POLITICAL INSTITUTIONS AND PROCESSES

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THE RELATION BETWEEN SOCIETY, STATE AND LAW

The state and law cannot be explained outside social categories, and have legal relations within them, where with the help of legal norms we know the rights and obligations of subjects of the right. Legal subjects become carriers of rights and obligations in their relations, related to the realization of legal norms, where with the creation of legal relations, different social relations are disciplined. The term 'right' (in French Droit, in German Recht, in Portugal Direitoo, in Spanish Derecho) originates from the Latin word – directus, from which a number of Latin terms originates, such as rex, region etc. With other words respectively in the main Indo-European languages: right, law, jurisprudence etc.

The function of the state contains those functions that are related to the general social interest. The state is an independent, strong social organization, protects public health, traffic and many other activities. The state and right are state activities for the protection of state interest and this is realized through the monopoly of physical force. The state and right protect and realize political, economic or property relations. The function of state and right on the other hand is presented as a function of state obligation, that is realized in case it is necessary, through the monopoly of physical force, with other words through coercion, as an organized state power.

For the function of state we will stop and analyze its two elements: the element – internal function and the element – external function. The essential element of the legal norm is the behavior of the subject of rights, as required by the legal norm. In this context we are talking about cases when the subjects of law behave based on law, respectively subsidiary acts, issued by authoritative state bodies, respectively other legal persons.

Norms, as a rule, can be divided in these two groups: natural laws, technical norms and social norms. Here we have to deal with social norms that contain the social sanction.

Based on this we can classify social norms in three groups: social norms that constitute in their selves sanctions that are used by the unorganized society; social norms that constitute of sanctions that are used by a social organization, enterprise or similar; social norms that constitute of sanctions that are used by a special social organization called state.

Moral, as well as the right, in their implementation, are based in the consciousness of citizens, but the difference between the right and moral stands in the fact that unlike moral, the right is set and sanctioned by the state, while moral norms are set by the public opinion and can treat moral as an internal sanction in the context of psychological consciousness and with this people know the done and undone actions, respectively the purposes of action or inaction.

It is understood that the norms issued and sanctioned by social organizations can't be contrary to the legal order, with norms that have higher legal power.

It is understood that the norms that are issued – adopted by social organizations can't be contrary to the legal order – the positive right, with norms with higher legal power that in this context are issued – adopted by the state as a strong social organization.

With the term 'right' we mean the norms that are created by the organized society and that are applied by that society which is called state, and the norms that are applied by the state are called the right. The state is an organization of organized violence based on legal norms is distinguished by other organizations, mostly thanks to its external element – physical force.

In the state and right there might be slow changes that happen in the society, which we can call evolutionary changes, ongoing changes, for example the change of some legal clauses in the acts

of some laws. Simply, only some clauses change. All these, in one way or another, change the state and law, (but partly) the essence remains the same. The state and right in essence remain unchangeable and within these changes of state and right are: changes called reforms, coup and conspiracy.

The reform is also a promoter of changes of the function of state and right, by following and incorporating the results, contemporary achievements in general social relations.

Coup – these kinds of changes are unacceptable for the society, don't coincide with the principles of the democratic order, because they don't bring important favors for the society in general, but only for a certain group of people.

The difference between coup and state conspiracy stands in the fact that state coup is done by a certain group of people in the state hierarchy, while the conspiracy is done by people that are not part of this hierarchy, that are outside state structures, respectively persons that are not part of state hierarchy. But it is also a characteristic of the conspiracy to emphasize that it doesn't change the state and right in essence, in this context it remains unchanged.

The revolution entails two meanings, respectively two notions: the revolution exercised by violence, and the revolution exercised peacefully. The revolution exercised by violence, physical violence, means armed conflicts between the carriers of state power and the ones that depend from this power, when an organization goes after the old state organization until the seizure of power, the political and economic one. The economic revolution is also reflected in the state and right in general, because it also changes the system of property, which means that, the state and right also change. According to the new democratic principles, starting from the system of property with different revolutions different property holders appear.

Key words: state and law, legal relations, state power, state functions, entirety of legal norms, evolutionary and revolutionary changes, reforms, coup, state conspiracy.

The familiarity with contemporary concepts of state and law are an imperative for every student that aims to be included in the universe of legal knowledge, for every citizen that wants to familiarize with the model of the science of law and jurisprudence in general, for every official person that wants to exercise its public authority inspired by the principles of this doctrine.

But, the first lessons of studying state and law educate the future jurists from this field. The familiarity with state and law, is a sovereign right of everyone, especially the ones that are interested to really benefit the intellectual property, the ones that do this for the good of state and law in general, which is in the service of state in particular. The word 'law' usually includes not only law in the narrow sense of the word, but something else as well - the state, i.e. that law is studied in legal sciences in general, which is closely related to state. So, legal sciences are narrower professional sciences for jurists, but these are also studied in some non-legal sciences, such as different social and political sciences. In the Faculty of Law, state and law are studied. And these sciences are known as state (public) legal sciences. With other words, this subject is called Introduction to Law. Let's do a comparison of the basis of state and law: the legal-political elements and categories that appear to state and law as an entirety.

In all cases the state doesn't represent a force that has been imposed to the society from outside. It is a result of the internal development of the society that is often accelerated or complicated by its external condition. Legal relations are social relations regulated by legal norms by the subjects, which in law are known as carriers of legal rights and obligations, and by the subjects, which in the name of state and based on law have certain authorizations and competences.[1] The state and law have special features that distinguish them from the other categories and this difference is seen in the monopoly of physical force.

