legal parlance, it is often said that the title of anything reflects its essence, both externally and internally.[1] The primary function and ultimate goal of a title is to provide a quick and comprehensive overview of the text's content before delving into its substance. If the creation of good legal work necessitates quality drafting, its first landmark becomes evident when formulating the titles of legal texts, distinguishing the drafter in their ability to identify and outline their content in comparison to other fields of study.

The title of a legal text goes beyond merely identifying its content; it also highlights the nature of the legal text itself, thus establishing its position within the legal hierarchy of the state. Furthermore, it determines its date of issuance and its sequential ranking within the same category based on normative value.

On this basis, we can address the issue through the following question: Can it be said that the drafter of a legal text relies on fixed and standardized formal criteria? To answer this question, this article is divided into three main sections. The first section addresses the identification of the type of legal text, the second section focuses on the numbering of legal texts, and the third section examines the determination of the date of issuance of the legal text.

Section One: Determining the Type of Legal Text

[1] The Al-Munjid Dictionary for Students, Dar Al-Mashriq, Beirut, Lebanon, 54th edition, 2010, p. 502.

It can be observed that the title of a legal text is not as simple as it may appear; rather, it assumes a complex structure, incorporating several elements. These elements include the type of legal text, its number, and the subject matter it addresses.[2]

Consequently, the precise determination of the type of legal text presupposes the existence of a fixed, pre-established regulatory framework that encompasses all applicable normative values within the state. Based on this, good legal drafting requires the establishment of consistent normative patterns to ensure that any new legal text is categorized within one of the established classes.

In this way, the title reflects the strength of the legal text, reinforcing the principle of the hierarchy of legal texts and solidifying their hierarchical structure, with the constitutional document at its apex, followed by laws, and eventually regulations. This classification is often referred to by some as the categorization of the legal hierarchy, which includes primary legislation, ordinary legislation, and subordinate legislation.[3]

Furthermore, the accurate determination of the type of legal text through its title ensures ease in identifying the authority that enacted it, whether it be the legislative or executive authority, depending on its nature. In this regard, the title serves as an indicator of the extent to which the respective authority respects the domain within which it has jurisdiction, as well as the procedures established by the Constitution, which must be adhered to during the stages of drafting or ratification of the text.[4]

The accurate determination of the type of legal text at the time of its enactment provides its user with a clear understanding of its position within the legal hierarchy and the availability of the procedures and formalities established for its enactment or amendment, in accordance with the principle of parallelism of forms.[5]

However, in the absence of firmly established normative patterns within the state, this situation negatively impacts both the legal text itself and the integrity of legal drafting. This necessitates that the legal researcher undertake a thorough effort and in-depth analysis to determine the true position of the legal text within the prevailing legal hierarchy of the state, rather than merely relying on its title.

An example of this is that legal texts addressing issues of a constitutional nature are expected to hold a higher position than other legal texts dealing with matters regulating relations between individuals, even if both are issued by the same authority and fall under the same type.

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[2] Rachid Khalloufi, Rédiger la Loi, Le Bonne Niveau Normatif, IDARA, Revue de L'école National D'administration, Alger, Volume 20; N°1, Année 2010, n°39; p.109.

[3] Ibrahim Abdel Aziz Shayha, Political Systems: States and Governments, Maktabat Al-Ma'arif, Alexandria, Egypt, 2003 edition, p. 122.

[4] Regarding this subject, see Dr. Bouhamida Attallah, Legal Texts: From Preparation to Implementation, Diwan of University Publications, Algiers, 2008 edition, pp. 17-24, 38.

[5] It is determined through the application of the principle of parallelism of forms concerning constitutional texts that the constitutional rule may only be abolished or amended by the founding authority or by those it delegates, as stipulated in the constitution. This principle is considered a product of the French Revolution. For more on this subject, see: Dr. Amin Atef Saleeba, The Role of Constitutional Jurisprudence in Establishing the Rule of Law: A Comparative Study, Modern Foundation for Publishing, Tripoli, Lebanon, 2002 edition, pp. 83-84.

