

INTRODUCTION TO LAW

Lesson 8

The legal norm and its elements



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The topics

- The concept of norm
- The legal norm and its elements
- Law, legal order and legality
- Violation of the right

The concept of the norm

What will we understand by “the norm”?

- The norm is a concept used not only in the juridical sciences but as well as in other social and technical sciences.
- The norm is a rule set by people to regulate the relationship between them, as well as between people and nature.
- **The norm is a rule that guides behavior among members of society or social groups.**

How can a norm become applicable?

- In order for a norm to become applicable, it must be based on objective laws and laws of science. The norm comes as a result of a conscious activity (after being created by people) as well as voluntary activity, in the moment the people decide to adapt their behavior to this norm.
- **The norm is a general rule of conduct** as it is addressed to a group of people rather than an individual.
- Some norms are **mandatory for all people**, others are **mandatory for members of a group** or organization.

The division of norms

The norms are divided into 2 groups:

a) technical group

b) social group

- The **first group** regulates the behavior of people in relation to nature, while the **second group** regulates the behavior of people in relation to each other.
- A technical norm is usually a formal document that establishes uniform **engineering or technical criteria, methods, processes, and practices.**

The division of norms

Social Norms are divided into:

- 1. material (economic) norms
- 2. ideological norms.

Ideological norms are grouped into:

- 1. legal norms
- 2. political norms
- 3. moral norms
- 4. religious norms

The case of the technical norm which is sanctioned by a social norm

- The Criminal Code prescribes as a criminal offense the violation of technical rules or working conditions, when this violation has caused death or serious consequences.

The technical norm sanctioned by a social norm

Article 289 Criminal Code

Breach of safety rules at work

- Causing death or serious harm to the health of an individual because of disregard of rules related to work, production, service, provided for by laws, acts of the Council of the Ministers or in the pertinent regulations of technical safety, technical discipline, work-related protection, hygiene and fire safety by an individual designated to respect those rules and to implement them, is punishable by a fine or up to ten years of imprisonment.
- When the criminal act has caused death or serious harm to the health of more than one person, it is punishable by no less than five years of imprisonment.

The technical norm sanctioned by a social norm

Rast i normës teknike por që sanksionohet nga norma shoqërore është shprehur tek neni 289 Kodi Penal.

Neni 289 Kodi Penal

Shkelja e rregullave të mbrojtjes në punë

Shkaktimi i vdekjes ose dëmtimi i rëndë i shëndetit të personit ardhur si pasojë e mosrespektimit të rregullave që kanë të bëjnë me punën, prodhimin, shërbimin, të përcaktuara në ligj, në aktet e Këshillit të Ministrave apo në rregulloret përkatëse të sigurimit teknik, të disiplinës teknike, të mbrojtjes në punë, të higjienës dhe sigurimit nga zjarri prej personave të ngarkuar me respektimin e rregullave dhe marrjen e masave në zbatim të tyre, dënohet me gjobë ose me burgim gjer në dhjetë vjet. Kur nga vepra penale është shkaktuar vdekja ose dëmtimi i rëndë i shëndetit të disa personave, dënohet me burgim jo më pak se pesë vjet.

The legal norm and its elements

- The legal norm **is one of the types of social norms**, but it has its own specificity compared to other norms.
- The elements that make this norm distinct are:
 - a. **the subject** who sets the norm;
 - b. **the content** of the norm;
 - c. **its consequences**.

The legal norm

- The legal norm is set by a person or group of people representing the state.
- The legal norm has general binding force only for that relationship which is subject to its regulation.
- The consequences, in case of non-compliance with the norm or the violation of it, are state austerity measures (masa shtrënguese) against the offenders.

The structure of the legal norm

- Regardless of the form of legal norm, (bylaw, custom, etc.) there are three constituent elements of the legal norm: **hypothesis**, **provision** and **sanction**.

(hipoteza, dispozita dhe sanksioni)

- **The hypothesis** specifies the circumstances under which the legal norm operates. It is a condition without which the legal norm is not enforced.

The hypothesis is an indispensable condition for applying the rule of conduct stated in the legal norm.

- **The provision** provides for the content of the code of conduct itself.
- **The sanction** provides for coercive measures in case of non-implementation of the legal norm.