The state and law cannot be explained outside social categories, and have legal relations within, where through legal norms the rights and obligations between the subjects of law are recognized. Legal subjects become carriers of rights and obligations in their relations, regarding to the realization of legal norms, where with the creation of legal relations different social relations are disciplined. The term 'right' (in French Droit, in German Recht, in Portugal Direitoo, in Spanish Derecho) originates from the Latin word – directus, from which a number of Latin terms originates, such as rex, region etc. With other words

[1] Buxhakoski, Stefan (2007). *Fillet e së Drejtës si disiplinë shkencore.* Tetovë: shtëpia botuese "Çabej".

respectively in the main Indo-European languages: right, law, jurisprudence etc.

In this context we also have to deal with the legal order, because legal relations itself present the legal order. Legal relations are social relations that are regulated by legal norms, based on which the rights, obligations and responsibilities of the subjects of law result. Legal relations are known to have these main characteristics and features: legal relations are social relations, but every social relation cannot be a legal relation. The legal relation is always based and institutionalized based on legal norms, as general norms, respectively conditional norms, while when they individualize we have to deal with non-conditional norms. The legal relations are relations between individuals, subjects of law, for example the legal relation of the student with the relevant faculty starts to exist when he/she is accepted to the relevant faculty. In the university, the student gains knowledge by participating in lectures, by using the library, electronic tools for using the literature in one side, while the faculty in the other side has the obligation to enable the realization of these rights. The entire legal relation is guaranteed and ensured as a value by the state, but there are cases when the parties that enter a legal relation avoid this relation, and so the state imposes its will by using its compelling (repressive) force because of avoiding the realization of the legal norm through the dispositive voluntarily.

As a rule, in the legal theory and practice we have a number of relations, such as: constitutional, administrative, criminal, civil, family-hereditary etc.

In legal reports there are rights and obligations; respectively there are relations that can be classified in: active and passive. The actives are always related to rights, while the passives with certain obligations that result based on the legal relation entered by the parties. Then we have long-term and short-term relations, relative and absolute, that are dedicated to parties in the relation.

According to this, it results that we have the elements of legal relations as a subjective right, the legal obligation that is linked to the subjects of the legal relation and with the object of the legal relation. State and law are closely linked to the society in general, but on the other side they are a special category.[1] The state and law are set by the society, and they impact on society and are in the service of society. We have the impact of state and law in society, but the society has an impact in state and law as well. So, state and law are presented as important factors in society, where the state as a social organization realizes its functions through the law inside the certain society. State and law, as we noted above, are social phenomena, therefore they carry the element of physical force in themselves,[2] exercised by the certain state mechanisms if different parties – subjects avoid the fulfillment of their obligations in legal relations. I.e. the state as a social organization has an impact in social legal relations because, in one way or another, it is presented as a creator of legal norm and as their protector in case they are violated by the relevant subjects. To shortly sum the notion of state and law: according to the normative theory, a society has an organization.

While if we talk about the institutional theory about state and law, then state and law operate in an organized society that is unified with the legal order. While legal order is unified with the communion of many elements, norms, customary norms, normative facts, systematically coordinated with each other. As an end of the notion state and law, it results that law is an organization or a group of norms in a ranked system that ensures the unity of norms i.e. the legal order of the state.

1. THE FUNCTIONS OF EXERCISING THE AUTHORITY OF STATE POWER

State power is distinguished by other social activities because everything that is social may not be related to state. The functions of state and law is specific in society, state and law have the duty or mission to maintain public order and safety, to realize justice, to protect humans freedom and rights etc. Defining the function of state is one of the primary issues not only as a notion but as an activity as well where the main sides of state apparatus are set and the main duties as a tool of realizing its activity. According to some theorists, state functions are exclusively based on state activity, everything that is known as state activity is also counted as state function. State activity includes: the legislative, executive and judicial activity, but in the general corpus of state activity we also have these activities: military, police, legal, economic, cultural, social, educational, health etc.

For state activities – functions we have different theories and meanings. Related to this we have the teleological meaning, where the state is presented as an institution that realizes law.

The function of state and law has to be distinguished by other activities. The state activity is a

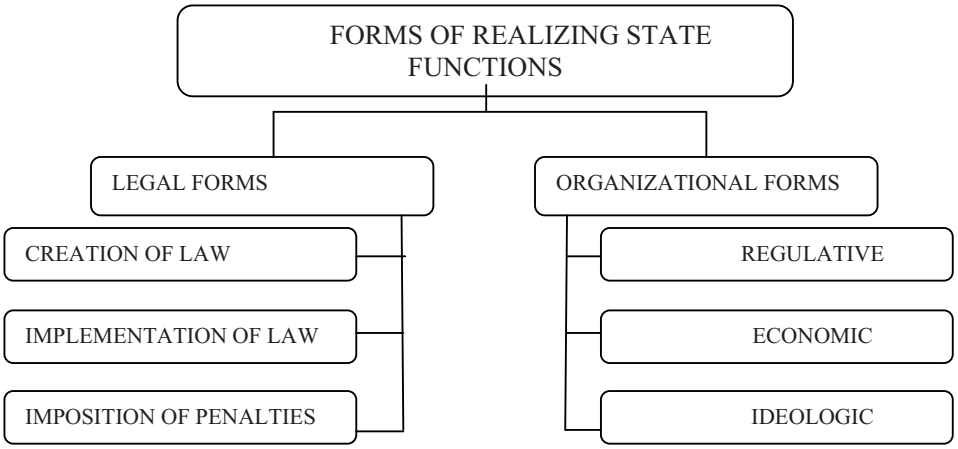
[1] Llukiq, Radomir, Koshutiq, Budimir (1981). *Uvod u Prava*, Beograd: Nauçna Knjiga.
[2] See: Комаров С.А., Малько А.В. (1999). *Теория государства и права*. Москва, 50.

concrete activity and acts for the general interests of society. State and law have a certain mission – duty for a certain purpose.

