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# Legal Acts in Relation to Social Practice and Their Legality

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**Abstract:**

*The normative element of the right in itself includes actions of the subjects of the right in relation to the law or judicial order. Whereas, the factual element consists of bodily or physical actions, such actions that can be positive or negative and based on them is distinguished the respect or disrespect of the legal rate. The relation between the mental and material actions, i.e. the appropriate actions to the right in general, represents the determined duties under the legal rate and the results achieved, in other words, this is the principle of efficiency. This principle is related to the principle of legality and the other principles of law. In other words, actions regulated by law, such as psychological operations show the report of the behavior of people on the basis of legal norms and their implementation in general social practice. Legal acts must be in accordance with the resources of the right, also in accordance with special and general acts. Namely, that legitimacy is a legal category that in the legal doctrines means the compatibility of all material legal acts (the behavior of entities) which are part of the law in a formal- legal meaning. The principle of legality is that all the elements, acts of lower legal order must be in accordance with the elements or higher relevant acts. This means that the category of legality includes aspects of compatibility between lower and higher legal acts and harmonize with all relevant laws and other subsequent legal acts. Legitimacy also includes the legal guarantee, which in itself is a legal hierarchy, as a guarantee, i.e. unites entirety, parts of the*

*legal order represent the entirety. While the entirety represents the certain hierarchy.*

*The legal power of higher legal acts affects to the other lower legal acts, in particular, in the form of legal acts. Therefore, the legal power means the level of impact of a legal act in other lower legal acts. This means that lower legal acts must be in harmony and hierarchy with higher legal acts, because their power and impact is greater. It is understood that the act of higher legal power is the constitution or the law. Hence, any acts with lower legal force, cannot have an impact on the act with the highest legal force. It is important to emphasize that the control of such acts with lower power than higher legal acts, such as the constitution, of certain institutions do justice regardless of political and legal system of the country. The constitutionality advocacy is exercised by a particular constitutional or political body, which is outside the parliament, government and courts. Such authority is competent to review the compliance of laws and other legal provisions of the constitution. The decisions issued by the competent authority for assessing the constitutionality, or legality of legal acts lower than the Constitution itself, are mandatory for authorities and other legal institutions. If we look at the notion of legality, it shows that legality is in conformity with the constitutionality of the process, based on the rule of law and other legal acts. This implies the compliance of all bylaws with the law.*

*If the behavior of entities of the right is subjected to the provisions we are dealing with the implementation of the law on a voluntary basis, as required by the legal norms. If the implementation is done through the force, then, we are dealing with the implementation of the right through force by respecting the sanction, i.e. if the murder is prohibited, but the provision is not respected, it means that the murder is committed; therefore, the sanction is enforced to the subject.*

*The power by applying the sanctions intends to deter or prohibit them or possibly murders to occur in a much smaller number. Therefore, the implementation of the provision on voluntary basis represents the maintaining of general interest.*

**Key words:** legal acts, social practice, legality

Human actions, such actions in relation to the rights, can be divided into free actions and actions which are regulated by law. Free actions are those actions which entities or subjects are free to perform, respectively, the right permits and not set rules of conduct. These actions can be considered free if they are not in conflict or confront with the law in force, relatively, the positive law as the applicable fair. It is essential to be emphasized that the legal order consists of the normative and factual element. The normative element includes psychological operations, which is created by the law and legal order. While, the factual element consists of physical actions, such actions that can be positive or negative and based on them can be distinguished the respect or disrespect of the legal norms. The relevance between mental and material actions, i. e. physical actions with the right actions in general, presents determined tasks based on legal norms and the achieved results, in other words, this is the principle of efficiency. This principle is related to the principle of legality and the other principles of law. Furthermore, actions regulated by law, such as psychological operations, show the interrelation of the behavior of people on the basis of legal norms and their implementation in the general social practice. If we rely on the types of provisions, the law generally recognizes prescriptive, prohibitive and permissive provisions.

