

INTRODUCTION TO LAW

Lesson 3

The concept of sovereignty, state territory and state function



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The topics

- The concept of Sovereignty
- The elements of Sovereignty
- The territory of the state
- The function of the state

How does the state perform its functions?

- **Power is the means by which the state performs its functions.**
- The element of power is found **in the notion of the state as a coercive organization.**
- Power cannot belong to only one party, it can be understood as a bilateral relationship.
- Power is the ability to impose a rule or command to someone, independent of the will of the latter.

Different kind of powers in society

- There are different powers in society, but in every power, there is **the element of coercion** which makes realizing its purpose possible.
- The state power has a monopoly on physical coercion and has a special apparatus for this purpose.
- **State power is the highest, independent, indivisible, unlimited, and comprehensive power.**
- These elements are related to the concept of state sovereignty.

What is the concept of sovereignty?

- Sovereignty is an important concept of constitutional law and international law.
- Sovereignty is the characteristic of state power.
- **Sovereignty** is the independence of the power of a state from the power of any other state, and it is expressed by the right of the state to freely choose its own internal and external affairs, without violating the rights and norms of other states and international law.

Internal and external sovereignty

- A state is an organization that is able to control a certain territory and the people living in it, both **in the sense of defending it against the outside world** and **in the sense of exercising powers and maintaining law and order inside its own borders**.
- These two capacities are considered to be two aspects of sovereignty, namely **internal sovereignty and external sovereignty**.

State sovereignty

- State sovereignty means that states are **in complete control of all the people and property within their territory.**
- State sovereignty also includes the idea that all states are equal as states.
- Despite different land masses, population sizes, or financial capabilities, all states, ranging from tiny islands of **Micronesia** to vast expanse of **Russia**, have an equal right to function as a state and make decisions about what occurs within their borders.



State sovereignty

- Since all states are equal in this sense, no state has the right to intervene in the internal affairs of another state.
- Practically, sovereignty means that one state cannot demand another state to take any particular internal action.

State sovereignty example

- For example, if Canada did not approve Brazilian plan to turn a large section of Brazil's rainforest into an amusement park, the Canadian reaction is limited by Brazil's sovereignty.
- Canada may meet the Brazilian government and try to convince it to halt the project.
- Canada may bring the issue before the UN, to survey the world's opinion of the project.
- Canada may even make politically embarrassing public complaints in the world media.
- However, Canada cannot simply tell Brazil to stop the rainforest project and expect Brazil to obey.

State sovereignty

- Sovereignty both **grants and limits power**: it gives to states a complete control over their own territory while restricting the influence that states have on one another.
- In the example, sovereignty gives the power to Brazil to ultimately decide what to do with its rainforest resources and limits the power of Canada to impact this decision.



Globalization and sovereignty

- However, **globalization is changing this view of sovereignty.**
- In the case of the Brazilian rainforest, Brazil may consider the rainforest located within its property an issue solely of internal concern.
- Canada may claim that the world community has a valid claim on all limited rainforest resources, regardless of where the rainforest is located, especially in consideration of issues like endangered species and air pollution.



International human rights law and sovereignty

- Similarly, states no longer find the treatment of citizens as the exclusivity of a specific state.
- International human rights law is based on the idea that **the entire global community is responsible for the rights of every individual.**
- International treaties, therefore, bind states to give their own citizens rights that are agreed on, at a global level.
- In some cases, **other countries can monitor and enforce human rights treaties against a state** regarding the treatment of the human rights of the citizens.

The elements of sovereignty

Which are the elements of sovereignty?

- a. independence from the power of any other state;**
- b. Lack of any official restrictions on state power in** issuing provisions that appear to be reasonable;
- c. The superiority of state power in the territory where it exercises the power,** above any other power.

The first element:

Independence from the power of any other state

- The state power of one state acts independently in relation to other states.
- On the basis of the authority of the state power, **it assumes voluntary obligations under international agreements.**

First element: Independence to the power of any other state

Is sovereignty an absolute power?