The function of state includes those functions that are related to the general social interest. The state is a special, strong and social organization, protects the public health, traffic and many other activities. State and law are state activities for the protection of state interests and this is realized through the monopoly of physical force. State and law protect and realize political, economic and many other relations. The function of state and law on the other side appears as a state liability function that – if necessary – is realized by the monopoly of physical force, with other words through liability, as an organized state force. The state is an organization that has the monopoly of physical force, respectively the sovereign power that serves for the protection of state's interests. Law is an entirety of legal norms that are organized by state – state apparatus.

In analytical terms, the bourgeois state, same as the states that existed before, has two main functions: the internal (main) function, the oppression of exploited classes and the external function, the territorial expansion to the detriment of other states and the protection from other state's attacks.[1] Taken in historical terms, the state has the same military force as the bourgeois state, i.e. its army. This manner of function is related to the everyday activity of state administration bodies, police authorities of the bourgeois state.

Another such manner is the judicial oppression of employees that is expressed in the punitive activity of the judicial bodies of the bourgeois state. Also the activity of the representative bodies of the bourgeois state, by including bourgeois parliaments, has been subjugated to the function of oppressing the employees. Therefore, in different spheres of the activity of the bourgeois state and of any other beneficiary state, we encounter the same function of the beneficiary state power, repressor of exploited people.[2] For the function of state we will analyze two elements: the element – internal function and the element – external function.



1.1. The element of the internal function

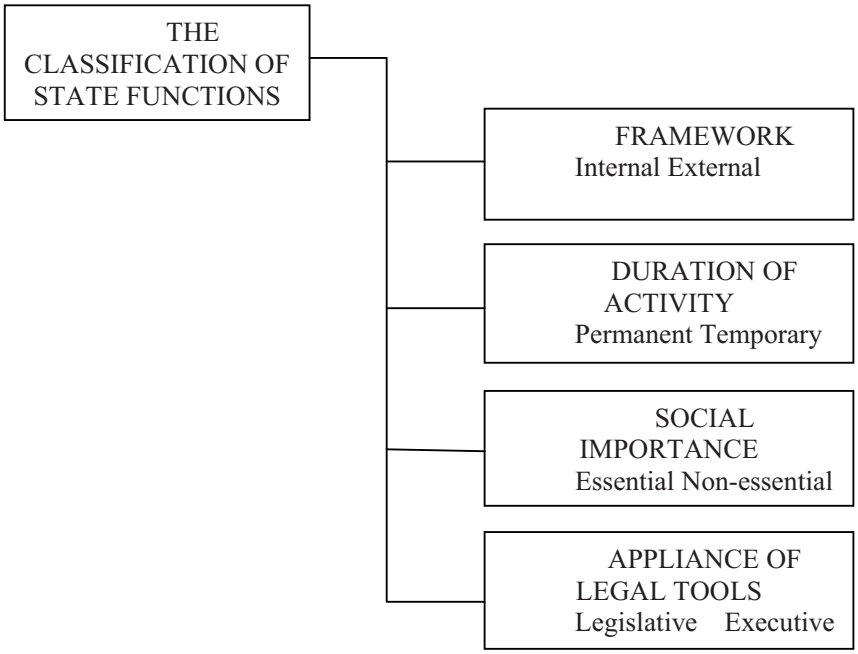
The internal element – function of the state and law is totally connected to the realization of state duties in the internal aspect, but within its internal functions the state does these activities: in its constitutive function and support to the legal order: providing legal property rights, private rights, protects citizens freedom and rights, exercises the economic, cultural, social, ecologic, health, military, educational activity etc. The internal function of state is linked to the fact that it has a beneficiary character of the activity of the bourgeois state, like every other exploitive state that results in the exploitive function. This function is known as one of the main functions because it realizes its main duty, the protection of the rule of exploiters, where by realizing this function the state also realizes its external policy with other states.

In the opinions about the socialist state, he conducts the function of oppressing opposite classes, the function of protecting the legal order and social property, the economic-organizational and cultural-educational function. The last opinion is seen as a more essential and specific function in socialist states, because from this the whole state benefits. In general state functions have to be functions in the service of protecting human's rights and freedom, it has to be unified as a legal state, respectively as a state of law.

[1] See: Omari, Luan (2007). *Parime dhe Institucione të së Drejtës Publike*. Tirana: Elena GJIKA.
[2] See: Omari, Luan (2007). *Parime dhe Institucione të së Drejtës Publike*. Tirana: Elena GJIKA.

