

Independence, Sovereignty, Preponderance – The Prevalence and the Territorial Expansion of State Power

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Abstract:

State is society's need for the existence of an organized power, equipped with the right equipments of coercion and able to run the society, by imposing the choices that seem reasonable to them, through legal norms. State is an organization of state power; it is an organized power which imposes its will to all the society and has a whole mechanism to execute this will. The state realizes its functions through power, which is a mechanism to accomplish its relevant functions. The power's concept is a social concept, which can be understood only as a relation between two subjects, between two wills. Power is the ability to impose an order, a rule and other's behavior in case that he doesn't apply voluntary the relevant norm, respectively the right. Using state power is related to creation and application, respectively the implementation of law. To understand state power better, we have to start from its overall character. So, we notice that in practice we encounter different kinds of powers: the family's one, the school's one, the health's one, the religion's, culture's etc. The notion of powers can be understood as a report between two subjects, two wills. Power is an order for other's behavior. Every power is some kind of liability, dependence from others. In the legal aspect, supremacy of state presents the constitutive – legislative form upon the powers that follow after it. Supremacy, respectively the prevalence, is stronger upon other powers in its territory. For example we take the highest state body, the

parliament as a legislative body, where all other powers that come after it, like the executive and court's one, are dependable on state's central power. We can't avoid the carriage of state's sovereignty in the competences of different international organizations. Republic, based on ratified agreements for certain cases can overstep state's power on international organizations. The people legitimate power and its bodies, by giving their votes for a mandate of governance (people's verdict). It is true that we understand people's sovereignty only as a quality of people, where with the word people we understand the entirety of citizens that live in a state. The sovereignty's case actualizes especially to prove people's right for self-determination until the disconnection that can be seen as national – state sovereignty. National sovereignty is the right of a nation for self-determination. Sovereignty's cease happens when the monopoly of physical strength ceases as well, and this monopoly is won by another organization. A state can be ceased with the voluntary union of two or more states in a mutual state, or a state can be ceased from a federative state, where federal units win their independence. In this context we have to do with former USSR's units, separated in some independent states, like Czechoslovakia unit that was separated in two independent states: in Czech Republic and Slovakia. Former Yugoslavia was separated from eight federal units, today from these federal units seven of them have won their independence and their international recognition, and the Republic of Kosovo is one amongst them.

Every state power's activity has legal effect inside the borders of a certain territory and inside this territory the people come under the relevant state's power. Territorial expansion of state power is three dimensional. The first dimension includes the land inside a state's borders, the second dimension includes the airspace upon the land and the third dimension includes water space. The airspace upon inside territorial waters is also a power upon people and the power is not universal, meaning that it doesn't include all mankind. State territory is the space that's under state's sovereignty. It is an essential element for its existence. According to the author Juaraj Andrassy, state territory lies in land and water space inside the borders, land and water under this space and the air upon it. Coastal waters and air are considered as parts that belong to land area, because in every case they share her destiny.

Exceptionally, according to the international right or international treaties, it is possible that in one certain state's territory another state's power can be used. In this case we have to do with the extraterritoriality of state power. The state extraterritoriality's institute is connected to the concept of another state's territory, where we have to do with diplomatic representatives of a foreign country, where in the buildings of these diplomatic representatives, the power of the current state is not used. These buildings, according to the international right, the diplomatic right, have territorial immunity and the relevant host state bodies don't have any power. Regarding to inviolability, respectively within this case, we have two groups to mention: the real immunity and the personal immunity, which are connected with the extraterritoriality's institute.

Key words: independence, sovereignty, territorial expansion of state power

The state is a materialized organized form of political organization in every society, influenced in first place from economic relations, which are translated in a natural way in dominance relations.