The mandatory provision orders the citizen to perform an action, it means, an action which is in the general interest of the society, i.e. orders citizens to be vaccinated in the cases of various epidemic diseases, otherwise, they will suffer the consequences of ignoring the order of relevant sanctions. Prohibitions, as a rule generally prohibits acts or omissions of citizens. In this context, to illustrate the prohibitive provision, as it is appeared in different areas of law such as in the criminal law, prohibiting murder, in the civil law, prohibiting the infliction of damages, in administrative law, prohibiting administrative infractions, and other social interrelations, prohibiting misuse of different powers or authorities.

Hence, all these cases mentioned above on are offenses in themselves, that represent actions, understandably treated as illegal acts and rule, in the first case, we are dealing with criminal sanction that is punishment for the offense concerned, in the second case, we are dealing with civil sanction and compensation , whereas, in the third case of the administrative offenses, which sometimes infringement committed by an act or omission, and the fourth case deals with other social relations, e. g. the breach of discipline, such as a violation of labor discipline that can be accompanied by the appropriate or relevant penalties/punishment .

While, the permissive provision completely differs from the two provisions mentioned above on, the prohibitive and mandatory provision. The provision is a permissive rule by which citizens are not ordered, or on the other hand, does not prohibit the citizen. The instances of this case are education and health. As is widely known secondary education is not compulsory, but everyone has the right of education as well as everyone has the right of health services. It is characteristic to permissive provisions that neither orders nor prohibits citizens to perform acts or omissions. These actions are normally free because the citizen is free to act or not to act. In general, all the actions itself must conform to positive law as the applicable fair, or should not be in contradiction with the principle of legality because; otherwise we are dealing the illegality or performing against the legitimacy. The illegality itself has relevant consequences for citizens. Therefore, we are dealing with criminal offenses and criminal prosecution, civil tort and compensation, administrative actions and appropriate punishment.

Among other offenses of a simple type can be mentioned "violation of labor discipline" and the punishment could be: termination of employment, the imposition of fines, warnings etc.

1. **Legality** - Legitimacy is an essential condition for the existence of the legal order, the existence of a statutory

> state or constitutional state, namely, of a democratic state, a state which operates under the legal norms and respects them accurately. It has been mentioned that legal order consists of many elements, many legal acts, acts which should be listed under the principle of the hierarchy. The legal acts must be in accordance with the resources of law, in accordance with specific acts as well as general acts.

That is to say that legitimacy is a legal category that includes the aspects of compatibility of all material legal acts (the behavior of entities) which are part of the law in a formal legal meaning. The principle of legality is that all the elements, acts of lower legal order must be in accordance with the higher elements. This means that the category of legality includes aspects of compatibility between low legal acts and higher legal and harmonizes all relevant laws with other later legal acts. Legitimacy also includes the legal order guarantee, which in itself is a legal hierarchy, as a guarantee, i.e. unites the entirety .Parts of law represent the entirety of the legal order, while the entirety represents the assigned hierarchy itself. The dependence of lower legal acts with the highest legal acts and their observance i.e. . the behavior of the subjects of law implies legitimacy . If we take legal order in a vertical or horizontal line, and built the legal system in a pyramidal line, it can be understood the dependence and the legal order in the ratio of consistency between the lower elements, the lower acts and the highest legal acts. If you rely on contemporary norms governing the issuance of legal acts, such as acts of state bodies, a legal act is called an act which is in accordance with the highest act. As an instance of the legality of appropriate state acts is, when, it is issued a legal and fair act based on the administrative procedure with norms provided as necessary for the existence of the principle of material truth. Based on this, an act to be lawful, preliminarily, should be verified all facts that are important for issuing that lawful act.

Procedures that precede the issuance of acts that are in accordance with provisions , specifically, factual situation , namely, whether the act of state authority bodies is issued within the constraints set and achieved results , we can say that we are dealing with the notion " legal category of legality .