1.2. The element – external functions of state

The state has these functions: maintenance of peace and peaceful coexistence, the opportunity of external cooperation, the protection of state sovereignty from external aggressions etc. As for the classification of state's functions, it takes these internal and external activities, related to their duration: temporary and permanent, related to their importance: essential and non-essential. While related to the implementation of legal measures in: legislative, executive and judicial activity.[1] In contemporary theories of the state function we distinguish two forms of realizing state's functions: as a legal form and activity and as an organizational one. The legal forms of activity, respectively of state functions, are related to the appliance of legal acts, issued by the bodies with the highest state authority. Besides the creation of acts for adoption, we have the implementation, realization of normative acts through the implementation of laws with administrative character and activity. While, regarding to organizational activity, organizational form, the organization of state administration, this is directly conditioned by the social order of a country and its state organization.[2] Then we have the theory of the separation of state powers as a state function, where according to Montesquieu, the state power is separable. The bases of this principle are given by John Locke and Montesquieu in his book "The spirit of laws". The power is categorized in: legislative, executive and judicial power. These three powers have a balanced independence.



The executive and administrative functions have a mutual function somehow. But, there are states that differentiate them. The executive function is executed by executive bodies, while the administrative function is exercised by the administrative state bodies. It is a characteristic to mention that the administrative function, except exercised by central state bodies, can also be exercised by organizations that exercise their works for administrative units, exclusively the institutions that have public authorizations.[3] From this, it results that state and law are closely linked to protecting the interests of the political class and the functions of state have to be seen in the dynamic prism of the development of that state. While if we take a look on the state in the bourgeois and socialist period, the theories of Eastern and South-East Europe countries dominate, where the external function of the state is not only the protection of the country, but also the territorial expansion to the detriment of other countries, while the function of the socialist state is entailed by its protective character. By looking the entire function of state, it results that the state is an entirety of concrete activities for the fulfillment of its historical function.[4] From these points of view we conclude that: the state has these functions: economic-organizational, cultural, educational, the function of

[1] Комаров С.А., Малько А.В. (1999). *Теория государства и права*. Москва, 50.
[2] See: Ballanca, Zejnullah (1974). *E Drejta Administrative e RPSSH*, *II*, Tiranë.
[3] See: Stavileci, Esat (1997). *Hyrje në Shkencat Administrative.* Prishtinë.
[4] See: Omari, Luan (2007). *Parime dhe Institucione të së Drejtës Publike*. Tirana: Elena GJIKA.

maintaining legal order etc. All these activities, respectively the functions that serve for the state give it an organizational and functional character.

2. SOCIAL NORMS AND LEGAL CULTURE TYPES OF SOCIAL NORMS

The society as a wide and organized community is consists of relations between each other that cannot exist without the expression of their will. But, the will is always understood by being subjected to the relevant state regulation respectively the legal regulation, meaning the regulation respectively the discipline of citizen's behavior in all social relations.

But, their will, as a rule, derives from the relevant period of the relevant acts adopted by that society, where through these regulations we fulfill individual and mutual requirements – needs.

The regulations can be: individual and normative, where with the individual regulations we understand a certain act of the subject of law for a concrete case, respectively an individual case, where the relevant subject will take an action, respectively inaction.

In this context, the subject is subjugated to the will of the creator of the act – the relevant individual regulation. While the normative regulations has a specter and effect of a general legal act against a certain behavior of a group of people in a society, where this group is subjugated to the act by their behaviors, i.e. it realizes the will of the creator of the relevant act.

In this context we have to deal with a wider behavior, a larger group of subjects against the legal norm.

These kinds of acts have a general legal character and effect, they include a larger number of people, where by behaving the way the legal norm requires they subjugate to the will of the act's creator.

The essential element of the legal norm is the behavior of the subjects of law as required from the legal norm. In this context we are talking about cases when subjects of law behave based on law, respectively subjugated acts, issued by the authoritative state bodies and other legal social persons.

The norms can be divided in three groups:

- Natural laws;
- Technical norms and
- Social norms.[1]

Natural laws, unlike norms, socially organized that the subjects of law subjugate to the will of the creator of norm, respectively these subjects base their behavior in relevant legal acts, as organized norms issued by competent state bodies, in this context related to natural laws, these act independently from the will of people or said otherwise they act against their will. In this context we have to deal with natural laws, majeure force, a force that acts against other norms.

While socially organized norms have their elements, such as: the disposition, sanction and hypothesis, these laws of nature have no sanction, while socially organized norms have these sanctions: criminal, administrative, civil, sanctions of the organized society that can also be legal-political sanctions etc.

Natural laws are not created and don't act the way the subjects of law want, but they act against the will of subjects, in this context we can mention: death, floods, thunder, earthquakes, high and low temperatures, i.e. they operate outside socially organized norms.

2.1. Technical norms

With norm we always understand a rule set by people and dedicated to them, to regulate their mutual relations or their relations with nature.[2] The first ones regulate people's behavior in their relations with nature, while social norms regulate the mutual relations between people.

Based on contemporary conditions of the technological development, technical norms have a special importance in the contemporary society, by using natural sources.[3] These norms determine people's behavior against nature.

On the other hand, through technical norms, people can achieve a technical goal – the change of nature. Of course if we stick to technical norms.

Nowadays technical norms have a special importance, in advancing and developing the society in

[1] Llukiq, Radomir, Koshutiq, Budimir (1986). *Fillet e së Drejtës*, Prishtinë: Universiteti i prishtinës Fakulteti Juridik, ETMM i KSAK.

