

# INTRODUCTION TO LAW

## Lesson 12

# LEGAL RELATIONSHIP; IMPLEMENTATION OF LAW



**Dr. Heliona Miço**



# **The topics**

## **Legal relationship**

- Subject
- Object of law
- The rights (legal title)
- The obligations

## **Legal facts**

## **Enforcement of law**

# The meaning of “legal relationship”

- The relationship between legal subjects where they participate as **holders of rights and obligations**, as defined and guaranteed by the legal norm, is called **legal relationship**.
- In the majority of legal relationships, each of the participants simultaneously has rights and bears obligations.

# Legal Persons

## ➤ Natural and Legal Persons

Legal rules **impose duties upon**, and **assign competences and rights to, legal subjects**.

These legal subjects are typically **human beings**, but the law can give the status of a legal person to anyone or anything.

For example, **a foundation, a company with limited liability, a state, and a municipality**, all of these can—and in many countries do—count as legal subjects.

# The elements of the legal relationship (The subject)

- Human beings are called “**natural persons**” while organizations that have received the status of legal subjects are called “**legal persons**”. The consequences of being a legal subject vary from one field of law to another.
- The individual is the subject of the law in the legal relationship, where he realizes his rights and performs obligations before the state and other individuals.
- Individuals, as subjects of law, have **legal capacity** and **capacity to act** (zotësi juridike dhe zotësi për të vepruar).

## Elements of legal relationship (The subject)

- Other subjects of law are **public and private legal persons**.
- According to the **Article 25 of the Civil Code** “Public legal persons are the state institutions and enterprises, which are self-financed or financed by the state budget, as well as other public entities recognized by the law as legal persons.”
- The legal person operates under a statute or a regulation.
- **Private legal persons** are *companies, associations, foundations or other private entities* that acquire legal personality in the manner prescribed by law.

## **Legal persons as a subject of legal relation**

- **Legal persons also have legal capacity and capacity to act.**
- The volume of legal capacity is determined by the statute of the legal person, while the capacity to act is different from the persons.
- **Legal persons operate through their organs**, which exercise rights and assume obligations.



# *The state as the subject of law*

- Another subject of law is the **state**. It emerges as a subject of law in international public relations but also in the property relations.
- The subjects of law are also **the organs of state power**.
- **The state organ** is considered a subject of law in legal relationships in which it appears as an authority.
- **The state body/organ** within the competencies prescribed by law, performs its functions and thereby emerges as a subject of law.



# The summary of the subject of law

- **The legal persons** are divided into natural persons and legal persons.  
Both of them have the capacity to hold rights and obligations.
- **Physical person**
- A physical person is, in the sense of the law, a human person to whom the enjoyment of rights has been attributed.

# The summary of the subject of law

## Legal entities

- Legal persons are groups of persons (corporations) with a certain purpose, to which the law confers the enjoyment and exercise of civil rights and **whose existence is independent of the persons who create or compose them.**
- Legal person under private law
  - **Civil law:** association, foundation
  - **Commercial law:** public limited company
- Legal person under public law
  - **domestic public law:** these are legal persons vested with competence by public law who have political bodies whose competence is limited by public law. (federated state, municipality, autonomous public institution).
  - **public international law:** these are the holders of rights and obligations at the international level.

# The object of law

- The **object of law** is called anything due to which the subjects of law enter into legal relationship and where their mutual rights and obligations are concentrated.
- The objects of law **can change** depending on the legal relationship.
- **In the legal relationship with property character**, the objects of law are **objects, things, values**. This object of law is taken into account in legal actions and in various civil legal contracts.

# *The object of law*

- In a legal relationship of a non-property nature, objects of law **are certain actions and behaviors of people.**
- For example: according to the Family Code, parents are obliged to take care of minor children, especially for their education and upbringing. In this case, **the object of the legal relationship that connects the parent with the child is the care of the parents for the education of the children and for their preparation for life.**

# *The object of law*

- ***Legal relationship of a non-property nature***
- **The object of the right may also be the abstention of an action.**
- For example, the case when the legal norm that regulates a relationship prohibits the performance of an action.
- The Criminal Code prohibits the commission of actions that are considered criminal offenses.