State is an expression for the need that society feels for the existence of an organized power, equipped with the right coercive equipment and the ability to run the society, by imposing choices that look reasonable in first sight, through juridical norms. State is a political power organization, it is an organized power, and it imposes its will to the society, having a mechanism to apply this will.¹ The term “state” is used in two meanings: in the meaning of a political organization in society and in the politico-geographical meaning. This notion interlocks three elements that a state should have: the territory, population and public-legal power that has legal effect on an assigned territory and the people that live there. The state, in one way or another represents a general organized politic. The

¹ See: Luan Omari “Parime dhe Institucione të së Drejtës Publike”, the tenth edition, Publishing house “Elena Gjika”, Tirana, 2007.

main feature of the state is the fact that it is a specified organization. From the past until nowadays we have: slave states, feudal states, bourgeois states, socialist states² and the current states based on international rules. To study them easier, we classify the states by type and form. The evolutionary basis for development of state concepts is supported in the legal theories of ancient Greece. Based on sociological theories, the state is a social organization created by us for the general good. This theory was developed by Plato and Aristotle, by treating the state as a community of people that have to protect common interests. Said otherwise, the sociological theory considers state as a product of some kind of differentiation between the government and the governed and as a cooperation of public services that are controlled by the government.³ Lenin thinks of the state as an organization. We do also have another theory, the one of Ferdinand Lasal, which says that the state is a union of individuals. According to him, only state has a big civilization impact on the development of education, culture etc. But, on the other hand, if we take a look on Leon Dygui's idea about the state, he treats the right as powerless without pressure - strength, or that strength without right would be barbarity. This strength should be lead by right.⁴ Along with these theories, the legal theory is more considerable because state has some legal elements and the legal sciences deal with state exclusively, as a special social organization, political organization. We can't eliminate other sciences that also contribute in this special political organization. In our everyday life, we often come across the meaning of state, for example, when we go out we'll see the traffic policeman, who gives orders about traffic and these orders should be respected, and in case they aren't, then penalties are given from relevant state authorities. In this case the policeman is represented as

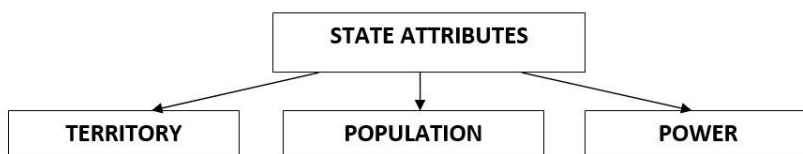
² See *ibid.*

³ See *ibid.*

⁴ See *ibid.*

an official state person. The state administration orders us to pay taxes and in case we don't, the payment will have to be done violently. Here we can see the conception of state acting violently against those that do not follow the rules – legal dispositions. It is worth mentioning that behind every state authority – official person – policeman, the judge or the prosecutor, is the state with a very strong mechanism to complete the duty. We have to point out that we can't talk about state outside the right. State counts lots of norms that together compose the right.

With other words state can't be understood out of the right, but even the right, on the other hand, can't be understood out of the functional aspect of state existence.



State power and sovereignty

State is always identified with practicing its authority, and through this it produces and modifies the right. State executes its relevant state functions by dint of power, which is a mechanism to fulfill these functions. The concept of power is a social concept that can be understood only as a relationship between two subjects, between two wills.⁵ Power is the ability to enforce an order, a rule, other's behavior, in case they don't follow willingly the relevant norm, respectively the right. Practicing the state power is nothing else but the relation between creating and application, respectively obeying the right. To get to know state power better, we should first know its overall character. We can see that in practice we encounter different kinds of power: the family one, the school's, the

health's, religion's etc. The notion of powers can be seen as a report between two subjects, two wills. The power is an order for the other's behavior. Every power is some kind of liability. While having to do with state power we should think of it as some kind of state power that is available to use physical restraint, which is a special mechanism, and with this restraint realizes the dedicated purpose. ⁶Power's liability can be double: with moral means without using voluntary strength, voluntary behavior against legal norms and on the other hand the liability can be in compliance with the order, with and without using physical strength.

