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## State Sovereignty and Validity of the Legal Norms as from the Spatial and Time Significance

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### Abstract:

*The state power is extended and has legal effect within the borders of one determined territory and within this territory the population are subject to the respective state power. Territorial scope of the state power is three dimensional. The first includes the earth within borders of one state, second dimension includes the air space on the earth surface<sup>1</sup> and the third dimension includes water surface-marine. Air surface also on the territorial underground waters is the power on the people and the power is not universal i.e. doesn't include the population. State territory is the space that is located under the sovereignty of one state. It is an inherent element for its existence. According to the author Juaraj Andrassy, state territory is spread in the earth and water surface within the borders, earth and water under this surface and the air on it. Marine waters and the air are considered as the parts that pertain to the earth space because in any case share its fate.*

*Exceptionally, according to the international law or according to the international treaties is possible that in the territory of one state to exercise its power in another state. In this case we have to do with **extraterritoriality** of the state power. Institute of the state extraterritoriality is related with the territory concept of another state, in which we have to do with diplomatic missions of one foreign state,*

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*where in the premises in which diplomatic missions are located, it isn't practiced the power of that state. These premises, according to the international law, diplomacy law, enjoy territorial immunity and the respective structures of the hosting country don't practice any action of the power. Regarding the integrity, respectively on behalf of this issue there are two groups that we can pick out: real immunity and personal immunity, which are related with the institution of the extraterritoriality.*

*As there is a moment of the norm when it enters into the force in one end there is also abolishing moment of the legal norm and termination of its validity effect. Related to the abolishing of the legal norm two situations may be distinguished: - one norm is terminated when one other norm is placed, which is higher than *lex posteriori derogate lege priori*. Exclusive norm always abolishes the general norm even if it is older than *lex specialis delegate lege generalis*. Validity of the legal norm from the territory- the space depends from the state regulation of that country and this depends from the fact that we have to do with the unitary or multiple state regulations.*

*According to the regulation a date is appointed from the moment of the norm creation until the moment of entering into the force so-called "vakatio legis." It happens a norm to enter into the force forthwith after the creation, but in urgent cases e.g. norm on the flood, fire prevention etc. As a rule the norm enters into the force from the moment of its publication in the Official Notebook. Validity of the norm ceases when consequences of the flood, fire etc. are avoided. In the case of the organic laws and notably of the codes, usually a longer term is left on entering into the force the law after publication in the Official Notebook, because these laws and codes request longer time in order to understand and execute right.*

*There are legal norms which lose legal value, notably those which are related to the dates. When the legal norm is without date it continues to produce its legal effects until it is abolished or abrogated. Abolishing can be done while issuing any other following act, or when the act, which is in force is in contradiction with the future act, which will come into the force (*lex posterior derogat priori*).*

*Norm ceases its value in the moment of the debt returning e.g. contract- bargain norm if it bounded in writing and in the determined*

*date it will cease its value in the moment when the obligations are executed towards the contracting parties.*

*Every old legal norm, every old order legal-economy ceases its value when it is substituted with another norm, other legal or economy order. These occur usually after the revolutions, wars, when the old power is changed and the new power is created etc. Kosovo case after the war, Resolution 1244 of the year '99, abolished legal system of Serbia in Kosovo and created New Legal Order with the International Civil Administration in Kosovo respectively on 17th February 2008 Constitutional Legal Order of the Republic of Kosovo, independent state and sovereign.*

**Key words:** State Sovereignty, State Validity, Legal Norms, Spatial and Time Significance

Activity of every state power is expanded and has legal effect within border of the fixed territory and within this territory population is subordinated to the respective state power. Territory state power scope is three dimensional. First dimension includes the land within the border of one country, second dimension includes spatial air on the earth surface<sup>2</sup> and the third dimension includes the water surface-marine. Though spatial air on the internal territorial waters is power on the people and the power is not universal, i.e. it doesn't include the whole population. The state territory is an area that is located under sovereignty of one state. It is an element being for its existence. According to the author Juaraj Andrassy, state territory spreads in the earth and marine area within the boundaries, earth and water under this surface and the air on it<sup>3</sup>. Seashore waters and air are considered as part that belong to the earth space as in every case share its fate.

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<sup>2</sup> See: Luan Omari "Parime dhe Institucione të së Drejtës Publike", tenth edition, Printing house "Elena Gjika", Tirana, 2007.

<sup>3</sup> See: Juraj Andrassy "Medjunarodna Pravo", Zagreb, 1971.