[2] Gurakuqi, Romeo, Trashani, Arenca. (2009). *Hyrje në të drejtën publike,cikël leksionesh përgaditur nga.* Shkdodër-Tiranë.

[3] Buxhakoski, Stefan (2007). *Fillet e së Drejtës si disiplinë shkencore.* Tetovë: shtëpia botuese "Çabej".

general. The main characteristics of technical norms are:

- The regulated subject is not fully social,
- The content of subjects, which is not taxatively related to a person, but with the outside world, with nature, technique etc.[1], although it is said they are not totally social, but their purpose is the fulfillment of the needs of an organized society.

In one way or another, these are created by the organized society, by applying socially organized norms, i.e. technical norms regulate people's behavior in their relations with nature and by adhering to technical norms people change the existing situation of nature.

2.2. Social norms

Social norms are those norms that define the manner of people's behavior in society. Therefore they can also be called orders, respectively social dispositions. In these norms the issue is more complex, compared to norms, natural laws and technical norms. Some characteristics of social norms are:

- The subject of regulating social relations;
- Their subjective content is related to people, as representatives of social life.[2]

So, social norms have sanction, where against the violator of the disposition the sanction is applied and this with the obligation to respect it. With this it results that we have to deal with the principle of legality, where lower social norms have to be in hierarchy with higher ones, socially organized. In this context we have to deal with the creation of the legal order. In the opposite case we would deal with illegality, where the organized society will undertake adequate measures against the illegal actions of the subjects, that violate the legal order, respectively the principles of legality of the organized legal order. From this it results that social norms are norms that protect the interests of the society.

While technical norms are technical rules, for example building objects, bridges, cars etc. Here, in order to have a result, it is required to adhere to technical norms, or we also have technical rules in medicine.

Technical norms, as a rule, have no sanction. But there are cases when the technical norms contain sanctions, for example when the society predicts a obligatory medical treatment of an epidemic – obligatory vaccination etc.

Said otherwise, social norms regulate and discipline mutual relations between people in society, where in case of violating the legal norm that regulates relevant relations between people we will have the relevant consequences, where as a specific of the social norm we will mention the application of state's coercive measures against the violators of these norms.

2.3. The types of social norms in a narrow sense[3]

Here we are talking about social norms that contain social sanctions. Regarding to this, social norms can be classified in three groups:

a. Social norms that contain sanctions used by the unorganized society;
b. Social norms that contain sanctions that are used by a social organization, enterprise or similar;
c. Social norms that contain sanctions that are used by a special social organization called state.

3. THE NORMS USED BY THE UNORGANIZED SOCIETY

The unorganized society applies sanctions but not based on rules, and this society is free to use only sanctions that are usually lighter.

Based on their formation they can be organized spontaneously, unorganized. These are created slowly and for a long time. Thus, we are talking about the rules that we call MORES,[4] which rely on tradition. These norms entail rules of the closed type or conservative as well. The most important norms of this kind that are closely linked to law are: custom and moral.

3.1. Custom

Custom is a social norm, as an unorganized norm it is a result of a long development during history, uncontrolled and unsupervised by the state.

The custom is a norm that is created by a long repeat, and gains its binding force with its long repeat during history. Customary rules are created slowly followed from generation to generation, behavior which

[1] Buxhakoski, Stefan (2007). *Fillet e së Drejtës si disiplinë shkencore.* Tetovë: shtëpia botuese "Çabej".
[2] Buxhakoski, Stefan (2007). *Fillet e së Drejtës si disiplinë shkencore.* Tetovë: shtëpia botuese "Çabej".
[3] Llukiq, Radomir, Koshutiq, Budimir (1986). *Fillet e së Drejtës*, Prishtinë: Universiteti i prishtinës Fakulteti Juridik, ETMM i KSAK.
[4] Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.

are considered as good and their long repeat imposes people to respect them,[1] but they are respected as customary rules by the members of that society that protects those 'values' with emphasized bigotry.

The custom protects the existing social relations, but on the other side it is a barrier for the creation of new social norms, and sometimes they are contrary to with these relations.

Every field of life has its customs. Customs, as rules of behavior, are different from each other. They can be classified in customs of dressing, customs of exercising various ceremonies, customs of hospitality, thus, they are concrete unorganized norms. These unorganized social norms mostly belong to the past and don't coincide with the advancement of the values of social orders.

But, as a rule, these customs are various inside a country or region, therefore they protect the past of a certain group or tribe with bigotry.[2]

This raises the question whether the organized social law should support these unorganized norms. In principle no, because they present an obstacle for the society and can be contrary to the existing legal order, respectively the positive law in one side, but that don't have a binding character, while the society can transform them in binding norms for the members of that society, if these are not in contradiction with the organized social relations.

So, the social organization called state, can import them in the corpus of socially organized norms if they are not contrary to the legal order, respectively with the positive law.

Customs have their own sanctions, for example mocking, boycott, and sanctions by money, penalty etc. Or, on the other hand, we have the bloodfeud sanction, as an unorganized social norm.

The custom finds its support in raising awareness, raising the culture of its members which entails stagnation, the non-evolution of society based on development levels.

With other words, the custom is a repeated rule for similar situations.

But the customs sometimes find support in legal norms, that can be called legal gaps, where these can be filled with relevant customs if they are not in contradiction with the positive law, respectively the applicable law.

