

# INTRODUCTION TO LAW

## Lesson 4

### The form of the state



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# The topics

- Understanding the type of state
- The meaning of the form of state
  - *Form of government*
  - *Form of political regime*
  - *Form of state organization*
- The forms of state power

# *Understanding the state*

➡ When we analyze the state from a simple perspective, we see that it is made up of:

**a) the essence,**

**b) the content,**

**c) the form.**

# What is the essence of a phenomenon?

- The essence of a philosophical category is an important, basic, and necessary element in a particular phenomenon.
- Therefore, the essence of the state is the most significant characteristic that determines its content, social purpose, and function.

# What is the essence of the state?

- States in every instance of their existence have one thing in common: **they are political organizations of governance directed by a social group in every socio-economic formation.**
- This common element constitutes the essence of states.
- **The essence itself is the reason why a phenomenon exists.**

# Another definition for the essence of state

- A **state** is a political entity that is typically established as a centralized organization.
- A **political entity** is identified as a group of people who have a collective identity, are organized by some form of institutionalized hierarchy, and have the capacity to assemble the resources.



## *Understanding the type of state*

- State **content** refers to the **type of state** and shows the main driving forces that exercise influence on political power in society.
- The **form** of the state is related to the **political organization of the society.**

# Understanding the type of state

- If we go back to the state content, we will see that the treatment of state types has some perspectives, **but the economic perspective is the right one.**
- It relates to different types of production relations.
- This means that **each type of economic relationship in production corresponds to a certain political order.**



## Understanding the type of state

- The type of state is connected to the **political and social content which depends on the relations in production.**
- If these relationships change, then both the political and social content and the particularities of the state that display this content, change as well.
- States belonging to a socio-economic formation are grouped into states of the same type. *(If the economic-social formation changes then the type of state also changes).*



## *Understanding the type of state*

- ➡ In this way, states are divided into:
  - slave-owner state; (shtet skllavopronar)
  - feudal state (shtet feudal)
  - bourgeois state (shtet borgjez)
  - socialist state (shtet socialist).

# Countries with slave-owning mode of production

- The transition from the primitive community to the slave-owning system took place for the first time in history in the countries of the ancient East. The slave-owning mode of production predominated in **Mesopotamia** (Sumer, Babylonia, Assyria, and others), **Egypt, India, and China** by the fourth millennium B.C. in some cases, and not later than the second millennium B.C. in others. The culture achieved in the slave-owning countries of the ancient East greatly influenced the development of the peoples of European countries.
- In **Greece** the slave-owning mode of production reached its height in the fifth to fourth centuries B.C. Subsequently, slavery developed in the States of **Asia Minor**, and **Macedonia** (from the fourth to the first centuries B.C.). The slave-owning system reached the highest stage of its development in **Rome** in the period from the second century B.C. to the second century A.D.

## Understanding the type of state

- In order to refer to the type of state, some authors have based their findings on any of the external characteristics of the state.
- Another categorization divides states into:

a) *monarchic states / republican states*

**This division is based in the form and not the type of state.**

Today's republics differ totally from the republic of ancient Athens.

# Understanding the type of state

Jelinek (16 June 1851 – 12 January 1911) an Austrian public lawyer and "the exponent of public law in Austria" has divided the state into historical types of state such as:

Eastern state,

Greek state,

Roman state,

Medieval state and

Modern state.

But the Eastern, Greek, and Roman states, despite their different forms, were based on the **system of slavery**.

## Understanding the type of state

- c) Another division regarding the types of states is:
- state-city;
- the eastern despot;
- feudal state and
- monarchy of order.

But again, we cannot approximate Athens and Sparta with Monaco principality as state-cities.

- So the division into a **slave-owner state, a feudal state, a bourgeois state and a socialist state** is the most accepted division.



# Understanding the form of the state

- **As the type relates to the content of the state**, the form shows the way state power is organized.
- The form of the state relates to three elements:
  - a. **the form of government** that shows the principles and the way the state's top organs are organized;
  - b. **the political regime** that expresses how political rule is exercised;
  - c. **the form of state organization** that refers to the territorial construction of the state.