- The idea of absolute sovereignty is unacceptable.
- According to this idea, state power has the right to disregard any legal law and moral principle. **Examples:**
 - Hitlerian Germany which enslaved other people;
 - Soviet Union in 50-70s which subdued Eastern European countries on the pretext of placing the socialist order in these countries.

Second element: *Lack of any official restrictions on state power in issuing provisions that appear to be reasonable*

- The state government has the exclusive **right to establish the rule of law and to organize its protection.**
- This is an absolute right of state power and **no internal or external organization can exercise this right within the territory of a given state.**
- But state power is not always independent of other bodies/organizations.

State power not always independent

- i. In the period of feudalism, the state and religious organizations were interdependent;
- ii. At different periods, various economic organizations such as **trust companies** influence state power by imposing their will.

Despite the influence that these groups may exert on state power, only the state power can give the legal and official form to its will, in order to manifest it.

Examples

Although the rule of law and its protection is a right of state power, the experience has shown otherwise. The cases relate to the countries of the former Yugoslavia:

1. Bosnia and Herzegovina when the local government was under UN supervision;

2. Kosovo, when forces of NATO intervened militarily in March 1999, in the time when **the Belgrade government did not sign the agreement in Rambouillet (France) and committed genocide against the Albanian people in Kosovo.**

The victory of NATO forces led to the establishment of an administration in Kosovo under the supervision of the UN.



Third element: *The superiority of state power above any other power*

- The state with its organs **is created and organizes its own activity, regardless of any other social power within the country.**

Is the state participating in the federation sovereign?

- **The federated state lacks the three elements of sovereignty.**
 - a) The federated state **is dependent** on the federation as it is part of it.
 - b) The laws / bylaws issued by the federated state **must be in accordance** with the legal framework of the federation.
 - c) **The power of the federal state** has precedence over the power of the federated state itself in the territory of the federal state.

Anyway, this question continues to be debated and still remains without a concrete answer.

Which is the holder of sovereignty?

There are a **variety of theories** on the issue of the holder of sovereignty.


- According to **Boden**, the holder of sovereignty is the absolute monarch. If the society surrenders power under a social contract then it cannot be the holder of sovereignty.
- According to **Hobbs's** point of view, the holder of sovereignty relates to the form of government established in each state:
 - ❖ in the monarchy, it is **the king**;
 - ❖ in the oligarchic state, it is **the body representing the oligarchy**, (oligarchy= a small group of people having control of a country or organization.
 - ❖ in the democratic state, it is **the representative assembly**.

Which is the holder of sovereignty?

While according to **Russo**, there is a new perspective.

- According to him, the social contract brings about the establishment of sovereignty of the people.
- The sovereignty is the realization of the general will and therefore the sovereign should belong only to the people.
- The representative of the people (the deputy) must act on behalf of the electorate, to adhere to its instructions, otherwise he may be revoked by the electorate.

The people and sovereignty


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- In relationship to sovereignty, the people have been treated as participants in power and object of power.

Slavery/Feudal Society

- People = object of the power

Democratic society

- People = subject to the exercise of the power

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- Given that people are treated as subject to the exercise of power, electoral restrictions have been imposed in some countries to prevent citizens from participating in elections.

Division of people into groups

- **Classes** are groups of people who belong to a particular economic class. When one's economic position changes then the person can move from one class to another.
- **Ranks** are generally associated with the period of feudalism. They are based on class position and generally more closed groups. The transition from one rank to the other is done by the order of the monarch and not by changing of the economic position.

State sovereignty extended internationally

- If a state gains sovereignty, it is extended to the international arena as it relates to the recognition of the sovereign state by other states.
- Recognition of the sovereign state also **means recognition of the government that is formed in this state.**
- The changing of government if it is done legally, does not pose a problem.

State sovereignty extended internationally

What about if the change of government is done ***in an unconstitutional way?***

- In this case, there is no established criterion for recognizing this government internationally. This is related to the political and ideological attitudes of different states.
- Recognition is granted if the government has stabilized the situation in the country and is an effective holder of power.

Territory of the state

- State power extends over the entire population **within the boundaries of a given territory.**
- Territory and population are essential conditions for the creation of the state.

