Legal Effects of Acts of State Power in the State Of Law

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Abstract: The legal order is the entirety of people's relationships in society that are identified and sanctioned by fair and legal norms. As a rule, the legal order itself means the unity or set of legal norms and behaviors of the subjects of the law in this context of natural and legal persons, according to those norms that define the notion of the juridical order. The legal order is carried out by its elements that are the legal norms and behavior of the people. Different social relationships are regulated by legal order. The legal order is carried out by two categories: the normative category and the factual category.The state of law presupposes the existence of independent jurisdictions, competent for resolving conflicts between different subjects, whether legal or physical, by applying at the same time the principle of legality derived from the existence of the hierarchy of norms and the principle of equality that contradicts any differentiated treatment of natural and legal persons. Institutions in the state of law relate to the rights and freedoms of citizens that represents one of the most important legal categories. Through this category the legal position of the citizen is defined in society, which means the liberal state in the 21st century. In the liberal state, the principle of the state of law must dominate all the subjects of the law, including the sovereign (parliament) who creates the laws, and the executive who applies them.

Keywords: Legal order; the state of law; Independent jurisdiction; the liberal state; the legal limitation of state power

The state of the law itself consists of:

1. Guarantees for respect for human rights and freedoms and 2. The legal limitation of state power.

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From this it turns out that the state can not impose anything because it concerns with the equality of citizens in relation to other subjects, respectively to the power.In other words, the citizen is a free subject within the certain legal norms, but has the right to seek assistance from the state in relation to the realization of his rights and freedoms.

Depending on the content of human rights and freedoms, we can group them into two categories:

1) Political rights and freedoms (the right to participate in political functions), the active and passive right of elections and the right to be equal to public functions, the right for adequate representation and the right of communities to state bodies, etc. social right and freedom (freedom of association, the right to family protection, the right to motherhood and childhood, health and social protection, favorable living conditions, etc.).

2) Economic, social and cultural rights, such as the right to property, the right to commercial activity, labor rights, educational rights, the right to participate in cultural life, the right to use scientific and cultural progress, literature creativeness and other types of creativeness.

These two categories are inevitable in state law.

In order to understand the legal order it is necessary to stop at legal sources, respectively sources of law which identify the main tools for the expression of the will of the relevant state bodies and the rules of conduct, legal norms of conduct, where we can divide legal acts in general acts and special acts. As a rule, the general acts are called sources of law and that in the formal and material sense.

The right in its broad meaning is a set of rules controlled by the authorities that have binding and legal force. The right of a country can be created in different ways. The different ways of creation lead to identifying different sources of law. Therefore: "A source of law is every element, fact or act despite the form, which provides a binding rule for the members of a certain society". The mandatory rules are divided into formal rules or sources and informal rules or sources. Thus, we have written rules such as constitutions, laws, ordinances, court decisions, but we also have customary unwritten rules, based on need and derived from religious texts.

Most of legal systems have chosen the formal system of law sources: they predict expressly the ways of creating the right. Another important fact is the relationship between the sources. In every system, we face several sources of law.

The existence of some sources leads us into using an evaluation system between them. We use the hierarchical principle according to which the high sources prevail

over the lowest ones. The clearest example can be given in the field of written sources: the constitution affects other sources of law, for example parliament laws, which must be adapted according to the constitution, but of course without changing it.

In practice, we can say that in all kinds of systems we can distinguish at least three levels of sources: constitutional acts; legal acts (issued by the Parliament) and regulations with implementing character (issued by the government).

1. Legal Order and Legal Acts

1.1. Legal Order

The notion of legal order is a set of legal norms sanctioned by the state that are connected to each-other, and through which the social relations are realized. Legal persons, as well as the physical ones, act in accordance with legal norms and by this we understand the observance of legal order. The unity of legal norms and people's behavior according to these norms in the concrete society constitutes the legal order.[1] The legal order is part of the social order in a concrete and well-organized society. The entirety of legal norms and the behavior of the subjects of law, such as physical and legal persons, presents the legal order itself which is different in each society and in certain levels of development.