# *The object of law in different eras*

- In different eras and in different types of state, the issue of objects of law has been resolved in different ways.
- **In slave-owning law**, the slave has been the object of the right and not its subject.
- **In feudal law**, the serf was also the object of the law, as long as he belonged to the landowner with incomplete property rights.
- However, in some legal relationships, the serf could also be presented as a subject of law with very limited rights and very extended obligations.
- Starting from the **period of liberal democracy**, all people are declared full subjects of law.



## ***The rights (legal title)***

- **The right is the legal title that the subject of law has, in order to act in a certain way and to demand from other persons a corresponding behavior.**

**For example:** The owner of a property has the right to take advantage of it and use it as he wishes, as long as this does not contradict the law, as well as to demand its return from anyone who has violated his right of property.



# The law on social insurance

- The law on social insurance guarantees the right of citizens to enjoy insurance in old age, as well as in case of illness or loss of their skills at work.
- According to this norm, in these cases **a legal relationship is created between the citizen who has lost the ability to work and the state body that owes the obligation to insure the persons who have this right.**
- The citizen has the right to request his insurance from the state body.

## The rights (legal title)

- The right, therefore, the legal title that the subject of law has in order to act in a certain way and to demand from the other person a corresponding conduct, is called **subjective right**.
- This right is related to the legal norm, because if a social relationship is not provided for by the legal norm, then its participants have no legal rights.

# The obligation

- The obligation as an element of the legal relationship lies in the fact that **the subject of law in the legal relationship must act in a certain way, must perform certain actions or abstain from performing these actions.**
- The obligation of the legal relationship is a legal obligation that differs from the moral obligation.
- This obligation in the legal relationship, is related to the fact that if a person does not perform the obligation, coercive measures are applied by the state apparatus.
- The obligation of one subject of law corresponds to the right of another subject of law.

# Examples of rights and obligations

- Thus, the **lender's right** to request the return of the money is subject to **the obligation of the borrower** (debtor) to repay the loan.
- **The right of the sick person** to seek medical help is subject to the **obligation of the health authority** to provide this help.

# The contract of sale

- Regularly every subject of law has both rights and obligations.
- **For example**, according to Article 705 of the Civil Code "*The sales contract has as object the transfer of ownership of a thing or the transfer of a right towards the payment of a price.*"
- Consequently, with the contract of sale, **one party (seller)** is obliged to transfer ownership of an object **to the other party (buyer)** and the buyer is obliged to take the object and pay its price.
- **Both parties have rights and obligations towards each other.** The seller is obliged to deliver the object and the buyer is obliged to pay for it.
- At the same time they have rights against each other: the seller can demand the payment of the price and the buyer the delivery of the purchased object.

# *The legal status of citizens in society*

- In the general system of legal relations, the rights and obligations are closely related to each other.
- The one who benefits from the rights, also has obligations and vice versa.
- **The totality of rights and obligations constitutes the legal status of the citizen in the society.**



# Legal facts, the connection with legal norm

- The legal basis for entering into a legal relationship **is the legal norm.**
- The legal norm is a rule of conduct that citizens must apply when the conditions indicated in this norm, in its hypothesis, exist.
- **Yet, the legal norm itself does not establish a legal relationship.**
- **For example:** the articles of the Civil Code on the contract of sale do not create a concrete legal relationship.
- **In order for a legal relationship to arise, two persons must enter into a legal relationship example into a sales contract.**



# Legal facts

- Circumstances that give rise to, terminate or change legal relationships, causing certain legal consequences, are called legal facts.

## The legal facts are:

- - events
- - legal actions
- - violation of the right.

## Legal facts (events)

- **An event** is a legal fact when the norm of law connects it with the creation, change or termination of legal relations.
- **For example:** **the birth of a baby** is an event. The newborn has legal capacity from the moment of birth and the birth imposes certain obligations on the parents.
- **The death of a person** causes some legal consequences and is a legal fact. Death brings to the heirs some legal consequences, several certain rights over the property of the deceased.