The state power sovereignty concept

State sovereignty is one of the most important state issues. The word "sovereignty" originates from Latin "supremus, superanus" meaning supreme and from the French right "Sovran" and has to do with the fact that it marks the subject's meaning as sovereign – supreme, respectively independent from others. In ancient Greece Plato and Aristotle had been dealing with this issue. According to the first thinker, the bearers of state power are philosophers, while according to the second thinker, Aristotle, the sovereign power within the state, belongs to the law. They gave big importance to this issue – the sovereignty issue, especially with the democratic revolution in France, where we mention Jean Jacques Rousseau as a worthy representative in its writings about social contract, where based on this theory the monarch is not sovereign anymore as an absolute monarchy but as the general will of people and that will is exclusively expressed through the democratic bodies of the nation, through the parliament. Sovereignty is a basic concept of the right, especially of the international and constitutional right. The concept of state power sovereignty, as

⁵ See *ibid.*

⁶ See *ibid.*

a concept of right, has two meanings: as a concept in the inner right, regulated with the constitutional right and as a concept in the international right that treats this phenomenon – category by the international public right. As a rule, sovereignty is one of the state power issues without which we can't even talk about the term "state", in the internal and external meaning. State power is based on the monopoly that means a bigger, sovereign, supreme from others, independent. As a rule the sovereignty notion connects with state – state power, where Lojesau, French author, says that "state sovereignty is the one thing that gives state spirit". If we refer to the political dictionary of Oxford, with the notion of sovereignty we understand "a request to be the last political authority that is not subjected to any higher power in terms of receiving and implementing political decisions."⁷ State sovereignty usually is considered as sovereignty in three necessary elements: in the independence against any power of other states, the lack of any formal restrictions about state power in extracting those provisions that are seen as reasonable and the preponderance that state power has in the territory which he extends, upon every other power.⁸ The state power sovereignty has two attributes of state power: state power on its territory, possessing strength to impose the realization of its goals on one side, but state power possesses outside sovereignty as well - if that state is a member of United Nations, than the state has "equal sovereignty" because this equal sovereignty is guaranteed and is known with the United Nations Card.

The sovereignty of state power can be explained in the legal and political aspect. In the legal aspect state sovereignty means a power that is independent from outside, from external factors that can't affect in certain state issues on one side, but we have

⁷ See: Oxford Political Dictionary, 2005.

⁸ See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", the tenth edition, Publishing house "Elena Gjika", Tirana, 2007.

the preponderance of this power towards all the internal factors. In the political aspect, in terms of state power sovereignty, we have to do with the report between political power and state power. The international right treats the state power sovereignty issue as one of the main categories of state and its independence. Independence without sovereignty would be too decorative and declarative, and the state power's actions wouldn't have legal effect.

Based on the thoughts of different authors about the sovereignty of state power, it is resulted that state has a high – supreme position in decision-making through the highest state bodies, where in the legal and political aspect doesn't depend from anyone in implementing every decision.

State power's independence from any other power

This notion means that the state power is free in making its own decisions without external interfering, meaning that the state power works independently in its relations with other states, of course always being supported in its own authority and strength, free to use it based on the international right, respectively international agreements which are dedicated to the internal right, as a national right. Setting the legal order is an exclusive right of state power. No other political organization inside the country and no other organization of other countries have this right inside the territory of a sovereign state. In this context state power is independent from any other power in different decision-making, doesn't listen nor is submissive from external orders.

This means that while releasing the decisions, state power is not obliged to listen or to comply with orders from any external power. External states can't mix in internal state issues and every interference of any external power in the internal power is seen as risky for the sovereignty.

The preponderance that state power has on the territory where it lies, upon every other power (supremacy – prevalence)

In the legal aspect the supremacy of state presents the constitutive – legislative form for all the powers which follow after it.⁹ The state apparatus is created and organizes its activity regardless of other social powers inside the country.¹⁰ This means that in its territory, the state is supreme and above all other powers, meaning that the highest power imposes its will to the other powers and dominates against them. In this context all other powers are obliged to listen to the central power.

Supremacy, respectively the prevalence is stronger over other powers because of its territory. For example we take the highest state body – the parliament as a legislative organ, where all the other powers that follow after him, as the executive and judiciary one depend on the central state power. We can't move on without talking about the transfer of state sovereignty in powers of different international organizations.¹¹ Republic, on the basis of international ratified agreements can pass the state power on international organizations for certain cases. If a membership agreement, ratified from the Republic of Kosovo for participation in international organizations explicitly asks for direct implementation of the norms of this organization. The law with which the membership agreement is ratified is approved with the two thirds of votes (2/3) from all the deputies of the Assembly and those norms have priority on the Republic of Kosovo laws. Lately, the restriction of state sovereignty is grown with the accession of a lot of European countries in supranational organizations, for example the European Union (EU). The member states transfer sovereignty

⁹ For details see: A.V.Malko, 1, chapter 3.