Some authors, the state territory consider marine and river ships, air flights and the official residency of diplomacy missions. According to some authors the air space is infinite, but general international practice considers the part in which could be ensured and guaranteed the effect of the state power exercise. However, the underground is considered territory, scope of the state power, respectively up to where has effect the state power and it is said until half of earth globe<sup>4</sup>, but effectively only where power could exercise and this exclusively depends from technical-technology achievements, perfection of the respective equipment techniques. In the territory that includes water dimension comprise rivers, lakes and marine surface, area that according to the international law is stipulated from the legislation of each seashore zone, supported by international law, space runs from 3 until 12 miles. If we analyze Albanian legislation, concerning this issue, the state power has territory extent in the elevation of 12 miles from the seaside. In this context, excluding the Corfu Channel, our waters are expanded until half of the distance between the two coasts. This marine surface consist the territorial waters. This space includes the territorial waters. Through this sounds a need to allocate the boundaries between powers and related with this there are: spatial union- territorial state power, in which all societies live in the appointed territory. State is territorial union, thus in its power are all the people that live in its territory.

State territory is the territorial space in which state exercises its power, in which are stipulated its state boundaries and marked precisely. On behalf of the state territory take part: earth, water and air surface. In the consisting parts of the state territory enter: earth including underground, water, air and the ships. Related to the waters, on behalf of them there are the

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<sup>4</sup> See: Luan Omari “Parime dhe Institucione të së Drejtës Publike”, tenth edition, Printing house “Elena Gjika”, Tirana 2007.

territorial waters (sea), harbour waters, internal rivers as inner waters, bay waters, internal bay waters, internal seas, internal lakes.

In the air category, on behalf of this category, enters air on the sea and on the earth. As regards to the ships that are reckoned as component part of the state territory enters: the sea-crafts, river and aircrafts. Ships as a rule consist part of the state territory.

These are fictitious parts of the state territory: “floating” parts, “aircraft” parts, where mainly subject to the laws and jurisdiction of the native state. But in order that these ship aircrafts to be treated as “floating” or “aircraft” territory must hold the flag, emblem of the state to which pertain and this regardless whether are located in territorial waters or in the free sea waters, high seas. This rule is valid also for the airplanes. Regarding the territorial scope of the state power, respectively scope of borders of the nominated states, borders of the state are determined easily in the earth surface- earth and very difficult in the water surface. Nowadays has become a rule that only one narrow girdle of the sea, close to the seashore, and that few miles away from the coastline to be considered the territory under sovereignty of that state.

Out of this space the sea is free, doesn't comprise territory of one state and these are called free marine waters or the high seas of everybody and nobody. This issue regulates international public law. Basically, every state practises its own power on this marine territory, in the high seas. This has to carry out at its floating equipment. It is considered that the state has territorial sovereignty, thus supreme power or otherwise the highest power on the citizen individual- citizens in its territory. According to the international law is area of the state power as sovereign power and includes each part of the space where is spread and has jurisdiction effect of that country. State power uses some liability measures towards these persons, citizens if they act contrary with the regulation

of that state whether native citizens or foreigners. Citizens, as a rule that enjoy rights and liabilities, are liable to that state if they don't refrain accomplishment of responsibilities towards that state.

Exceptionally according to the international law or according to the international treaties is possible that in the territory of one state to practice its power one other state. In this case we have to do with **extraterritoriality** of the state power. Institute of the state extraterritoriality is related with the concept territory of the other state, in which we have to do with diplomatic mission of the foreign state, where in the buildings that are located diplomatic missions, is not practiced the power of that state. These buildings according to the international law, diplomatic law, enjoy territorial immunity and respective hosting state structures don't exercise any action of the power. As to the integrity, respectively on behalf of this issue, there are two groups that we can apart: real immunity and personal immunity, which correlate with extraterritoriality institution.

Hugo Grocius has programmed real immunity theory, where according to this theory diplomatic mission, premises of this mission are enclaves within other state and as such are component parts of the referring state. The first and second immunity category is liaison with extraterritoriality institution of the state power; the latter also is expanded out of its factual territory. Moreover this principle and rule is valid also for warship and militant aircrafts anywhere located which are parts of the territory of that state, the flag which are liable to retain.