For instance, an order issued by the President of the Republic concerning a matter within the scope of organic law is fundamentally superior in force to one that addresses a subject matter related to ordinary law. Therefore, the determination of the type of legal text only yields a positive effect if it accurately reflects the strength of the text in terms of its type and subject matter.
On the other hand, the determination of the nature and ranking of applicable legal texts requires, initially, a stable regulatory framework in the form of a hierarchical structure.
This structure gradually evolves with the development of the state and is progressively enriched through key political milestones in the state's history, during which these normative values are refined and developed, not merely modified or addressed in response to immediate circumstances. However, if this regulatory framework experiences significant fluctuations and inconsistencies in its content over short periods due to the immediate handling of exceptional situations, the very purpose of its existence will be undermined, leading to the loss of the fundamental goal behind the establishment of the principle of hierarchy in legal norms.
This, in turn, will have a negative impact on the integrity and quality of legal drafting, eroding trust in the position of legal texts and, by extension, the stability and certainty of established legal positions, particularly in the domain of rights and freedoms.
With regard to issuance, it is essential to avoid fluctuations in normative value to prevent any defects that should be avoided when seeking to achieve sound legal drafting. This requires the establishment of stable normative values that ensure each legal text attains the prominence it deserves, dictated by its type and content. These values should progressively descend from law to decree to presidential ordinance.
Moreover, the formal nature of the title of a legal text necessitates the classification of decrees based on their nature, thereby facilitating their accessibility, identification of their source, and understanding of their content from the title alone. This, in turn, serves as a supporting factor for the realization of sound and high-quality legal drafting, ensuring the unification of normative values through which the most important legal texts in the state are issued.
All of these considerations highlight the pressing need for the establishment of a stable regulatory framework for all normative values in any state, aimed at
preventing deviations and ensuring the creation of qualitative legal work that guarantees the value and dignity of legal texts.

Section Two: Numbering of Legal Texts
The date of a legal text is an integral part of its title, forming its second component, which is directly connected to the first part that defines its nature, or type. The importance of numbering a legal text lies in ensuring ease of access and distinguishing it from other legal texts of the same normative value that have addressed the same subject matter at an earlier time. Thus, the date of the legal text plays a crucial role in accurately defining its title, and it must be carefully considered during its drafting to achieve sound and high-quality legal work.
In the context of our country, the application of the date in legal texts relies on two numbers separated by a hyphen (-), through which the year of issuance of the legal text is determined. The first number corresponds to the year of issuance, followed by the hyphen and then the sequential order number assigned to each legal text within the same category based on its legal nature, issued during the same calendar year. In this way, the legal text acquires its legal existence prior to its issuance, although it will only become effective after its publication. This has led some to consider issuance as a subsequent procedure necessary for the completion of the law.[6]

[6] Dr. Abd al-Aziz Al-Sayyid Al-Juhari, Law and Administrative Decision between Issuance and Publication: A Comparative Study, Dar Al-Matbu'at Al-Jami'iya, Algiers, 1991 edition, p. 24.

Despite the doctrinal disagreement surrounding the legal qualification of issuance[7], the definition previously provided appears to be the most appropriate. Some scholars argue that this divergence arises from the influence of doctrinal schools on the practical application of the issuance process within each political system, with its nature potentially differing from one constitution to another within the same state.[8]

On the other hand, some scholars approach this issue from the perspective that legal texts, including constitutions, are the ones that confer this competence and authority in order to prevent any delay that may be incurred by the body entrusted with this competence, especially when it holds it exclusively.

Legal texts do not receive their numbering in terms of the Gregorian year, as previously explained, nor the sequential order number in their title, until after they have been ratified and scheduled for issuance.

As we have previously mentioned, the primary purpose of numbering legal texts is to organize them and ensure their easy accessibility after publication. Thus, it serves as a practical organizational mechanism, which should, in principle, be fixed and widely recognized to facilitate easy access to legal texts for users of the Official Gazette.

These texts are categorized primarily according to the civil year, with the first publication in the year assigned the number "01," and the numbering continues until the final issue of that year. This system creates a direct correlation between the numbers of the Official Gazette on one hand, and the legal texts published within it on the other, both in terms of date and the nature of the legal texts.

However, the lack of proper regulation of this matter, which would ensure the achievement of this objective, results in significant confusion in practical reality that could hinder the establishment of such a connection, thus undermining the integrity of legal work.

For instance, there are instances where the numbering of the Official Gazette has not been consistent in certain years, or where there are repeated and identical numbers for different issues within the same year containing different legal texts. Additionally, distinguishing between decrees carried by the Official Gazette, in terms of their nature, is often difficult, relying on a single sequential numbering for different types of legal texts, such as laws and orders. Furthermore, the same numbering has sometimes been used for legal texts with different legal natures.

Another example of the failure to adopt consistent standards in the preparation of the Official Gazette is the use of different symbols for numbers in the titles of legal texts. This includes the use of Latin numerals in French texts or Indian numerals in Arabic texts.

What we infer from this disparity is the fluctuation and instability experienced by the drafter of the legal text from one stage to another, which could lead to the potential occurrence of errors due to the absence of fixed, standardized, and continuous criteria regulating this technical domain.

A researcher or administrative officer accustomed to dealing with legal texts in French may find it difficult to quickly adapt to the fact that a point (.) represents (0), that (1) represents (2), or that (1) means (6).

This necessitates the preparation of such decisions, requiring time to implement them effectively. Moreover, it demands that the symbols used in drafting legal texts in the Official Gazette align with the language understood by the general public, as the legal text serves primarily as a means of communication between the legislator and the citizen. Its content should be comprehensible to those

[7] Dr. Abd al-Aziz Al-Sayyid Al-Juhari, Op. Cit., pp. 24-40.