¹⁰ See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", the tenth edition, Publishing house "Elena Gjika", Tirana, 2007.

¹¹ See: Article 20 of Constitution of Republic of Kosovo.

always and more, by attributing them the power of creating legally dependent norms, as well as the power to adopt mutual politics, that have always been reserved from the sovereign decisions of member states. Until now we have mutual monetary, agricultural politics etc.

Juridical boundarylessness of state power

The concept of power is a social concept that can be understood only as a relation between two subjects, between two volunteers. The power is the ability to impose an order, a rule or other's behavior, no matter if he obeys it with or without intention.¹² The establishment of legal order and the organization of its protection is an exclusive right of state power. No other political organization inside the inner state right has this benefit. With this we can say that state does always have full independence from other organizations.

In terms of the principle we mentioned above, it turns out that only state mechanism is available to use the adequate means to force this will, and this is an exclusive right of state power and no other organization has it. We have an exception here with the case of dissolution of former Yugoslavia – first in Bosnia and Herzegovina, where the local power was under the supervision of the United Nations, second in Kosovo, where NATO forces intervened military in March 1999, after Belgrade government didn't sign the agreement that was prepared in Rambouillet – France, by continuing the genocide against Albanian people in Kosovo.¹³ After the military victory of NATO, an administration of UN was placed in Kosovo, disconnecting practically and finally Kosovo from the jurisdiction of former Yugoslavia and replacing this administration with the administration of released acts from

¹² Entrance in the public right, lectures prepared by: Romeo Gurakuqi, Arenca Trashani, Shkodër – Tirana 2009.

¹³ See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", the tenth edition, Publishing house "Elena Gjika", Tirana, 2007.

the relevant authorities of Kosovo, currently Republic of Kosovo. The sovereignty of state power of Republic of Kosovo is a legal expression of the monopoly of politic will for the people of Kosovo. Said otherwise, the state sovereignty is equal with the human rights and freedom. State sovereignty contains other aspects as well, as: the economical aspect as state sovereignty, political aspect as state sovereignty and the legal aspect that presents the constitutive form regarding to legislature.

Said otherwise, state power is the strongest one from all the other powers in society, because it can vanquish them by using the monopoly of physical strength.¹⁴

After the armed conflict, from 12 June 1999, Kosovo is under heterogeneous and unconsolidated administration of UNMIK, KFOR, and OSBE¹⁵ as international institutions, where the 1244 Resolution of 1999 presented the big need to define the final status of Kosovo into an independent Republic. With this we can say that the subjects of law's behavior are regulated and sanctioned with relevant norms that have to be respected and fulfilled. State sovereignty also includes the basis of the dispositions of legal order, which can't be contested from anyone. This is imposed to others by the sovereignty of state power in organizing and applying the right through the highest legislative mechanism towards the other dependent mechanisms.

Demotic and national sovereignty

The demotic and national sovereignty is ranged right after the state sovereignty. The demotic sovereignty means the realization of politic will of people through the concept of the majority's governance, which is put in place directly from the

¹⁴ Dr. Osman Ismajli, the University of Pristine, Law Faculty, Pristine, 2004.

¹⁵ See *ibid*.

citizens¹⁶ or through the representative bodies, chosen directly from the citizens. POWER'S LEGITIMACY EMANATES FROM PEOPLE AND LAW. The people legitimate the power and its bodies, by giving them their votes for a mandate of governance (people's verdict).¹⁷ It is true that we understand the national sovereignty as a quality of the nation, and with the word nation we understand the totality of citizens that live in a state.¹⁸ The sovereignty issue is put in action especially to testify the right of people for self-determination which can be seen as national – state sovereignty.