Whereas, an illegal or unlawful act represents a violation of the legal order and affects the general interest. Therefore, illegal acts are not tolerated in a country that functions within a legal order. In the cases, where, the principle of legality is violated or infracted we are dealing with illegality.

The principle of legality is expressed in the work of the bodies which issue the special administrative and judicial acts, the public authorities' body works. The principle of legality means that no governmental body can make an individual decision not to be in line with a general provision previously announced.[1]

An instance of the hierarchy of legal lawful acts is as follows: Blerim has a contract with Ardit, where, Blerim has to pay 1000 euros to Ardit. The obligation of Blerim to pay the debt to Ardit is provided by the contract, on the lowest act. But the contract is based on the highest legal act, as is the law and, the law is based on the constitution. Therefore, Blerim's behavior based on the contract and the completion of this contract which is based on the law on the constitutional law, that is the highest legal act, shows that we are dealing with the hierarchy of acts which itself incorporates the principle of legality . Therefore, there is the formal and material legitimacy. Formal legislation is anticipated that the act should be issued in written form, otherwise, the act would be unlawful issued in oral or verbal form.

Formal legality of the act is in compliance of norms according to the authority (power), procedure and materialization of the legal act and vice versa[2] . If it is

[1] Hyrje në të drejtën publike, Cikël leksionesh,Romeo Gurakuqi,Arenca Trashani Shkoder-Tiranë 2009

[2] Dr. M. Dimitrijeviq "Uvod u pravo", Beograd, 1986, vepër e cituar, fq. 220.

anticipated that the sale of real assets contract is prohibited, then, such a contract is illegal by the material means, thus the principle of legality is broken. Generally, should be emphasized that the category and the notion of legitimacy t in itself represents equality and legal certainty to subjects of law, whether to physical or legal person. In general, the authorized state bodies which exercise public authority, should be subjected to this principle, it means, the principle of legality. Legitimacy, as a fundamental principle, exclusively for authorities of a country, explicitly is provided in the country's constitution. The principle of legality is of paramount importance, especially, for state administration bodies[3].

As a rule, the principle of legality always finds application of the request. The application of the principle of legality in the field of public administration appears concretely , not only in the fact that the entire activity of legal or non-legal administrative bodies is performed in accordance with its requirements , but also on the responsibility that they have before the law and all other subjects of the law. In this context, the legitimacy represents the regulation and the union of legal norms in a single whole that can be identified by judicial order.

According to the content, the principle of legality is a legal-political principle. It formally implies the compliance of all material laws to the legal acts relating to, respectively, the compliance of all legal lower acts to the law. At the same time, the legality implies the fundamental freedoms and human rights of citizens, subjecting all individual acts to norms of law, law supporting of any proceeding before administrative and judicial authorities in the case of decisions making related to the rights of citizens. As a rule, the concern of legality is observed mostly to state authorities and in particular to judicial or administrative authority, because these mechanisms, in one way or another are competent for issuing individual citizens, where, the activity of these state mechanisms is restricted by

[3] Dr. R. LLUKIQ "Teoria drzhave i prava", libri I, Beograd,1995.

the law .By respecting the law is ensured the legality, equality and legal certainty for citizens.

Finally, one of the principles by which is ensured the legality, is the restriction of an administrative and judicial bodies by general norms. The democracy can only operate, if the legality is ensured and respected and vice versa, the legitimacy exists in the countries where principles of democracy are operating[4]. Among the main principles of the rule of law, are the principle of constitutionality and legality, equality before the law and the principle of non-discrimination, freedom and civil rights, separation and limitation of powers, de-politicization of public services of the state, an independent judiciary, civil society, etc[5]. This means that the state administration bodies or justice by applying the positive right that is effective in itself, implicates that we are dealing with the notion of legality. As a rule, substantially the legitimacy is provided for the existence of a legal rule or a democratic state operating under laws and other legal acts, which requires their respect or accomplishment.

2. **The iIllegality**- The illegality represents the discrepancy between the administration and judiciary lower legal acts of state and the higher legal acts.