The legal order is a form of social regulation. The social order is a set of every social relation, of people's relationships between them. The legal order is the entirety of people's relations in society that are sanctioned by the right and legal norms. As a rule, legal order itself includes unity or the set of legal norms and the behavior of the subjects of law, in this context the physical and legal persons, according to those norms that define the notion of legal order. The legal order is consisted by its components, which are legal norms and people's behavior. Different social relations are regulated and disciplined through legal order. Legal order is consisted from two categories: normative category and factual category.

1.1.a. The Normative Category of Legal Order

The normative category is consisted by legal norms and legal acts, i.e. psychic acts. Here we have to do with those elements of legal order, where special and general

[1] Radomir Llukiq dhe Dr. Budimir Koshutiq "*Fillet e së Drejtës*", The Bureau of Textbooks and Teaching of Kosovo, Prishtinë, 1986, p. 18.

legal norms are in hierarchy with higher acts, issued by the highest body of state power, in this context acts that are issued by the Parliament. Here we have to mention the observance of legal order, respectively the respect for the principle of legality. There exists a connection of legal norms in a well-organized social order, which consists exclusively of legal norms that are norms created by the state and with this the normative attitude is embodied.

1.1.b. The Factual Category of Legal Order

The factual category is consisted by people's actions, so, it is the appliance of legal norms in the general social practice.The relations between legal norms and material actions or their appliance implies their legality. The domestic content of legal order is consisted by legal norms.

The aim of legal norms is their realization in life and their appliance, where people's behavior is regulated with relevant legal norms. With other words, the purpose of legal norms is their realization in the general social practice.Legal order is conducted by legal norms and the subjects' behavior according to these norms presents the factual element. The creation of legal norms and their realization in practice presents the legal order. And, legal order is nothing else but a form of social order. The factual element is interlocked with subjects' behavior in accordance with relevant norms. The normative element consists of legal norms, thus psychic actions, which promote the creation of legal norms.[1] Meanwhile the factual element of legal order consists of material actions. The relation between psychic actions and material ones in the right creates the observance of the principle of legality. According to Prof.Dr. Osman Ismaili, legal order is nothing else but the creation of legal norms and their realization. Thus, the legal order is the realization and harmonious adjustment of people's behavior, in accordance with legal norms, in a logical and reasonable system.

2. Legal State

2.1. The Historical and Legal Aspect

Gazing from the historical and legal aspect, the notion of legal state has always been identified with the power which has been organized in accordance with the principles of law, in which there are strong guarantees that it will be implemented in accordance

[1] Osman Ismajli "*Fillet e së Drejtës*", University of Prishtina, Law Faculty, Prishtinë, 2004, p. 78.

with the right. But, through centuries, the right is linked with justice. In everyday discussions we see how an ordinary man believes that justice is realized through the right.

There exists a profound thought of many theoreticians of law that justice serves as a criterion of evaluating some existing rights, respectively positive rights. However, there are many others that consider that justice can't be achieved through the right but that the right has completely other purposes. In the areas of law and justice some certain legal elements have been introduced, creating the link between justice, the right and moral.[1] The ethics of legislation is undivided from the legal state and legitimizes it as such; therefore the general ethical principle is the one that means the legal state which through legal general and abstract rules can restrict human freedoms and rights in the democratic contemporary state. This kind of understanding of rule of law is inseparable from the theoretical approach of Anglo-American constitutionalism based on the material notion of legal state to which the content and purpose of legal order dominates. It is thought about the real purpose, the one that has the administration and its organs, such as: police, inspection services and agencies and others for law enforcement which have been left the responsibility with many purposes. For each of them, special tools are created for the realization of these purposes and which can be used only in accordance with authorizations. All the others would be only anarchy, so it can't be accepted that "the purpose justifies the means", not even when we talk about socially allowed purposes, the means for the achievement of which are not allowed. A democratic contemporary state is based in the need for the rule of law, the domination of this against different social interests and political structures, in conditions of political pluralism, is the only condition for social equality and for the realization of general social goals.[2]

In the realization of the general goal, the state must be moral, because its overall best can't be only a result benefited by the unification of the number of bodies and its public services (e.g. administrative bodies), but it means its civic awareness, political virtues and the law of freedom. The overall goal, which would be allowed to be realized with all the legitimate means, has to emerge from universal values of human society and ethical assumptions in which relies the birth of the contemporary constitutional state. This purpose must ensure the citizens the realization and full development of their personality, while the state can realize this only if it stays upon individuals, collectives or their parts. The spiritual power of state relies on the mind