Thus, in these cases customs are transformed into social legal norms or in organized legal norms by the organized society, such as the state as a powerful social organization. As a rule this happens if the custom is not contrary to the social legal order – legal system, with the positive law.

3.2. Moral

The moral is presented as a system of rules that results from the conditions of society's livelihood, knowledge of people, good and bad, appreciation and modesty, reward and reprimand, honor and consciousness, dignity etc.[3] Or, said with other words, the moral is part of the most general human values.

These social norms are created in conditions of development, advancement of society from a not so emancipated society in the emancipated one. Among these values we mention the honor, good behavior, bad behavior, dignity, moral obligation, moral order etc.[4], but they contain some kind of sanction that is consciousness as a type of a moral sanction.

But even in these kinds of social norms such as moral, sanctions can appear. We can mention derision, moral mocking, that can later take the character of organized sanctions by the state, as a special social organization. I.e. these social unorganized norms can be transferred in another kind of social norms that are organized, or said otherwise in legal norms. In this context for the violators of the last ones these norms have sanctions and the social sanction of the legal norm will be imposed.

Unlike custom, moral doesn't gain its power by being exercised for a long time, but depends from the consciousness whether the thing ordered by moral is good or when something is forbidden by moral that thing is bad.

Said in other terms, these social norms depend from their behavior, which in one way or another are depended from the external form in which they appear. Anyway, the norms of moral don't have organized sanctions neither.

The moral contains sanction and that can be called as a sanction that an individual can put himself in, and in this context we are talking about pangs of conscience. This is a sanction of conscience where the person judges its acts, without being imposed by organized social norms such as law.

Sometimes, the person can have a sanction of opinion: evaluation, honor, admiration, glory or the

[1] Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.
[2] See: *Kanunin e Lekë Dukagjinit.* (1999). Tiranë.
[3] See: Комаров С.А., Малько А.В. (1999). *Теория государства и права*. Москва, 75.
[4] Комаров С.А., Малько А.В. (1999). *Теория государства и права*. Москва, 75.

opposite like: dishonor, humiliation about what society can think for that person, group of persons, that puts this kind of sanction to himself – group of people as some kind of conscience pang sanction.

This is a sanction which the individual or society applies for themselves, for the action or inaction, for the immoral action that is inadequate for that society.

It is a characteristic to mention that every group pretends to impose its moral to other groups, or the groups always pretend to protect their moral. As known, Immanuel Kant supports the thesis that law is connected to moral, respectively the legal legislation has to be identified with ethical behavior, with ethical legislation. But taken in general, moral norms gain their power immediately from the emancipation of the society, but moral norms are realized through evaluation and social relations, just like law that orders or forbids.

I.e. moral norms sometimes judge, forbid, order but as unorganized social norms. The legal evaluation of these norms has to do with moral dispositions, while the moral evaluation has to do with moral rules of behavior against these norms. Said logically, the legal evaluation and the moral one are different only in legal principles, while people's behavior against the relevant norm is something they have in common.

Therefore, norms of moral are free norms, non imposed by political will of state power, operate based on belief, having a dose of independence, because the subject accepts them as such and respects them because there he/she sees a certain interest.[1]

From what we said above the moral of a society or of a certain social group can be transformed in a moral norm of another groups because a social group always pretends to impose its moral norms to another social group.

As an end for moral norms a characteristic of these norms is that they are concrete moral norms, of every individual, social group that has its own moral. From the independence of moral it results that the moral contains its own relevant sanctions. As a relevant sanction is the violence of the norm of moral, which contains the prang of conscience.

This is the sanction that the subject applies to himself, of course by repenting for his/her immoral act.[2] The difference between custom and moral stands in the fact that customs have a closed and unchanged character, while the moral is in continuous movement, in evolution by changing the existing situation, despite that some authors think that moral is an unchanged category.

Moral, as well as law, in their implementation are based in the consciousness of citizens, but the difference between law and moral stands in the fact that state decides about law and state sanctions it. While moral norms are set by the public opinion[3] and can treat moral as an internal sanction if looking from a psychological consciousness where people know their actions and inactions, respectively the purpose of their actions and inactions.

With this some kind of retaliation is done by philosophical moral maxims that are in harmony with the character of the person – group of persons, by correctly using and applying the rules of honor, as said by Montesquieu in his book L. Espert de lois flammarion, Paris, 1981, by being protected from shame by the continuous use and soft silence. In one way or another, moral regulates wider relations than the law. Therefore law regulates social relations that have special importance for the state.

4. NORMS APPLIED BY SOCIAL ORGANIZATIONS

Except norms that have to be applied by the state through its authorized bodies there also exists the possibility for social organizations to create norms, but not norms with high legal power but norms with lower legal power.[4]

Social organizations are human creatures, conscious creatures, well organized and well planned, entailing a certain activity. With other words, they have their purpose of creation. These organizations are regulated based on constitutive elements.[5] As a rule, they have their relevant acts such as the higher act – the statute and different regulations. These social organizations, based on their activity and organization are based on those acts and norms.

It is understood that norms issued and applied by social organizations can't be in contradiction to the

[1] Llukiq, Radomir, (1995). *Teorija drzava i prava*, Beograd, 32.
[2] Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.
[3] Omari, Luan (2007). *Parime dhe Institucione të së Drejtës Publike*. Tirana: Elena GJIKA.
[4] Omari, Luan (2007). *Parime dhe Institucione të së Drejtës Publike*. Tirana: Elena GJIKA.
[5] Omari, Luan (2007). *Parime dhe Institucione të së Drejtës Publike*. Tirana: Elena GJIKA.

legal order, with norms that have higher legal power.