Incompatibility between the lower and highest legal acts bring out contradictions in two ways: formal legal and material contradictions. Since, the concrete acts, as specific acts are issued according to the preliminary norms if these are not issued based on such norms, then, we deal with the illegality of concrete acts to the general legal acts.

Therefore, the concrete acts as acts of state administration and special acts of the judiciary, such as the

[4] Shih: Jon Elster, Rune Slagstad, Constitucionalism and Democracy, Cambridge Universitets forlaget,1988.

[5] Kolegji FAMA, Arsim BAJRAMI, PARLAMENTARIZMI (Aspekte krahasuese), Prishtine, 2010.

court law must be within the hierarchy of the general legal acts, otherwise, we are dealing with illegality. Any act - the act of state administrations', respectively, the judiciary bodies such as courts must be complied with the law, which means exclusively based on the law and other general acts that are issued based on its implementation.

The legal theory classifies the state administration or the judiciary unlawful actions into several groups and more frequent cases of illegality, respectively, by the courts, are:

- the incompetence;
- the infringement of rights in the proceedings;
- the violation of the material or legal right;
- the wrong confirmation of the factual state or situation;
- Lawlessness in the opportunity or the purpose of the act[6];

Regarding the incompetence, the relevant state bodies or justice in their activity can also display their incompetence or may have to do with the usurpation of the competence; i. e. authorities concerned are entitled to the issuing authority of the relevant acts, while in fact we are dealing with incompetence. In other words, the act cannot produce legal effects and should be judicially declared as null or void act. The violations of rights in the procedure , i.e the violation of material or legal rights, in concrete cases of the verdict or judgment, if the rules are applied incorrectly , or has become erroneous interpretation of the relevant legal norm. Lawlessness in the opportunity to incorporate the official person when of issuing the relevant acts , he issues an act for other purposes and not for what is intended to be extracted, i. e. issues an act for a different purpose by abusing the official authority, or by disregarding the authority concerned. As a rule, all these actions, which could be finalized with the

[6] Luan Omari "Parime dhe institucione të së drejtës publike," botimi i dhjetë, "Elena Gjika", Tiranë, 2007.

relevant legal acts, shall be declared non-existent, void or null acts, also as invalid acts.

**1.a. The judicial power** – Any judicial act has certain law power, this means that any legal acts has its legal power. Acts with the highest legal power has greater legal impact on lower legal power. The judicial power is a legal measure, where, a particular legal act affects other legal act and serves as a tool to determine which legal act is higher. The act with the highest legal force has great influence on the act with lower legal force and the lower act is dependent on the highest legal act. The Constitution is the highest legal act of the Republic of Kosovo. Therefore, the laws and other legal acts shall be in accordance with the Constitution[7]. As a rule, specific acts, as not binding acts, have less legal force than the general acts as acts of conditions. Legal power of legal acts with the highest level against acts of lower legal force can bring up to the fact that:

- Lower act to be repealed;
- Lower act to be amended or brought out another act;

Obviously, if the relevant lower legal acts in force are in contrary to the highest legal force.

The legal power of higher legal acts affects other lower legal acts, in particular in the form of legal acts. Therefore, the legal power means level of impact, the action of a legal act in other legal low[8].

This means that lower legal acts must be in harmony and hierarchy with higher legal acts because of their greater impact and power. It is obvious that the act of higher legal power is the constitution or the law. Also, any act with lower legal power cannot impact the act with the higher legal power. It is important to emphasize that the control of such acts with lower power than higher legal acts, such as the constitution, of certain institutions do justice regardless of political and legal

[7] Stefan BUXHAKOSKI" Fillet e së Drejtës si Disiplinë Shkencore, "Çabej", Tetovë, 2007.
[8] Dr. R. LLUKIQ, Dr. B. Koshutiq, faqe 321.

system of the country. The constitutionality advocacy is exercised by a particular constitutional or political body, that is outside the parliament, government and courts[9]. Such authority is competent to review the compliance of laws and other legal provisions of the constitution. The decisions issued by the competent authority for assessing the constitutionality, or legality of legal acts lower than the Constitution itself, are mandatory for authorities and other legal institutions. If we look at the notion of legality, it shows that legality is in conformity with the constitutionality of the process, based on the rule of law and other legal acts. This implies the compliance of all bylaws with the law.