National sovereignty is the right of a nation for self-determination until the disconnection in case he's part of a federal state, until the formation of the independent state¹⁹ in unitary states, where numerically a nation constitutes the overwhelming majority, as in the case of Albania, Italy, France, Germany, Greece, and Portugal. As a rule, these countries sovereignty is identified with the nation's sovereignty.²⁰ The population is the entirety of citizens that belong to the same state power. The nation is a permanent communion of a considerable number of people that have lived together for a long time and have mutual features: in language, culture etc. In one state the population can be composed from several nations, for example one federal unit interconnected in the federative state, with different nation and nationalities. With national sovereignty we understand the nation's right to decide if they want to create their own country or if they want to join another nation's country. The nation is and should be sovereign because it has the right of self-determination about their future regarding to the decision of that nation to be independent, an

¹⁶ See: James S. Fishkin, *Three Democratic Conditions*, New York, 1991, p. 29-42.

¹⁷ See: Melvin I Urofsky, *Basic Readings in U.S Democracy*, Unites States information Agency, Washington, 1992.

¹⁸ See: Dr. M. Dimitrijeviq, *Uvod Pravo*, Belgrade, 1983.

¹⁹ See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", the tenth edition, Publishing house "Elena Gjika", Tirana, 2007.

²⁰ See *ibid*.

independent state or if it wants to join in a multinational country, as is the federative state. Earlier, nations as communions have been subjected so tuning to the state sovereignty, wanting to keep their identity safe, knowing that the priority of self-determination will be respected till the disconnection, so the right to disconnect from the mutual state to realize their right to create a new, independent²¹ and sovereign state.

This right also includes the right to disconnect from the country with which a nation lives with other nations. In federal or composite states this case is solved depending on the character of the federate, because the federate can be two types: mandatory and voluntary. In the federal states that are formed or kept by dint of strength, since once they could have been formed with the free will of the participants, the state sovereignty is just form of sanction of the preponderance of the ruling nation. We've had these kinds of cases with the Yugoslav federation during the antifascist national liberation of the nations of Yugoslavia, created voluntarily with the consent of the representatives by taking the status of Republic and in this context Albanians were discriminated, by being denied their right to be an equal subject with the other nations that were part of the Republic of Yugoslavia.²² We also have similarities with the Union of Soviet Socialist Republics, where in their creation and destruction, respectively gaining the national sovereignty, former units of USSR most of which won their sovereignty and were accepted in the family of the internationally recognized states, have won their international subjectivity.

If we take a look at the self-determination institution, as a high value for the state of the right, it results that everyone has the rights and freedoms enacted, without any differences, so

²¹ Dr. sc. Osman Ismajli, the University of Pristine, Law Faculty, Pristine, 2004.

²² See *ibid.*

that any recent notion in the human history wasn't more privileged to bear the mission of the human future and the expression of human rights. As a rule, the principle of the right to self-determinate is supported in the United Nations Organization Card and gives the documents practical values that regulate this. The principle of people's self-determination²³ should be applied to Kosovo as well. Self-determination, as an institution and as a legal-political category, is one of the fundamental principles of the international right and one of the collective crucial rights that refers to the creation nation authority. "People's will is a crucial and supreme priority for settling the statute of Kosovo."²⁴

Self-determination, as the main institution that is supported on nation sovereignty, has the highest value of democracy and should be a permanent and comprehensive process in which, every person, regardless of its conviction, religion or race should have his human dignity respected. In another country the state and national sovereignty can be realized at the same time, because it is consisted from different nations and nationalities that may agree and live together in a country. The national state, respectively the national sovereignty, unites the communion of the nationals of a nation that live in that state under the same administrative regime with mutual interests.²⁵ One of the crucial elements that constitute national sovereignty, we can reckon two more important: creating a political will of people and actualizing the political will²⁶ which presents self-governance and national sovereignty, respectively demotic sovereignty. The requirements for the people's self-determination happen because the encroachment of human freedom and rights and because of the equal mishandling in politics, culture etc. compared with the major nations in a

²³ Prof. Upendra Baxi. From inhuman injustice and human's rights.

²⁴ Dr. sc. Fejzulla Berisha, "E Drejta – Law" Magazine for legal and social issues, nr. 2 – 4 – 2006.

²⁵ See more widely: Klimovski, 1.