The elements of the legal norm

- There are cases when all three elements of the norm are found in a single article (Article 480 Civil Code)
- In most cases, the elements of the norm are not clearly distinguished from one another. The hypothesis merges with the provision. (Article 155 Civil Code).
- There are cases when an article may contain some legal norms. (Article 3 Criminal Code).

Example when all three elements of the norm are found in a single article

Article 480 Civil Code

- When the execution is made impossible due to the fault of the debtor (1), the creditor has the right to ask from him the compensation of the damage caused (3). The debtor is guilty when, with intention or by negligence, has created circumstances that have made impossible the execution or when he has not taken measures to prevent it. (2)

The hypothesis, the provision and the sanction are not placed one after the other.

Case when the hypothesis merges with the provision

➡ **Article 155 of Civil Code**

The owner of soil, after first asking the neighbor to cut the branches and roots of the trees which extend into his land, has the right to cut them himself, if they cause him damage, as well as collect the fruits and use them for his own benefit. The fruits, which fall from the trees onto the land, belong to the owner of the soil where they have fallen.

Cases when an article may contain some legal norms

Article 3 of Criminal Code

Operation of the criminal law in time

- No one shall be sentenced for an offence, which, according to the law at the time it was committed, did not constitute a criminal offence.
- A new law not incriminating an offence has retroactive effect. If the person has been sentenced, the enforcement of the sentence shall not commence and, if it has commenced, it shall cease.
- If the law in force at the time when the criminal offence was committed and the subsequent law are different, the law, the provisions of which are more favorable to the person having committed the criminal offence, shall apply.

The elements of the legal norm

- The constituent elements of the legal norm may be expressed in several articles. (Contract of sale Civil Code article 705 and article 724).
- Among the three elements of the legal norm, **the provision is the most indispensable element.**
- In terms of **sanction**, it can be found within the norm itself, but it can also be sanctioned by other norms.
- There are cases when the sanction can be found both within one norm and reinforced by other norms.
- There are norms that do not have their own sanction but are protected and guaranteed by the whole system. (**Article 1 of the Constitution**)

Article 1 of the Constitution

Article 1

- 1. Albania is a parliamentary republic.
- 2. The Republic of Albania is a unitary and indivisible state.
- 3. Governance is based on a system of elections that are free, equal, general and periodic.

The classification of the norms

- The norms vary by the nature of the rules of conduct that make up their content.
- Depending on this, they are divided into:
 1. **binding norms** (norma detyruese);
 2. **prohibitive norms** (norma ndaluese)
 3. **permissive norms** (norma lejuese)

The classification of the norms

- **Binding norms** command people to perform certain actions.
(Family Code, administrative norms, financial norms)
- **Prohibitive norms** prohibit citizens from committing certain acts.
(Criminal Code)
- **The permissive norms** neither prohibit nor order but allow citizens to perform one act or another. (Civil Code)

The degree of determination of rules of conduct

There is another division, according to the degree of determination of rules of conduct as follows:

- 1. **defined norms** clearly express the rule of conduct.
- 2. **white/blank norms** do not determine the rules of conduct themselves but leave it to the state authorities to fill this gap.
- 3. **reference norms**. To formulate a defined rule, they refer to other legal norms.

Defined norms; white norms

- **Defined norms** clearly and fully express the rule of conduct. Most norms are defined ones.
- **White norms** are norms that do not define the rule of conduct themselves but leave competence to state bodies which must fill this gap.
- For example: **Article 282 of the Criminal Code** provides for the punishment for violating certain rules for possession, production, use, storage, transportation and sale of explosives, combustible or radioactive substances.
- **This article does not indicate what these rules are as they are set by various state bodies within the limits of their competencies.**

Reference norms

- **Reference norms:** These are norms which, for formulating a defined rule, refer to other legal norms.
- For example: **Article 23, third paragraph of the Criminal Code** provides:
The provisions for the resignation or expulsion of a judge also apply to the secretary of the hearing and the persons in charge of making transcripts or photographic or audiovisual reproduction.
- The provisions referred to in the third paragraph of Article 23 are prescribed in Articles 17, 18, 19, 20, 21 and 22 of this Code.
- Article 23 is a reference provision.