Regarding the legality, respectively the legal power of the legal acts we deal with the principle of the supremacy. Supremacy of law to other legal acts and these acts with applicable regulations should be in accordance with the law. If we are dealing with the principle of supremacy of law, the supremacy of federal law is federal laws units. With this we are so in what the legal power of the federal law, it extends and applies on federal units, where the laws of such units may not be in conflict with federal laws. When, such acts for which the competent authority finds that are unconstitutional or illegal conduct cannot be applicable because violate the principle of constitutionality or legality. As regards the supremacy or superiority of acts, generally, in this context, can be seen the implementation of international law within the domestic law. International agreements ratified by the Republic of Kosovo become part of the internal legal system, as published in the Official Gazette of the Republic of Kosovo. They are directly applied, except when they are not self-executing and require the promulgation of a law. Concretely, international

[9] Dr. Esat STAVILECI "Hyrje në Shkencat Administrative", ETMM të Kosovës, Prishtinë, 1997.

agreements ratified and legally binding norms of international law have supremacy to the laws of the Republic of Kosovo[10]

**1.b The remedies (legal means/instruments)** – It is a rule that every act should be subjected to the legality and this can be proved by legal means , respectively, by two-leveled principle . The remedies involve in itself the institute or the right instrument for solving social and practical tasks, hence, we have to do with fulfilling the interests of citizens as members of the society. This approach is equivalent in law as legal instrumentation, within which, are studied the mechanisms, instruments and means of legal regulation. If we look at the mechanism of legal regulation, which includes the remedies, one of the key principles in jurisprudence generally reflects the principle of legality. The right remedies entitle each person to pursue legal means against judicial and administrative decisions which affect the rights or interests in the manner prescribed by law. [11] The control of the legality of the legal acts can be initiated in two ways: **1**. when the citizen initiates the procedure privately because it assumes that the act in question affects his interests and, of course, the citizen has the opportunity by legal guidance to declare his stance on the legal act, which can produce unpleasant legal consequences, and **2**. Initiative can be raised by the state bodies, when the legal or material act impacts or violates greatest interest, such as public interest . Hence, this procedure is raised according to official obligation (eksoficio), by which are required the control of legality of acts that are supposed to be illegal or against the principle of legality. This principle can be proved by appealing juridical mean. The plaint as the legal means represents the prior guarantee in the implementation process of protecting the legality and constitutionality of legislative acts.

[10] Dr. Esat STAVILECI "Hyrje në Shkencat Administrative", ETMM të Kosovës, Prishtinë, 1997.
[11] Dr. S. Gaber, vepër e cituar, faqe 225.

Through legal means , as in this context is the complaint, is equivalent to that legal act issued in the first instance , using the legal means, the party, which is the protection of its rights and in itself represents the principle of legality . At first instance the legality of the act makes the body itself, the entity that has issued the act, while at the second level or instance, the legality of the act is done by the other authority body. In this context, the two-level act issuing related to legal act, for the party is a basic guarantee for the implementation of the rights and its legal interests. But the highest legal act is always more legal, and therefore, it is not subjected to the review of legality! And if this happens, it happens in exceptional cases. The body that is responsible for the review of the act is the court, competent state administration body and it can be reviewed and tested through the legal remedy. In this context, the legal remedy is the indictment or appeal. Hence, as a rule against the decision of the highest authority of state administration issued based on the appeal may be proceeded the claim to the judicial body and then, is issued a decision on the legality of the act. The context regarding the legality of an administrative act is called legal administrative context. On the legality of the decision of the first instance decided by the second instance based on the appeal, but, in other cases, on the second instance decision such as in the exceptional cases the decision is made by the third degree in this context the Supreme Court. This is done through appeal or claim if it comes to the latter in terms of administrative conflict.