## **A. The form of government**

- The form of government is a very important element of the form of the state and shows the way the state organs are organized and how the people participate in the governance.
- Depending on the form of government, states are divided into:
  - a. monarchy**
  - b. republic**



# *The features of monarchy*

## MONARCHY

- 1. The existence of a single person as holder of the highest state power, the monarch.
- 2. Hereditary character of power. (When the monarch dies the crown passes to his heir.)
- 3. Representation of the state by the monarch on the **basis of a personal right** not on basis of a mandate given by voters.
- 4. The monarch's irresponsibility for state actions carried out under the laws signed by him. **The government and ministers are responsible for these actions.**

# *The features of Republic*

## REPUBLIC

- 1. **The existence of an individual or collective head of state** (France, Albania, Italy have a monocratic body at the head of the state, the People's Socialist Republic of Albania was directed by the Presidium of the People's Assembly)
- 2. **Election of the head of state for a fixed term.** The election may be made directly by the people or by the representative assembly.
- 3. **Representation of the state not on the basis of a personal right** but of a mandate given by the People.
- 4. **Political and criminal responsibility of the head of state** according to the cases provided for in the Constitution.

# *The parliamentary republic*

- The republics are divided into **parliamentary** and **presidential**.
- In the Parliamentary Republic, the head of state is elected by the parliament and the role of the president is more limited.
- The parliamentary republic includes countries such as Albania, Italy, but also Austria, Finland where the president is elected by the people.



# *The presidential Republic*

- In **the Presidential Republic**, the President of the state:
  - a. is elected by the electorate
  - b. has more power than the president in the parliamentary republic.

# *France*

France is a typical case of a semi-presidential republic where mixed **parliamentary** (relative limited power of the president, existence of the Council of Ministers) and **presidential features** (the president is elected by the people) are together.



## **B. The political regime**

- The second element of the form of the state is the **political regime** which expresses how political power is exercised.
- If this political power is realized by respecting human rights and freedoms then we have a **democratic state**;
- If this rule is realized by force, we have an **anti-democratic state**.



# *The political regime*

- The meaning of the political regime **was originally given by Aristotle** who divided states into **just and unjust ones** (shtete të drejta dhe të padrejta).
- Just states were:
  1. monarchy (one individual at the head of state);
  2. aristocracy (a small group of people at the head of state);
  3. polity (head of state is the representative assembly)
- Unjust states were:
  1. tyranny;
  2. oligarchy;
  3. democracy.

# *The political regime*

According to Aristotle, there are three systems of government diverging from the three “straight” systems:

- tyranny diverging from monarchy,
- oligarchy diverging from aristocracy,
- and democracy diverging from polity.

Each diverging system is structured to operate to the advantage of the ruler(s); **for example, democracy is ruled to the advantage of the poor.**





# *The political regime*

- In every socio-economic formation there have been states with a **democratic** and **anti-democratic regime**.
- Even between these two ends there is an escalation of the realization of democracy in a country, which is connected to real respect for human rights and freedoms.

## *C. The form of state organization*

- The third element of the form of state is the form of state organization.
- This element is related to the relationship between the state as a whole and its constituent parts, and to the connection between the central and local organs.
- In terms of state organization, the states are divided into:
  - **unitary states** (shtete unitare)
  - **federal states** (shtete federale)

# *A unitary state*

- **A unitary state** is a state which is not composed of other state formations and has a single system of state organs. (Albania, Greece, Italy, France etc.).
- Unitary states can be grouped into **centralized or decentralized**, but this element does not change the form of state composition.
- In this context, we emphasize that a centralized state is a unitary one, but not the opposite.

# Decentralization

- Decentralization is related to the relationship between central government and local government.
- The highest authorities in a decentralized state have the right to control only the legality of the activity of the lower bodies, but not the usefulness of that activity, which means, not the benefits deriving from it.
- The higher authority has the right to change / abrogate an act of a lower body only if this act is illegal.
- **(However, there are some bodies within the state that require centralization, such as the military, internal affairs, prosecution, etc.)**

# *The federal state*

- **The federal state** is the state composed of other state formations in which there are several state organ systems with a certain hierarchy.
- Such states are the USA, the former Soviet Union, the former Yugoslavia, Switzerland, Canada, Australia, Argentina, and others.
- In the international arena, the subject of international law is the federal state and not the federated state (not the state as a particular component).