In this context we have to do also with trading ships in the high seas, which is part of the state territory, whilst when entering in the territorial waters of one other state, certainly must subject to the jurisdiction of that state e.g. extraterritorialized territory as may be: various diplomatic missions – consular, foreign chiefs of the states, floating of the

floated equipment in the free marine waters etc. For all these cases and issues regulates in the exclusively detailed fashion Public International Law<sup>5</sup>. Definition of the state, in this context if we base on the Constitution of the Republic of Kosovo: 1. Republic of Kosovo is independent state, sovereign, democratic, unitary and indivisible 2. Republic of Kosovo is state of its citizens and all individuals within its borders<sup>6</sup>. Meanwhile with regard to the Republic of Kosovo sovereignty, focus article 2 of the Constitution of the Republic of Kosovo: 1. of the Republic of Kosovo arises from the people, pertains to the people and is practiced conform with the Constitution through the selected representatives, with referendum and other forms conform to the provisions of this constitution. 2 Sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable and indivisible and is protected with all stipulated means with this Constitution and law.<sup>7</sup>

### **Validity of the Legal Norm as from the Territorial-Spatial Significance**

1. Norms, as a rule, regulate one definite sphere of the social reports, where subjects of the law must behave according to the legal relationships which are regulated with juristic norms. When the subjects of the laws behave in the manner as legal norms demand to be applied then norm is also liable for the respective subject. For instance law as general juristic conditional norm starts to oblige respectively to have legal effect in the moment when it enters into the force. Or, legal norms have validity in the assigned territory, that is, are valid only for one part of the state territory. So as we have the moment of the norm when it enters into the force in one side

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<sup>5</sup> See: Zejnullah Gruda “E Drejta Ndërkombëtare Publike”, Printing house - Furkan, Shkup, 2007.

<sup>6</sup> Constitution of the Republic of Kosovo, article 1, Prishtina, 2008.

<sup>7</sup> Constitution of Republic of Kosovo, article 2, Prishtina, 2008.

likely we have the moment of abolishing of the legal norm and terminating the effect of its validity. Regarding abolishing of the legal norm could distinguish two situations:-a norm is terminated when other norm is placed, which is higher than *lex posteriori derogate lege priori*. Exclusive norm always abolishes general norm even if it is older than *lex specialis delegate lege generalis*.<sup>8</sup> Validity of the legal norm on the territory- surface depends as from the state regulation of that country and this depends from the fact that we have to do with unitary or multiple state regulations.

However in the unitary state also validity of the legal norm may be parted according to the competencies<sup>9</sup> which apply decentralized power in the respective territory units. Whereas in the multiple state with federal regulation territorial validity norm has to do with what effect have legal norms and does it produce legal effects in the whole federal territory. But legal norm is also valid only for federal unit; point is for the units which constitute the multiple states, but in this case this legal norm cannot produce juristic effect for other federal units.<sup>109</sup> In this context such norms have its respective effect for one narrow territory of the federal state i.e. is valid for the respective territory of the federal unit, respectively territorial unit. With this is also interlocked territoriality principle of the juristic system in one respective state, in which there is legal order based on the juristic respective system.

It is characteristic to emphasize if we observe the Constitution and the federal laws of the former Republic Socialist Federal of Yugoslavia and other respective provisions of the Federal are valid for the territory of RSFY. Regarding

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<sup>8</sup> Broadly for this category of the political regime, refer to Stefan Buxhakoski, "Fillet e së Drejtës si Disiplinë Shkencore", Printing house, "Çabej", Tetovo, 2007.

<sup>9</sup> See: Dr. sc. Osman Ismajli "Fillet e së Drejtës", University of Prishtina, Faculty of Law, Prishtina, 2004.

<sup>10</sup> See: Dr. Radomir Llukiq dhe Dr. Budimir Koshutiq, "Uvod u Prava Naučna Knjiga", Beograd, 1981.



this we cite article 270 of the Constitution, where it is stated: “Federal law and other provisions and general acts are obliged in the territory of RSFY if with these provisions and acts are not determined that will be applied in one territory- smaller area”.<sup>11</sup> Point is for the federative units of the republic and autonomous provinces respectively here we have to do with some norms from the specificity of the federal unit. Occasionally in the jurisprudence every rule has exceptions as territorial prominence is not always absolute. In this aspect also exist exceptions notably when we have to do with extritoriality of the state power, regarding various diplomatic missions, where here diplomacy missionaries and with personal immunity in the hosting country have two kinds of immunities: with real immunity which are related with diplomatic missions and with personal immunity which secure representing diplomatic person.