The norms that are issued – adopted by social organizations can't be in contradiction to the legal order – positive law, with norms with higher legal power that in this context are issued by the state as a powerful social organization.

In the frame of the norms that are issued and applied by the organization for its members, these groups are: different communions, churches, mosques, scientific associations, economic enterprises, political parties, different cultural associations, health ones etc.

These norms are applied inside the organization, for its members and punish its members for the violence of these norms, the way they require to act.

5. NORMS APPLIED BY THE STATE

The norms applied by the state have a big role and impact in society. But on the other side we have norms that are not applied by the state, such as unorganized societies that have their own norms and don't have a binding character for others. Those norms have a lack of sanction in cases of violence. In this case we are talking about church norms, different cults and temples, religious norms etc.

With the term 'law' we understand norms created and applied by an organized society called state, and norms applied by the state are called laws.[1] The state is an organization of organized violence and based on legal norms it is divided by other organizations, mainly because of its external element – physical force.[2]

Based on previous notions we can give the definition that law is an entirety of norms applied by the state and if not applied by desire it is applied through the apparatus of physical force, as a competent state mechanism, called sanction.

But, norms that are not created by the organized society are not applied by this organization – the state, while norms that are not organized by the state are not applied by it, these are illegal norms, as unorganized social norms.

They can become socially organized norms in legal norms if they are in accordance with the social and moral order of a society, as norms of the applicable law.

As a condition for these norms to gain their legal power from unorganized norms such as mores, customs to organized state norms it is required for them to be in accordance with the legal order, the positive law.

Thus, the state offers its support and protection to social norms, by giving them the character of legal norms, but in the mean time by guaranteeing and implementing the sanction if they are not respected by the members of that society. These kinds of social norms, when supported and protected by the state are called legal norms – laws.[3] In one way or another, the law is also known as a sanction that includes the discipline and the sanction (positive for obedience and negative for the opposite).

6. THE FRAME OF THE EVOLUTIVE DEVELOPMENT OF STATE AND LAW

State and law are social and historical phenomena that were created in a certain level of society's development, when the society was divided in classes. The state and law always undergo changes and transformations and are in continuous movement. State and law are actually in an organized movement, they were created in a level of social development when the society was divided in classes.[4] State and law are subjugated to different periods of great changes, economic and political revolutions and evolutions. We will not continue to talk about the creation of state and law because it is an object of study for the history of state and law.

To tell the truth, state and law are always subjugated to a variety of processes, such as: state and law in the period of slavery, feudalism, capitalism, socialism and in contemporary legal systems of state law, which is consolidated based on the new international order and based on this we have revolutionary and evolutionary changes.[5] The development of state and law in its functionality is subjugated to evolution. As single promoters of changes and development of the function of state are: the impact of substantial and formal characteristics of state and the impact of the internal environment of the state.

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[1] Llukiq, Radomir, (1995). *Teorija drzava i prava*, Beograd.
[2] Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.
[3] Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.
[4] See: Llukiq, Radomir, Koshutiq, Budimir (1981). *Uvod u Prava*, Beograd: Nauçna Knjiga.
[5] See: Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.

6.1. Evolutionary changes

In state and law there can be slow changes that happen in the society, where in one way or another they can be called evolutionary changes, ongoing (continuous) changes, for example we change those legal dispositions to the acts of some laws. So, just some dispositions are changed. All these actions change the state and law (partly), but the essence remains the same. The state and law in essence remain unchanged and in the frame of these changes of state and law, we mention: changes known as reform, coup and conspiracy. [1]

If we take a look on the American Constitution, as the oldest constitution of the world, it has served as a model for many constitutions in the world, and its form and sustainability has been achieves thanks to its simplicity and elasticity. Firstly destined to provide governance with a healthy basis, where its 27 amendments continue to serve the needs of over 250 million people in 50 different states from the Atlantic Ocean to the Pacific Ocean. The Constitution includes the disposition to amendment this document whenever the economic, social and political conditions require it.

Since the adoption of the Constitution there were 27 amendments, which proves that its elasticity constitutes the most sustainable points. Without such elasticity it would be inconceivable that a document, approved over 200 years ago, can still efficiently serve the needs of people from different levels in the United States of America. These changes in the American Constitution motivated me to incorporate and take a look on the evolution of this Constitution through evolutionary changes, although the American Constitution, in principle, is unchanged, but relevant dispositions of the Constitution leave the space for its evolution. With this we can notice that object of evolutions can be ongoing changes, for example the constitutional line can change through amendments, annexes, while the content remains unchanged.