Besides regular means, such as the plaintiff and the appeal in the judiciary have exceptional means such as:
1 ) Application for repeating the procedure, 2 ) The request for extraordinary mitigation of legality , 3 ) The request for protection of legality , 4 ) The request for extraordinary review of the omnipotence of the relevant state laws. [12]

[12] Më gjerësisht për aktet matriale shih: D. Bajalxiev, 2, vepër e cituar, faqe 417.

**2.1. Sanctions against illegality-** when the illegality of any acts is proved, then, the measures are taken to stop the act from the legal order, in this way, to be canceled and removed all legal consequences and to prevent such acts in the future to not be appeared and produce legal effects . Sanctions are divided into restrictive and retributive. [13]

**2.1.a. Restrictive sanctions -** such sanctions aim to turn the so-called previous state or condition, the state that has been before causing the illegality or lawlessness.

**2.1.b. Retributive sanctions** – are such sanctions that aim at vengeance , causing a terrible future that does not cause such violation or breach . In the case of unlawful acts are imposed sanctions against acts that aim to return to the previous state or canceling legal consequences of the act which has caused to the legal order. And, if such acts are declared null and all the consequences which have caused should be avoided and should be considered to have never existed. E. g the contract has been signed for the sale of which was canceled as illegal. This means that the item is back in the condition in which it was before the conclusion of the contract, and the price and things have to come back along with the item. Thus, if the illegal act is in default of debt, the sanction lies in the reverse operation, so that the debt should be paid. If that is the illegal act of house burning, the cutting of trees, the poisoning of animals, here the sanction lies in building a new house, in planting of seedlings, the buying of other animals etc. Against the offenders who have committed illegal acts, the sanctions are taken in order that in future such illegal administrative offenses are dispensed.

If we examine the state administration acts that are adopted or issued as illegal acts, the most frequent cases that cause legal consequences and violate the principle of legality in the field of public administration are:

[13] Luan OMARI "Parime dhe Institucione të së Drejtës Publike", botimi dhjetë, "Elena GJIKA" ,Tiranë, 2007.

a. the incompetence ;
b. the violation of rights in the proceedings ;
c. the violation of material - legal rights;
d. the erroneous certification of factual situation;
e. lawlessness or illegality in the opportunity or the purpose of the act; [14]

When the illegality is verified by the competent jurisdiction, such acts normally are removed by the judicial order. Herewith, where it is possible are eliminated the legal consequences of those acts which have infringed the rule of law, respectively, the positive right as a right that is in power. The legal order to be stable in a society, as a rule, the concerned society through its own competent mechanisms provides the opportunity for those acts, which are illegal or which have caused negative legal effects and the appropriate sanctions should be imposed. Therefore, legitimacy in each legal order related to the legal acts which are illegal provides specific sanctions. As a rule, sanctions are provided to offenders and acts that are found as illegal. Regarding the illegal acts, are imposed the certain sanctions that should be applied to illegal acts exclusively on the principle of legality.

**3. The omnipotence** - legal norms are feasible and are implemented in everyday life when they are legitimate, when, their legitimacy is established and the definite procedure is completed. These acts cannot be considered on their legality. It is connected respectively to assess the legality of legal acts. When the relevant legal act is effective upon confirmation of its legality cannot be canceled through the regular legal means. As a rule, the final act, which is confirmed by the second instance body, takes the form of the act of performance, where, the characteristics of the performance are:

[14] Kushtetuta e Republikës së Shqipërisë, 1998, neni 16.