Both these have base in fixing on exsterritoriality, according to which person of the representative diplomacy and its mission premise are considered that are out of the territory in which are factually. According to this they are not subjected to the acts-laws of the place in which are present.<sup>12</sup> And according to the principle of the extritoriality of the state power is regulated behaviour of the delegated state citizens in the accepted state. Thus here is valid, personal principle, regardless in which territory are citizens, in this case is valid his citizenship pertinent. These privileges are of the type, that such diplomatic people enjoy immunity, integrity of the residence etc. which as rule regulates contemporary international law.

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<sup>11</sup> See: Former Constitution – Republic Socialist Federative of Yugoslavia, year 1994.

<sup>12</sup> See: Zejnullah Gruda “E Drejta Nderkombetare Publike”, supplemented and corrected edition, 2007.

2. Every legal norm is valid for certain area. Law of one state is valid for its territory. In the course of the legal norm realization, previously must appoint the area, respectively borders of its action. This indicates that according to the state norms are obliged to carry only persons which stand in the area of the respective state, and towards things which are located in the area of this state. The issue of the legal norm action in the area is solved in this fashion. Legal norms issued from the assembly, Ministry Councils, have legal force in the whole territory of the state. Legal norms, as sub legal norms, which are issued from the competent local power respectively administrative units have its legal power for the territory i.e. the space which is under the administrative jurisdiction of those municipal structures etc. Legal norms, issued from the central structures, may have also its effect on one part of the state territory. This is territorial validity principle of the legal norms. In the branch of the constitutional and administrative law exist also exceptions from the territorial validity norm principle initially for the diplomatic representatives, thus extraterritoriality principle, which consider as being in the territory of their state.

Our laws as a rule are executed similarly for the foreign citizens who are present in the territory of Albania. Article 16 of the Constitution foresees that for the Albanian citizens are valid the same norms as for the foreigners and for the persons without citizenship in the territory of Albania.<sup>13</sup> Thus for instance when one foreigner executes offences, respectively illegitimate actions, which are forbidden from the positive right of the country, he is liable according to the laws or our positive rights. In this context there are exceptions for the foreigners (diplomatic representatives) that enjoy so called extraterritoriality right and according to the rule they are liable but according to

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<sup>13</sup> See: Provisions of the article 147-1 of the Liability law of the Republic of Macedonia Official Gazette of RM, nr.18-2001, Skopje.

the laws of countries that have recognized diplomatic representatives. About the foreigners, that are present in the hosting territory, notably in the civil law, all foreigners are obliged to fulfil civil liabilities, with an exception when the foreigners enjoy the extritoriality right, such as various diplomatic personalities etc. But some norms e.g. in the federal state, as a rule are valid for the whole state territory, but it happens that the norm is valid only for one territorial republic unit, respectively municipality or city hall, dependent from the specificity of that territorial unit.

### **Legal Norm Validity as from the Time Significance**

1. As regulation legal order has its legal effect based on the legal norms, which are associated with the time and with this is linked viability of the legal norms. In order to be the legal norm effective as to the viability, it is associated with the time. Norm always is valid for a certain time i.e. from-until, but there are norms that are valid only when enter into the force. Regarding the moment when the legal norm loses its power, must distinguish between normative acts without and with date. When legal norm respectively when the normative act integrates-signifies its action dates, it loses power with execution of this date. Legal norm liaison with the self time interlocks positive law. The positive law is a right that is applied in the everyday life, respectively a rule which is in force. A rule for the legal norm as the general norm is to determine time of its validity.

As there is a norm moment when it enters into the force in one side so there is also the abolishing moment of the legal norm and the termination of its effect validity. Regarding the abolishing of the legal norm could be distinguished two situations:- one norm is terminated when is placed one other norm, which is higher than the *lex posteriori derogate lege priori*. Exclusive norm always abolishes general norm even if it

is older than *lex specialis* the *delegata lege generalis*.<sup>14</sup> Validity of the legal norm as from the territory-area depends from state regulation of that country and this depends from the fact that we have to do with state regulation-unitary or multiple.

As a rule the moment of the entering into the force legal norm is specified during the approval of the legal norm from the respective structures which are competent on issuing the norm i.e. the time is specified from when the legal norm enters into the force, respectively from when the legal norm starts to obligate respective subjects.