Reference norms

- The reference norms resemble with blanket/ white ones because both refer to other norms.
- But the reference norm refers to another norm that has been established and recognized, **that is in force**. A reference norms is distinguished only by the way it is compiled.
- So **the reference norm is not a blanket one but a defined one**.
- **Blanket norms usually refer to norms that have not yet emerged and that will emerge to meet the rule of conduct.**

Law and legal order

- Law, despite being constituted by legal norms, finds itself expressed in the social relations that are in a given society. Legal norms would not have any effect, if in reality they were not enforced by the people themselves.
- The link that exists between legal norms and people's behavior is expressed in the legal order.
- **What is the legal order?** It is the entirety of the relationships of people in society that are expressed and sanctioned in law, in legal norms.

The legal order and social order

- The legal order is part of the social order.
- The latter is comprehensive and includes several orders:
moral, economic, political and legal order.
- **Legal order, as part of social order, has its own peculiarity as it is regulated by law.**

The analyses of legal order

- If we analyze the legal order we find out that it is composed of **legal norms** and **people's behavior**.
- For this reason, we say that the legal order consists of **2 parts**: the **NORMATIVE part** (the part that includes the norms of conduct) and
- the **FACT part** (the part that includes the behavior based on the legal norms).

The analyses of legal order

- **The legal order is always connected to the law in force and the realization of the right.**

The legal order exists when the relations of the state organs and citizens, as well as the relations between the citizens themselves are based on legal norms and are protected by law.

- It also includes the human rights system, which is protected by law.

It has 2 features: **a. stability; b. clear wording/formulation.**

The absence of legal order

- ➡ When the state power is not based on the law in force, it is arbitrary and the activity of state organs is illegal.
- ➡ **In this case, we cannot speak of legal order.**

Legality (ligjshmëria)

The legal order is the order of human relations that relies on legality.

Legality is a key element of the legal order.

- Legality is expressed in the rigorous and uniform application of legal norms by all subjects of law.
- According to the principle of legality, no state body can make a decision **that is not in accordance with a previously announced provision.**
- Every action performed by state bodies will be done in accordance with the law.
- The principle of legality is holistic and absolute in relation to state bodies.

No state body can make an individual decision contrary to the law

- No state body can take an individual decision in violation of the law.
- **The activity of the Parliament is also based on law.**
- This body can repeal the law, change it, or replace it with a new one, but as long as the law exists, the Parliament must implement it.

The legality and the rule of law

- Legality is a basic condition for the existence of the legal order in a certain society.
- Legality ensures **stability** in relations between people and creates **security and conviction of people that no one can violate the norms and rights** recognised by the state in the Constitution and legal framework in force, without being penalized.



The violation of the right

- The main condition for the implementation of legality and legal order is the respect of the law in force.
- Violation of the law will be considered the actions of citizens or officials **who are against the law and we consider them as illegal actions.**
- Any violation of the law is followed by appropriate measures given to the persons who commit these violations.

The violation of the right

- The major violations of laws are **criminal offenses**.
- They pose a danger to the state and the rule of law. They are divided into **crimes** and **criminal offenses/contraventions**. Relevant punishment measures are imposed by the court against persons who commit criminal offenses.
- Less important violations of the law are **offenses**. (*kundravajtjet*)
- These are divided into **administrative offenses** and **disciplinary offenses**. (*kundravajtje administrative dhe shkelje disiplinore*)

The violation of the right

- **Administrative offenses** are violations of the law, specifically of certain **rules of conduct committed by citizens**. Citizens receive administrative penalties in case of administrative offenses.
- **Examples:** fine imposed by the police for speeding while driving / fine imposed by the municipal police for placing an advertisement on a billboard without permission etc.)
- **Disciplinary violations** are violations of the law made by an employee during the performance of his activity. A disciplinary sanction is applied against the employee for the disciplinary violation.

The violation of the right

- Violations of the law also include violations of norms that regulate the relationships and interests of institutions, organizations and citizens.
- These are called civil law violations.
- The subject who has suffered a certain damage may sue the person/ the subject who has committed the violation, in order to establish the infringed right, or to obtain a award for the specific damage.

The violation of the right

➤ In the fight against violations of law, apart from the sanctions, there are several elements that have specific importance:

- 1. the awareness of people,**
- 2. the education of citizens**
- 3. the legal awareness.**

These help the stability of legal order.