# Confederation

- **Confederation** is distinguished from the federation.
- The federation is a composed / united state, while the confederation is a **union of fully sovereign states that unite their politics and activities in certain areas.**
- The states create on the basis of governmental agreements, state bodies necessary for these purposes, mutual monetary funds, etc.



# The difference between the confederation and the federation

1. The connection between the confederated states **is much weaker** than the connection between the federated states.
- 2. The body that stands at the **head of the confederation** does not have the character of a sovereign state body but has the features of an international conference. Decisions made by this body do not automatically apply to the countries participating in the confederations, but go through **ratification by the respective organs of each state**, just like international agreements.
- 3. States Parties to the Confederation have the **right to withdraw** from it and these States themselves are subjects of international relations.

The Confederation is considered an alliance of states and is characterized by the principle of unanimity in its functioning.

# Examples of Confederations

- Examples of confederations include **the United States of America from 1776-1787, Germany from 1815 to 1870**, and **Switzerland** until the end of the 18th century.
- Switzerland today is a federal state despite having the name of the Swiss Confederation.



# *Other state unions*

- personal union
- real union
- protectorate
- the mandate system
- the custody system
- the commonwealth



## **Personal Union**

- 1. **Personal union** is the case of the unification of the royal crowns of two states into a single person thus ensuring the connection between the two states.
- This kind of union belongs to the past.
- In personal union, each state independently regulates its internal affairs in accordance with its Constitution.

## **Examples of Personal Union**

- Example: **Austro-Hungary known as a dualist monarchy** where the emperor of Austria was the king on Hungary.
- Until the October Revolution of 1917, Finland was linked to the Russian Empire given that the Tsar of Russia was also the Grand Duke of Finland.
- In the international legal literature, the attack of fascist Italy on Albania on April 7, 1939 was considered as Personal Union. This is because Victor Emmanuel III, king of Italy and emperor of Ethiopia, was proclaimed king of Albania.

## **Real Union**

- 2. **Real union** is the case when the union of crowns is strengthened by the existence of several common state bodies in each country.
- The case of Austria-Hungary: first we have a personal union that turns into a real union in both countries, **having in common the Ministry of Foreign Affairs.**
- The real union also existed between **Sweden and Norway** from 1815 to 1905, as well as between **Denmark and Iceland** from 1919 until the end of World War II.

## *The protectorate*

- 3. **The protectorate** forms the link between the states in which the **protector state exercises a true colonial rule over the protected state.**
- This was encountered before World War II. The protectorate form also includes France's colonial rule over Morocco.
- The Sultan of Morocco had a fictitious power limited to some internal administrative powers always under the supervision of the French governor.
- In the foreign sphere, the representation of Moroccan interests was done by France.

## *The mandate system*

- 4. **The mandate system** existed after World War I and was established by the League of Nations for Great Britain and France.
- These states were entrusted with custody over Iraq, Palestine, Transjordan, as well as Syria and Lebanon, respectively, as these countries were unable to be independent states.
- This system ended with World War II and was replaced **by the custody system.**



## *Custody system*

- **The Custody system** does not differ from the mandate system and it was accepted by the UN.
- But it did not last long and it became the reason for the continues wars that included countries in Asia and Africa in order to create independent states.



# *The Commonwealth*

- **The Commonwealth** is a form of link between the various states with the UK in the lead.
- Commonwealth was the official denomination (emertim) that characterized the British Empire including a range of countries with the status of colonies or semi-colonies.
- After World War II, this empire collapsed and countries gained independence. Some countries, such as Canada, Australia, and New Zealand, maintained dynastic ties.
- Other countries like India, Pakistan, and Ghana maintained only economic and cultural ties.



# *The Commonwealth*

- The human symbol of this free association is the Head of the Commonwealth currently King Charles III.
- Today the Commonwealth is a heterogeneous organization of states that despite political attitudes, have maintained some ties.
- Common interests are discussed at the annual meeting of the participating countries' Prime ministers in London and chaired by the British Prime minister.