Moreover, from when the legal norm can produce its legal effects for the subjects to whom is dedicated. As a rule, the moment of the norm creation and the moment when the norm enters into the force, i.e. when the norm produces legal effects is called “*vocatio legis*”. If we decipher abolishing of the legal norm must distinguish two segments:

A norm will not have legal effect when one other equally norm with it is issued or the highest norm (*lex posteriori* derogate *lege priori*), exclusive norm as an unconditional norm abolishes general norm as conditional norm even if it is older (*lex specialis* *delegata lege generalis*).

In this context time significance of legal norm validity is principle which is associated with time when the norm enters into the force i.e. has legal effect until then the legal norm ceases having these effects. Hereupon legal norm, that regulates various social reports and which is issued in the legitimate manner is positive norm of legal respective order, then that norm is obligatory for the respective subjects.

If we view the general norm, as conditional norm and an exclusive norm as an unconditional norm proves thus: general norm regardless from the citizens, respectively the subjects of the law to whom is dedicated its validity is longer and is valid

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<sup>14</sup> See: Provisions of the article 147-1 of the Liability law of the Republic of Macedonia Official Gazette of RM, nr.18-2001, Skopje.

for longer period of time, meanwhile the exclusive norm is unconditional and is valid only for the concrete case and is an individual norm- concrete that is dedicated to the fixed subject for the concrete case and can cease with the concrete case. <sup>15</sup>E.g. subject x in order to pay taxes for the subject Y, in the moment of the executing liability- legal relationship between respective subjects the norm ceases its function i.e. by itself ceases to exist.

Whereas, general legal norm, as the conditional one it is valid for longer period of time even for the other cases. It can be terminated and not having legal effect then when the circumstances cease which had impact of its issuance. So with the case of the legal norm execution must have in regard if the legal norm has ceased from the function, respectively not in meantime is issued any other norm that would abrogate the respective norm. According to the Prof. Dr. Osman Ismajli the moment of termination is difficult to determine. But also this moment could be stipulated: legal norm contains its validity date e.g. “this law is valid until 31 December 2009.”

As there is the moment of the norm when it enters into the force in one side, there is also the abolishing moment of the legal norm and termination if its validity effect. Related to the abolishing of the legal norm two situations may be distinguished: - one moment is terminated when the other norm is placed, which is higher than *lex posteriori derogate lege priori*. Exclusive norm always abolishes general norm even if it is older than *lex specialis delegate lege generalis*.<sup>16</sup> Validity of the legal norm as to the territory- the area depends from the state regulation of that country and this depends from the fact that we have to do with - unitary or multiple state regulations.

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<sup>15</sup> See: Dr. sc. Osman Ismajli “Fillet e së Drejtës”, University of Prishtina, Faculty of law, Prishtina, 2004.

<sup>16</sup> Broadly for this category of the political regime, refer to Stefan Buxhakoski, “Fillet e së Drejtës si Disiplinë Shkencore”, Printing house, “Çabej”, Tetovo, 2007.

According to the regulation always is determined the time from the moment of the norm creation until the moment of entering into the force so-called “*vakatio legis*.” According to the article 84, paragraphs 3, of the Constitution, laws enter into the force not before 15 days after the publication in the Official Notebook. It happens that the norm to enter into the force forthwith after the creation, but in urgent cases e.g. norm on the flood, fire prevention etc., enters into the force from the moment of its publication in the Official Notebook. Validity of the norm ceases when the consequences of the floods, fire etc. are avoided. In the case of organic laws and notably of the codes, usually is left one longer time for entering into the force of law after publishing in the Official Notebook, because these laws and codes request longer time in order to understand and fulfil as rightly .

There are legal norms which lose legal value, notably those that are related to the dates. When the legal norm is dateless it continues to produce its legal effects until is abolished or abrogated. Abolishing could be done by issuing any other subsequent act, or when the act, which is in the force, is in the contradiction with other following act, or when the act which in the force, is in the contradiction with one other future act, which will come into the force (*lex posterior derogat priori*).E.g. Blerim is obliged to return the debt to Ardit in the value of 10.000 Euro. Norm ceases to be valid in the moment of the debt return, e.g. contract- bargain norm is bound in writing and fixed time and it will cease in the moment when the obligations are executed towards the contracted parties.

Every old legal norm, every old legal -economy order ceases to be valid when it is substituted with one other norm, other legal or economy order. These happen usually after revolutions, wars, when the old power changes and the new power are formed. Kosovo case, after the war, Resolution 1244 of the year '99, abolished legal system of Serbia in Kosovo and created New Legal Order with the International Civil

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