# Legal facts (actions of people)

- **The actions of people,** foreseen by the hypothesis of the legal norm, **can create, change or terminate rights and obligations,** thus bring about the creation, change or termination of legal relations.
- For example, a legal action is the conclusion of any contract provided by the Civil Code (e.g. a loan, sale contract).
- Persons entering into a contract, acquire rights and assume obligations arising from the contract.
- **In this way, they create a legal relationship between them.**

## Legal facts (violation of the right)

- C) **Violation of the right by any person** is a violation of a legal norm in force and the rights of another person.
- **This violation may create for people certain rights and obligations.**
- Thus e.g. if a person damages one person or the property of another, he is obliged to compensate the damage caused (Article 608 of the Civil Code).
- **Causing a damage** (e.g. damage to the property of another) **creates a legal relationship** between the one who causes it and the one who suffers the damage.

# Legal facts (violation of the right)

- **The most serious violation of the law is the committing of a crime.**
- The person who commits a crime **puts himself in a certain legal relationship with the penal authorities of the state**, which have the right and obligation to apply to the citizen the punitive measures provided by the Criminal Code.
- On the other hand, in many cases **a legal relationship arises between the perpetrator and the victim** (e.g. when the perpetrator is forced to compensate the damage caused by him).

# When do the events and actions become legal facts?

- The legal facts cause the creation, change or termination of legal **relations**, not because these facts have a special power that "forms the law", but because **the legal norm** on which a legal relationship is based, **specifies this fact, as a condition for the creation, change or termination of the legal relationship.**
- Ordinary life events and actions of people become legal facts only when a legal norm envisages in its hypothesis these events or actions as legal facts for the respective legal relationship.



# *The operation of the legal norm in space*

## The operation of the legal norm in space

- 1) The legal norms issued by the Assembly, by the Council of Ministers shall have effect throughout the territory of the Republic of Albania.
- 2) The legal norms issued by the local government bodies are effective only within the territory of the respective municipality or commune.
- 3) But there are also norms issued by the central government that extend effects to specific part of the state's territory.

(Ex. Provisions of the Civil Code for the agricultural family)



# *The operation of the legal norm in time*

- By **the operation of the legal norm in time**, we mean the moment when the legal act begins and ends.
- The norm begins to act **at the moment of its entry into force** and shall continue to act **until it is revoked** in the manner prescribed by law.
- Entry into force: **Article 84 of the Constitution.**
- In Albania, the law enters into force at the same time throughout the territory of the country, regardless of the citizen's knowledge.

# Entry into force of a legal norm

## ➤ Article 84 of the Constitution

- 1. President of the Republic promulgates the approved law within 20 days from its presentation.
- 2. The law shall be considered as promulgated, if the President does not assume the entitlements provided for in paragraph 1 of this Article and in paragraph 1 of Article 85.
- 3. The law shall enter into effect not earlier than 15 days since its publication in the Official Journal.
- 4. In the event of the extraordinary measures, as well as in case of need and emergency, the law shall enter into effect immediately, after being announced publicly. The law shall be published in the upcoming edition of the Official Journal.

# *The operation of the legal norm in time*

- Regarding the **loss of legal power** from the legal act, there are two moments:
  1. normative acts with definite duration
  2. normative acts with indefinite duration.
- When a legal act has a **definite duration**, it loses its legal force upon expiration of the time.
- When the legal act is **indefinite**, it acts until it is repealed /abrogated.

# ***The retroactive power of law***

- It is accepted that the law **has no retroactive effect**.
- This means that for every fact-related event, **it is applicable the law under which the action or event took place.**
- The new law will apply to those events that occurred after its entry into force.

# *The retroactive power of law (Art 3 Criminal Code)*

A special case is Article 3 of the Criminal Code.

- "No one will be convicted of an offense which according to the law of the time when it was committed did not constitute a criminal offense" (So the law has no retroactive effect).
- **Paragraph II of Article 3:** "The new law that does not punish the criminal offense has retroactive effect."

So if a criminal offense that was previously considered a crime has ceased to be such and can be committed freely by any person, then there is no reason to punish those who have committed this offense before.