²⁶ Dr. Radomir Llukij "Fillet e së Drejtës", Pristine.

common state.²⁷ This causes discontent and contradiction in relation with the numerically largest nation with which it sets its affection through formal governance on the smaller nations or human communities, by exerting violence and state terror, as we have the Serbian nation supremacy against the former Yugoslavia nations. The cause for the Yugoslavian federate collapse comprised by different nations, was domination, the governance with Serbian colonial rule against the other nations of former Yugoslavia, the majority of which actually won their right for self-determination, their sovereignty, sovereignty which was upheld the international community.

The cease of sovereignty and the recognition of states

The cease of sovereignty will be done when the monopoly of physical strength ceases of existing, and this monopoly is won by another organization.²⁸ In this case, we bring the question: Who does the sovereignty belong to? Of course, the sovereignty belongs to the new state, while the existing state loses the monopoly of power, stops existing as a state. In this case, the sovereignty of power in the new state is a legal power and the legitimacy is won by the new organization that is called state. So, the superior organization has the legitimacy which overthrows the old power and that is declared by the new organization. As a different way of ceasing the state sovereignty we mention the invasion or occupation. With occupation (invasion) we understand the situation where a part of a territory or the entirety of that territory is captured from another international subject. In this case we have to do with state's sovereignty depravity and with the submission of the relevant nation to the newly created state. The newly created state does the relevant structuring of the organized state

²⁷ Dr. sc. Osman Ismajli, the University of Pristine, Law Faculty, Pristine, 2004.

²⁸ See: Dr. Radomir Llukiq, Dr. Butimir Koshutiq, the University of Belgrade, "Uvod u Pravo", Belgrade, 1981.

structures in the occupied territory. Associated with this case we have to do with the disappearance of states as a result of the occupation of a state's territory and its fully conquest. States can annex another state even without invasions and war. For example, Prussia and Sardine have annexed (attached) without war different countries and by doing this they have realized their national unity.

A state can be disappeared with the voluntary union of two or more states in one mutual state.

Thus, Montenegro has ceased to operate as a state organization and as a particular international subject, when its assembly has announced the union with Serbia in 1918, as Syria and Egypt.²⁹ The state disappears when its territory is separated between other states, thus in 1829 – 1830 great Columbia was separated in Venezuela, Ecuador and New Greenland; in 1993 Czechoslovakia was separated in the Czech Republic and Slovakia; in 1991 Soviet Union was separated after Baltic republics regained their independence and other republics gave voice their will and won their sovereignty. Differently from Czechoslovakia and the Soviet Union, the dissolution of former Yugoslavia was characterized from a lot of agreements and disagreements until the war between federal units of former Yugoslavia to gain their independence, supported by the self-determination right. The Security Council, as a special body of the United Nations Organization, has clearly said in 1992 that “the state formerly known as the Republic of Yugoslavia has ceased to exist.”³⁰ These states cease and transform into another state or organization. With other words the sovereignty is won by another stronger organization and becomes carrier of the rights, obligations and

²⁹ See: Zejnullah Gruda “E Drejta Ndërkombëtare Publike”, supplemented and improved edition, Furkan, Skopje, 2007.

³⁰ Refer to the European Union Declaration about the criteria for the acceptance of new states in eastern Europe and former USSR. This Declaration was used as the basis to recognize these republic's independence.

responsibilities, especially those in the international right, of legal-political legitimacy.

Territorial expansion of state power

The activity of every state power expands and has legal effect inside the borders of a current territory and inside this territory the population is subjected to the relevant state power. Territorial expansion of state power is three-dimensional. The first dimension includes the land inside the borders of a state, the second dimension includes the airspace on the land surface³¹ and the third dimension includes the marine area. The airspace upon internal territorial waters is also a power upon people, meaning that the power is not universal, does not include the whole mankind. State territory is the space that's under a state's sovereignty. It is an essential element for its existence. According to the author Juaraj Andrassy, state territory lies in the land and water surface inside the borders, land and water under this surface and the air upon it.³² Coastal waters and air are considered as a part that belongs to the land space, because in every case they share its destiny.

Some authors consider as state territory even the naval ships and river boats, aircrafts and the official headquarters of diplomatic representations. According to some authors the airspace is endless, but the general international practice considers the part where the state power can be provided. But, the underground is also considered as territory, territorial expansion of state power, respectively until the point where state power has effect and it is said until half of the terrestrial globe³³, but effectively only where this power can be used and this is exclusively hanged on technological achievements. In the

³¹ See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", the tenth edition, Publishing house "Elena Gjika", Tirana, 2007.