[8] Ibrahim Qaoui, The Role of the Executive Authority in Legislative Activity within the Algerian Constitutional System, Master's Thesis in Law, Branch of Constitutional Law and Political Organization, Faculty of Law, University of Algiers, 2002, p. 54.

addressed, in accordance with the prevailing culture within the environment where its provisions apply.
A sound legal system should facilitate easy access to the law in an accurate and clear manner, which can only be achieved through the adoption of fixed, standardized criteria capable of removing any ambiguity or confusion that might arise for those interacting with legal texts. It also serves as evidence of the drafter's careful consideration and attention to every detail involved in the process of preparing the text, no matter how trivial it may seem.

Section Three: Determining the Date of Enactment of the Legal Text

When examining the issue of the date of a legal text as a component of its title, it is essential to first clarify that this date fundamentally differs from the publication date in terms of its organization, even though they may coincide in certain legal texts. The date of the legal text is tied to the signing and issuance by the competent authority,[9] whereas the publication date is associated with its appearance in the Official Gazette, aimed at informing the public of its entry into force and enabling the relevant authorities to carry out their duties.[10] As such, the date of the legal text, as a general rule, precedes the publication date.
In reference to Algeria, the issue of determining the effective date of legal texts has been regulated through Article 1 of Presidential Decree No. 64-147, as it is one of the first legal texts to organize the matter of enforcement and publication in our country.
It states that **"laws and regulations shall become effective throughout the national territory one full day after their publication in the Official Gazette of the People's Democratic Republic of Algeria, unless otherwise decided."**[11]
While the Gregorian calendar alone has been the basis for determining the date of legal texts in Algeria since the publication of the first order in the Official Gazette on July 6, 1962[12], this basis changed with the publication of the Official Gazette in Arabic starting in 1964.
Since then, the Islamic (Hijri) calendar has been consistently used alongside the Gregorian calendar when determining the title of legal texts in the Official Gazette. This practice has been consolidated with stability and consistency in regulating this matter, which supports the development of good legal practices.

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[9] Dr. Abdel Aziz El-Sayed El-Gohary, Law and Administrative Decisions between Issuance and Publication, A Comparative Study, Dar Al-Matbu'at Al-Jami'iya, Algiers, 1991 edition, pp. 45-46.

[10] In Algeria, this task is assigned to the Official Printing House since its establishment in 1964, which is responsible for printing the official government bulletins and all necessary documents for various government administrations and bodies, either directly or indirectly. See Article 1 of Presidential Decree No. 64-332, previous reference. Also, see Article 05 of Presidential Decree No. 03-189, dated 26 Safar 1424, corresponding to April 20, 2003, which includes the amendment of the basic law of the Official Printing House in the Official Gazette No. 30, published on April 30, 2003.

[11] Article 2 of Presidential Decree No. 147/64, dated 16th of Muharram 1384 AH, corresponding to May 28, 1964, regarding the implementation of laws and regulations, published in the Official Gazette No. 01, dated May 29, 1964.

[12] Ordonnance N° 62-01 du 06 juillet 1962 Relative à la Réintégration et à la Révision de la Situation Administrative de certains fonctionnaires et agents, Journal Officiel de L'état Algérien, 1 année N° 1; 06/07/1962.

On the other hand, the date of the legal text may raise another issue related to its effectiveness, as the legal text is impacted in cases where its issuance is delayed. The primary purpose of enacting the law is to regulate a specific subject matter within the context of a defined environment, which the law was enacted to address and apply within.
The longer the issuance of the law is delayed, the more negatively it affects the regulation it was intended to establish, whether due to potential changes in the environment in which it will apply, or the failure to inform relevant parties of its existence. Furthermore, delays in issuing related regulatory texts, which are essential for its implementation, may result in the law being unenforceable until those texts are issued.
From our study of the title of the legal text, specifically the phrases with which the title ends, the subject matter of the text is determined, which defines the scope of its applicability. The subject may be independent, in which case the topic of the text is distinct from other existing subjects, particularly when the text addresses a new or emerging issue, or when it involves the complete repeal of an existing text and its reorganization.
Alternatively, the subject may be tied to the phrases "amends" or "amends and supplements," when the text introduces new provisions to an existing law. The subject may also be related to the application of specific provisions of an existing legal text, in which case the article number(s) to be applied are explicitly referenced in the title. Consequently, the full title of the legal text includes the relevant linking phrases that explain the reason for its issuance.

CONCLUSION:

In conclusion, we assert that the formalities of the title of the legal text necessitate treating the legal text as an independent unit that must ensure its effectiveness. It is important to acknowledge that it is part of a comprehensive legal system that relies on the consistency of the normative values upheld by the state.
When drafting the legal text, it is essential to avoid assuming the existence of a unified model for drafting all legal texts, as this is practically impossible due to the nature and specificity of each legal text, in terms of its type, scope, the subject(s) it governs, the competent authority responsible for its drafting and issuance, and the mandatory procedures and formalities that may vary from one text to another.

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