6.1.a. Reforms

The reform as a rule is an important change for the state and law that includes a field of social life. These kinds of changes in society, state and law always happen. The society accepts the movements in dialectic movements, i.e. for the development of new processes in life fields.[2] The reform means economization, in improving the conditions – position of that society, its employees. The reforms can be focused in a number of social fields: social, educational, science and culture reforms, where the reform is related to changes, from the past to the future. We also have reforms in the legislative sphere, by adapting to important changes for state and law. The most important changes in state and law are known as codification, i.e. the systematization of a branch of law or the legislative sphere in general, where the legal order is based on these relevant reforms. The reform changes the existing condition and claims changes in the future, developing new processes in society. The state administration is based on the optimal rapport between the set duties and achieved results, by offering relevant services for the citizen. In order to achieve efficiency of the work in administration, it would have to undergo a number of changes, such as: administrative reforms, the modernization of administration's work, increasing the professionalism of work and the information of the communication in administration. The administration itself undergoes changes in order to be in the service of citizens, as required by law. These reforms lead in the realization of the set duties and achieved results. These reforms are done and determined with a successful impact, related to the function of state and law, which entails a more successful organization and function of the society in general.

The reform is also a promoter of changes for the function of state and law, by following and incorporating the results, contemporary achievements in general social relations.

In the terms of reforms we can shortly talk about decentralization of state power, which consists in a weakening of the functional influence of central power bodies in the favor of local state bodies, authorized powers by the bodies of central power. The weakening of the influence of central bodies against local ones can be caused for different causes and motives, such as: the tendencies for the social and political democratization of these bodies conform to the political reality and will.

These changes can be called evolutionary, that entails the democratization of different social relations, between central bodies and depended bodies of powers.

6.1.b. State coup

It is a kind of change that happens in state and law, although it is illegal, that doesn't coincide with the existing legal order. This event belongs to a certain group of people that abduct the power through

[1] See: Llukiq, Radomir, Koshutiq, Budimir (1981). *Uvod u Prava*, Beograd: Nauçna Knjiga.
[2] See: Llukiq, Radomir, Koshutiq, Budimir (1981). *Uvod u Prava*, Beograd: Nauçna Knjiga.

physical violence. The coup is exercised by the category of persons or people that are part of the high state hierarchy.[1] These kinds of changes are unacceptable for the society; they don't coincide with the principles of democratic order, because they don't bring important favors for the society in general, but only for a certain group of people. Usually, the coup happens in countries with low levels of economic development or in countries going through transition, because of their political ideologies and different cultural aspects. Here we have to deal with countries that really have a lack of organization and function of state and law, therefore social relations are in a low level of social regulation.

The coup is an exclusively illegal change, against the existing legal order, where a group of people take the power based on hierarchy, taking an important place in the organization and function of state. But it is a characteristic to mention that the content, the essence of state still remains unchanged.

6.1.c. Conspiracy

State conspiracy is not that different from coup, it is an evolutionary change, also illegal. The difference between coup and state conspiracy stands in the fact that state coup is done by a certain group of people in the state hierarchy, while the conspiracy is done by people that are not part of this hierarchy, that are outside state structures, respectively persons that are not part of state hierarchy. But it is also a characteristic of the conspiracy to emphasize that it doesn't change the state and right in essence, in this context it remains unchanged.

In all these evolutionary changes, seen from the time aspect is much longer because they happen evidently, such as revolution.

But, as a result of slow evolutionary changes, in different social practices we encounter radical and fast changes that are also known as revolutionary changes.

6.2. Revolutionary changes

The revolution entails two meanings, respectively two notions: the revolution exercised by violence, and the revolution exercised peacefully. The revolution exercised by violence, physical violence, means armed conflicts between the carriers of state power and the ones that depend from this power, when an organization goes after the old state organization until the seizure of power,[2] the political and economic one. The economic revolution is also reflected in the state and right in general, because it also changes the system of property, which means that, the state and right also change. According to the new democratic principles, starting from the system of property with different revolutions, different property holders appear. In this context we have to deal with state property, as a mutual property for wide social interests, private property with private holders, and the mixed property. But, from this it results that these three kinds of properties, in front of relevant acts, respectively the law, are equally treated and protected. With the political revolution we have the exercise of pressures and radical changes of the political class in power. Here we have to deal with taking the political power from a new organization to lead the state and law. The economic and political revolutions are in common because these two revolutions entail substantial changes of the state power. The economic and political revolutions creates the new owner of the state property, where an old political organization terminates and the power is concentrated in the new one, which puts new roots for the new state. If we look the political-territorial autonomy of Kosovo, the anti-constitutional ways of Serbia between 1989-1999, when in this period Serbia approved through its Assembly more than 50 incriminating laws against Kosovo's citizens and over 500 other special acts to the detriment of the Albanian population, where the Kosovar population responded with the organization of Kosovo Liberation Army, having an armed conflict between the year 1989-1999 against the regime of Belgrade, as an autocratic regime. With this we can say that we dealt with essential and substantial changes in the territory of Kosovo, compared to the relevant occupation period 1989-1999, when Kosovo gained its liberty from Kosovo's Liberation Army and NATO, which from 17 February 2008 has become the newest country in Europe and in the world, with the Republic of Kosovo, an independent and sovereign country.

If it is not acted according to the directions mentioned above, the revolution as a phenomenon will be terminated when it's over, where previous carriers of power usually return, which will take the state power. This phenomenon in the theory of state and law is known as anti-revolution. Said otherwise, between evolutionary and revolutionary changes exists a close connection, the period of evolutionary changes on time terms is much longer than the one in revolutionary changes.[3] Revolutionary changes are more rapid, when compared to evolutionary changes which are known as slow changes.

[1] See: Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.
[2] See: Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.
[3] See: Ismajli, Osman (2004). *Fillet e së Drejtës.* Prishtinë: Universiteti i Prishtinës, Fakulteti Juridik.

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