³² See: Juraj Andrassy "Medjunarodna Pravo", Zagreb, 1971.

³³ See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", the tenth edition, Publishing house "Elena Gjika", Tirana, 2007.

territory that includes the water dimension we can mention rivers, lakes and marine, areas that according to the international right is determined from every coastal country's legislation, relying on the international right the area goes from 3 to 12 miles. If we analyze Albanian legislation about this case, state power has a territorial expansion at a height from 12 miles from sea coast.

In this context, by excluding Corfu channel, our waters expand until half of the distance between two coastlines. This marine area constitutes territorial waters. With this we feel the need to set borders between powers and relating to this we have a spatial – territorial union of state power, so in this power are all the people that live in that territory.

State's territory is the territorial space in which the state uses its power and where the state borders are accurately set. Within the state territory there are: landmasses, waters and airspace. In the constituent parts of territory there are: the land, including the underground, waters, air and ships. Regarding to waters, within them we have territorial waters (sea), port waters, internal rivers and waters, waters of bays, internal seas, internal rivers etc. In the air category we mention the air upon the sea and the land. Regarding to the ships, that are counted as constituent parts of state territory we have: sea ships, river boats and aircrafts. As a rule ships constitute as part of state territory. These are fictitious parts of state territory: "floating" parts, "flying" parts are mainly subjected to the laws and jurisdiction of the origin country. But for these aboard ships to be considered as "floating" territory they have to keep their country's flag and emblem and this regardless if they are in territorial waters or in free marine waters, open sea. This rule applies to the airplanes too. Regarding to the territorial expansion of state power, respectively certain countries border's expansion are assigned easier in landmasses – land, and harder in water spaces. Nowadays it's some kind of a rule that only a narrow strip of

sea near the sea coast, and only several miles from the sea coast is considered as a territory under that state's sovereignty.

Outside this space the sea is free, it doesn't constitute a state's territory and these are called free marine waters or high seas that are everybody's and nobody's. This case is regulated by the international public right. Every state uses its power in this marine territory, in free marine waters. This has to do with their vessels. It is considered that state has territorial sovereignty, thus supreme power or with other words the highest power on citizens in its territory. According to international right rules it is a state's power area as sovereign power and includes every part of the area where its jurisdiction has effect. State power uses several liability measures against these persons – citizens if they act contrary with the state rules, whether citizens or foreign. In order to enjoy their rights, the citizens also have responsibilities to that state.

Exceptionally, according to the international right or international treaties, it is possible that in a certain state's territory, another state uses its power. In this case we have to do with extraterritoriality of state power. The state's extraterritoriality institution is connected with the concept of another state's territory, having to do with diplomatic representatives of a foreign country, where in the building where these diplomatic representatives are placed, the power of the relevant state can't be used. These buildings, according to the international right, the diplomatic right, have territorial immunity and the relevant bodies of the host state do not pursue any power act. In terms of inviolability, respectively within this case, we have two groups that can be separated: the real immunity and the personal immunity, which are connected with the extraterritoriality institute.

The real immunity theory was programmed by Hugo Grocius, and according to this theory the diplomatic mission, the buildings of this mission are an enclave within the other state and being so they are integral parts of the state that

sends it. The first and second category of the immunity is related with the extraterritoriality institution of state power, where this one is also expanded outside its factual territory.

This principle – rule also goes for the warships and military aircraft wherever they are, that are part of that state's territory, the flag of which they are forced to keep.

In this context we also have to do with the commercial ships at open sea, that are part of the state's territory, while when they enter the territorial waters of another state, they must come under that state's jurisdiction, for example the extraterritorial territory as: different diplomatic representatives, foreign heads of states, navigation of vessels in free waters etc. All these cases and issues are regulated in detail exclusively by the International Public Right.³⁴

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1. Luan Omari “Parime dhe Institucione të së Drejtës Publike”, the tenth edition, Publishing house “Elena Gjika”, Tirana, 2007.
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