[1] *Teoria E Administratës Publike*, Prof.Dr. Zenaid Gjelmo, Prishtinë, May 2008, p. 23.
[2] Владо Камбовки, *Судско Право*, Скопје 2010, p. 156.

with which state functions are shaped with the requirements of the politic body that articulated the will of the majority of population. The different theoretical positions towards the right and moral as a relation between legality and legitimacy undoubtedly have common stance according to which the right and justice are complementary categories that are linked between each-other, and then with the people in state as its main subjects,with moral, religion etc. In this aspect, justice could be considered as a thematic framework between the right and moral.

The state of law assumes the existence independent jurisdictions, components to solve conflicts between different legal persons by simultaneously applying the principle of legality, that emerges from the existence of the hierarchy of norms and the principle of equality that rejects every differentiated treatment of legal entities. [1]

2.1.a The Notion of Legal State

Some authors have given the definition of the notion of legal state in the formal-legal aspect, while some others have supported the material-legal aspect. Thus, Friedrich Julius Stahli, has considered the concept of legal state in the formal-legal aspect, starting from the formal side of state actions. He considered that the most important thing is how the state power is applied and if it is regulated with legal norms. He has given the definition of legal state, which says: "The state has to be legal; this is the sign and the truth of the specific developments of new era. In the aspect of the right, it has to define and provide the ways and inviolable borders of its actions, and the sphere of the freedoms of its citizens. This is the notion of legal state, and not for the state to do something such as a legal regulation without an administrative goal or simply to protect individuals' rights, they are not a target in the contemporary state, but only a manner and character in which it will carry out". According to Stahli, it is important for the judiciary to realize the idea of justice. The material side of legal state (moral, divine faith, justice etc.), although exists in a hidden way, in reality represents the condition of the principle of legal state. Stahli considers that a state can't be a real legal state if it doesn't present a realization of divine viewpoints and morality ideas. The critics of Stahli's views for the legal state emphasize that his theory is very conservative in essence. The legal state, as seen by Stahli, is connected with the way of the creation of the right and state action in the boundaries of the positive right. Robert von Mohl sees the legal state as a basic set of civil liberty.[2]

[1] Ylli Bufi, *Tempulli i Demokracisë,* OMBRA GVG, Tirana 2010, p. 66.
[2] *Teoria E Administratës Publike*, Prof.Dr. Zenaid Gjelmo, Pristine, May 2008, p. 28.

He tries to do this again through some essential elements such as equality in front of law, transparency of public services for capable and competent citizens, personal freedom along with freedom of speech, religion and change of residence. It is clear that according to Mohli citizen's freedom is the one from which the notion of legal state is mostly defined, which clearly turns into the concept of freedom. Many authors consider that this is the fundamental weakness of Mohli's lessons. They particularly have in mind that Mohli's legal state leans towards anarchy. According to Otto Mayer with legal state we understand the state as a democratic creature which is based in the principle of separation of powers, independent judiciary, legal security and the rule of law. It is interesting that Mayer links the concept of legal state with administrative judiciary, respectively with the legal administration. Radomir Lukiq considers that since revolutions the source of a state's sovereignty is democracy, respectively citizens' freedom. According to Lukiq, the state and the right can be justified only with the highest purpose, "the value of the world part of which they are, and that is the existence of a large number of human beings in their full potential of dignity:"

We consider that the state is a full social set and in essence self-sufficient of citizens. Within it, social life is organized with content and forms of expression which respond to the achieved level of culture. It can serve as a space in which there are preconditions to normally meet all needs of the members of the community. The community is not limited in any closer or partial field of social life, respectively it doesn't serve as a frame of a partial process, but for the overall social process. Therefore, it may exist in an autochthonous way, without relying and without providing additional and important preconditions linked to similar or different communities. It is the most complex social community which consists of different parts mutually interconnected. Each of these parts has its defined role and place. The state, regardless of how it is considered and understood, always exists to achieve certain purposes. These goals can hardly be considered as individual interest, although even today the so-called "private states" exist, the purpose of which almost blurs the general purpose. However, the state as a political community undoubtedly contains the general purpose which is common for all community members.