- the legal entities are obliged to act in accordance with it;
- an act is executive when it is completely powerful (exception to this rule is the act of deprivation of liberty and the act of tax payment);
- the omnipotence and enforcement are closely linked to time limits, during such time limits they should be accepted or rejected. Judicial power is the element that determines the position of the legal act in the overall legal system. [15] Omnipotence begins over time which is fixed at the start of the procedure for reviewing the legality and such action is lawful. But it happens that after the verification of the legality and omnipotence of the act can be presented new evidence which arouse reasonable suspicion that the act in question is illegal. In this case, such a procedure begins with an extraordinary legal remedy. The omnipotence of the act should be distinguished from the entry into force of the norm. Entry into force means that entities are required to fit under the act comes into force. An act can have the judicial power before it becomes omnipotent; then, it can be omnipotent and gain the judicial power.

In this case we are dealing with the constitution of a country, which at the time of act issuing is omnipotent, since it cannot be challenged or attacked, but that does not mean it will immediately gain the legal power. As a rule, the omnipotence of legal acts in the social legal order incorporates the principle of legality of legal acts, because only legal acts can be legally enforceable or omnipotent.

To be a valid legal act must be proved their legitimacy. In other words, only the omnipotent acts may be executable, respectively, to be subjected to the implementation phase. When a legal act is subjected to audit, it means, verifying the

[15] Luan OMARI "Parime dhe institucione të së drejtës publike", botimi i dhjetë "Elena Gjika", Tiranë, 2007.

legality of authorized state bodies and in particular of the extraordinary legal remedies, then we can say that the omnipotence of the act is more stable.

3. **Enforcement – the implementation of the right**

a. **The Enforcement-** While we stated that the legality and the omnipotence are two related categories, it cannot be avoided the execution or implementation of these two categories. According to the legal rule any legal act must be executable, where subjects must be behave under that act. The start of the execution of the act should be distinguished from the moment of entry into force of the act itself. When the act of gain the legal force, it means that, form that moment the respective subjects are required to abide by it.

The implementation of the act means that from the start of execution entities are obliged to abide by it, which means that it can be executed through the relevant authorized body to apply force, if the act is not executed without the use of force. This means that the act can be executed - implemented through the state power. [16]Any act which is issued by the authorized state bodies can be executable and if the final terms are applicable for its implementation. That's means only acts that have become final, are as legitimate in order to be implemented.

While general legal acts, as may be the law in this context, the subjects of law shall be conformed to it only when it is published in the Official Journal, i. e .after a certain period appointed by the legislature, who has adopted the law. When the subjects voluntarily do not want to enforce the provision, the state body implements the provision by force, i. e. Force the subject to execute the provision. Hence, the execution itself also includes the latest stage in the process of recognition and enforcement of the legal norm. With the execution of a legal norm or judicial act it can be understood the implementation of

[16] Dr. sc. Osman ISMAJLI "Fillet e së Drejtës," Universiteti i Prishtinës, Fakulteti Juridik, Prishtinë, 2004.

the right. Here is an example, when the administrative body issues an order for the transfer of an entity from the flat and this order shall be executed, it means that the subject should execute the order voluntary; otherwise, the state will transfer him from the apartment by force. [17] If the procedure begins and the order for eviction was lawful, the legality of the order is examined and the order is considered legitimate, then the execution subject is consciously offense. Then, it is presented the execution of sanction by force, or if the order for execution is issues for the payment of tax and the relevant entity does not pay the tax, the state will execute it by force. Here is the implementation of the enacting by force.

Furthermore, before the judgment will be executed it should have the final form. Exceptionally, the judgment or any other acts it can be executed before taking the final form, but these are exceptional circumstances which are provided by the law. During the execution of the act, attention should be paid that the act is not illegal, because the consequences cannot be avoided easily later. Hence, the consequences cannot be improved. This occurs when executed illegal act, which implies illegal consequences such execution of the death penalty, which later, it found to have been unlawful. But to execution should be aware to not return to the previous state, that such an act to be not declared unlawful. Before the act is executed it must be subjected to the assessment procedure of its legality, if it is necessary to be certified.