Territory is a space that has three dimensions:

1. The first dimension includes **land within the boundaries of the state.**
2. The second dimension includes **airspace.**
3. The third dimension is the **underground.**

Aerospace and underground space

- **Aerospace** is endlessly elevated, there are no boundaries, but in reality it goes to that distance where power is effectively exercised.
- **Underground space** reaches half the globe, but it also goes till the point at which the power is effectively secured.



Maritime space (hapesira detare)

- **The territory of the state includes rivers, lakes, marine areas.**
- The latter (marine area) extends from the coast to the distance specified by the legislation of each country, in accordance with the norms of international law.
- This space ranges from 3-12 miles.

Maritime space (hapesira detare)

- The waters of Albania lie 12 miles from the coast, except for the Corfu Canal. The maritime space is extended to halfway between the 2 shores. This marine space constitutes the territorial waters.
- The merchant ships of other countries have the right to freely pass in the territorial waters of a country.
- For foreign warships, it is needed the permission of the state to which the territorial waters belong.



Extraterritoriality

- The power of the State is not exercised in the **buildings of diplomatic missions of foreign states**. The buildings and their territorial belonging enjoy extraterritoriality and territorial immunity. It means that the organs of the state in which they are situated, cannot exercise power.
- ➡ In the context of extraterritoriality, it has been recognized that **warships and warplanes** wherever they may be, belong to the territory of the state whose flag they hold.
- ➡ While **offshore merchant ships (anije tregtare në det të hapur)** belong to the territory of the respective State, while entering the territorial waters of another State they fall under the jurisdiction of that State.

The territory of the state changes

- The territory of the state changes, so it is not immutable.
- The history has shown that states sometimes expand and sometimes shrink their territory.
- Territorial division is the key element that distinguishes the state from the gender organization.
- In the gender organization the blood relation was its characteristic element, **while the territorial division is characteristic for the organization of the state.**

The territory and territorial sovereignty

➤ State territory is also linked to territorial sovereignty, which means:

1. Within the territory of a **State it will operate only the power of that State.**
2. **All the persons within the territory of a State shall be subject to the authority of that State.**

Whom does the territory of the state legally belong to?

- In the period of feudalism, the territory was considered state property (**Dominium**), while the power (**Imperium**) fulfilled the state's ownership of the territory/land.
- In the bourgeois period, different theories argued that **the state owned the Imperium not the dominium**, as the bourgeois class had an interest in converting the land into private property.

The state exercises the complete power over its territory that are compatible with its functions **but not with the right of ownership**.

But it is the state's right to expropriate private land for public interest.

The function of the state

- The function/functions of the state are one of the most important legal issues.
- **The definition of state functions is related to:**
 - a) the role of the state,
 - b) its content,
 - c) its activity.

The function of the state (Soviet School)

The functions of the state are related to the directions of the general activity of the state.

So state functions vary from one type of state to another.

The function of the state (Soviet School)

The bourgeois state

Socialist state

They both have 2 main functions: Internal & External

Internal Function (main): suppressing the classes

Internal functions: suppression of opposing classes, preservation of legal order and social property, and economic-organizational and cultural-educational function (main function)

External function: expanding territory at the expense of other states and protecting it from attacks by others

External function: protection of the country from attacks by other states, mutual assistance for socialist states, political relations for peaceful coexistence with other countries

The function of the state

But historical reality is different.

- Bourgeois states like Sweden, Austria, and Switzerland had no intentions of ruling other states.
- While the Soviet Union as a socialist state pursued a policy of subordination towards others.

The main functions of the state

The main functions are:

- maintaining law, order and stability,
- resolving various kinds of disputes through the legal system,
- providing common defense,
- looking out for the welfare of the population in ways that are beyond the means of the individual, such as implementing public health measures, providing mass education and guaranteeing expensive medical research.

The function vs activities of the state

- But the **function** of the state differs from the **activities** performed by the state.
- The activity of the state is the set of actions that the state carries out to fulfill its function.
- For example, fields such as economic-organizational, cultural-educational ones are activities that serve to fulfill the function of the state.