**b. The implementation of the right** –the concept of the implementation of the right is the action of the right, the execution of it, the commandments, and the rules which are set by the right. The execution of the right can be defined as the behavior of subjects according to legal norms. Respectively, the implementation of the right is also the commitment by state bodies or legal authorities for some special actions, who execute the legal norm in

[17] Dr. B. LLUKIQ, Dr. B. KOSHUTIQ, Universiteti i Prishtinës, Fakulteti Juridik, Prishtinë, 1986.

this case. In this context, state bodies or officials act within the limits of their competence.[18] The implementation of the right is exclusively the competence of state operation and the authorized state bodies. Where, that competence regards to bodies of the legislative, executive and judicial operations.

In the legal literature, regarding the implementation of the right, are distinguished two forms of its executions: the operational - legal action form and in the form of legal protection of operation. [19] If we take three examples regarding the implementation of the right in the field of criminal, civil and administrative subject for the execution of the right, it turns out that: as a rule, the competence of the court are the solving of criminal cases by assessing the relevant evidence to declare the act concerned for the defendant and finds out if the defendant is guilt or not guilty. In the second instance or case, the competent court of civilian areas by assessing the relevant evidence submitted or deposited in the court declares the act concerned. In other words, based on the relevant provisions, the court accepts or rejects the claim. If it accepts is declared by the relevant act. In the third case, if we are dealing with torts or administrative infractions, the competent courts will also accept or reject the application for the committed infraction. Based on the assessment of evidence, the competent courts will declare the act concerned to the certain issue. All these solutions by the competent courts are nothing other than the application of the principle of legality and other relevant principles, based on the principles of the positive law. This means that the competent state institutions interpret the law for each case separately, and it can be said that we are dealing with the implementation of the right.

[18] Kushtetuta e Shqipërisë, Tiranë,1998, neni 29, ku shprehimisht thuhet:"Ligji penal favorizues ka fuqi prapavepruese," në të kundërtën jo.
[19] Dr. O. STANKOVIQ, Dr. M. ORLIQ "Stvarno pravo", Beograd, 1966, vepër e cituar, faqe 178.

As we know, the legal norm contains two rules of behavior: provision and sanction. On this basis we distinguish two types of the implementation of the right: voluntary implementation and also by force. [20] If the behaviors of the people are subjected to the provisions, then, we are dealing with the implementation of the right on a voluntary basis, as required by the legal norms. If the implementation is done through force, we are dealing with the implementation of the law through force by respecting the sanction, i.e. If the murder is prohibited, but the provision is not respected, it means that the murder is committed, therefore, to the subject is applied the sanction. The power by applying sanctions intends to deter the murders or possibly occur in a much smaller number. Therefore, the implementation of voluntary provision presents maintaining the general interest.

Hence, the implementation of the sanction by force, presents certain expenses, time wasting etc.The citizens as well as state authorities can not evade the implementation of the right. They can change it, interpret it in their ways, but may not be allowed in any ways to be violated. If the state mechanisms are breached, which are authorized to defend the right, they will implement the right through appropriate legal means, i.e. state bodies act when the right subjects evade law enforcement voluntarily. As a rule, in this context, the state uses the sanction to fulfill their obligations to the state or the law, e.g whether we are dealing with the cause of the damage compensation, debt repayment etc.

As a rule, sanctions are divided into restituive and retributive sanctions. The restituive sanctions aim to achieve the same state which would exist as the provisions would be respected, such as provisions willingly fulfilled.

And, the retributive sanctions aim at revenge against the person who made the cause of the damage, which has caused an unlawful act that cannot be returned to the previous

[20] Dr. R. LLUKIQ, Dr. B. KOSHUTIQ: "Uvid u pravo Naučna knjiga," Univerzitet u Beogradu, Beograd, 1981.

state. Such sanction is the punishment attributed to the offender of the right. While, with the voluntary implementation we understand each fulfillment of the provision by the subject either by fear or belief that provisions must be fulfilled. Noting that the sanction is inevitable, the subject will execute it.

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