2.1.b. Universal Values of Human Society and Ethical Assumptions

In theoretical scientific debates about these issues, the historical-legal theories and the sociological ones dominate, by refraining to the purely ethical approach in the elaboration of the problem. The essence of their lesson has to do with the request that the legal state while realizing the general purpose has to be moral. From this, it

follows that the general purpose of state must be permitted and legitimated. For that purpose to be realized, it starts from universal values of human society and ethical assumptions in which relies the birth of the democratic, contemporary and constitutional state. This purpose has to provide its citizens the full development of their personality, while the state can realize this only if it stays higher than the individuals, but collectives as well, except the political body itself from which it takes the greatest willingness in relation with its subjects. The state is above all, no one is above the state. The spiritual power of the state is based on the mind with which state functions are shaped with political body requirements that articulates the will of the majority of its population. The evolutionary and democratic development of state as a political community has affected in the progress of public morality to all of those that have been undergoing the state will. In relation with those that state power serves, that process has been developed much faster rather when it comes to those who in the name of the first ones apply that power.[1]

State as a legal organization According to its most essential definition the state is nothing but a set of individuals in a certain territory, wherein a higher (sovereign) power is exerted. For the fair meaning of the so-called "legal state", we have to take a look on whether that state is an organization created through legal order. It has some basic and characteristic attributes. In reality, they are certain elements through which in particular this special creature is emphasized. First of all, it is the public power, which is nothing else but a form of government in general. With other words, it appears that some people are those who have the specificities of the body, issue orders that others must apply. The public power is the most important power within the global society. This power is increasingly different from private power, respectively it does not apply directly for the benefit of the entity that is its carrier, which operates as a state body, but on behalf of the whole state. Only in this way, the implementation of power by an individual can be converted in the implementation of power of a particularly organized creature. So, this is the personal power, but in the other hand it is quite determined in its orientation and efficiency. Public power is characterized by a feature called sovereignty.

It is a material and formal manifestation of the autonomy and independence of state power, both in the field of internal social relations and international relations as well. Then, an important attribute is the monopoly of liability: he consists of an extraordinary pile of bodies that possess material means of liability. Monopoly is the highest and most powerful concentration of liability which can be formed within the

[1] *Teoria E Administratës Publike*, Zenaid Gjelmo, Pristine, May 2008, p. 34.

concrete global society. Therefore, it can win and eliminate any other form of liability. Monopoly is only a form of rationalization of liability because in that way, the use of liability in accordance with society needs can be efficiently controlled, respectively of those forces that affect state the most. It must be emphasized that this attribute mostly defines external circumstances and is dedicated to maintaining external security, but to also solve serious interstate conflicts. In the end, the sphere of state's organization action is important as well. First of all, this sphere is territorially defined, and it is similar with the space in which the state power is and can be implemented. This definition is important, among others because very often definitions between certain global communities are made. In this way, individuals are integrated in an organized community. In the end, there also exists the sphere which is consisted by certain processes or social relations which are an object of state's organization activities. The state develops its activity only within the most important areas of social life, and its impact is practically not felt outside these areas. The state in its development, from the initial community in the epoch of slavery up to the modern state, has been developed in accordance with the respective level of development of producing forces and based on social division of labor. With time, it realized the role that was necessary for the social regulation of relations and the protective function of state. It is about these protective functions of state: 1. Economical, for the protection of its economic power; 2. Ideological, for the protection of different forms consciousness about state and power; 3. Political, for the protection of those state bodies that appear as overbuilt. The state as an organization is the state that has in disposition the monopoly of physical liability and whose duty is to protect its main functions and to enable their practical application. In essence, state is the toughest organization in society, who can exist by itself if the three functions mentioned above are realized.

2.1.c. Legal Order and Social Order

The notion of the right is also in direct connection, which is presented as a set of legal norms behind of which is the state with its monopoly of legitimate liability. Legal order – social order is a set of every social relation, respectively every relation of people among themselves. It includes social norms and the real behavior of people based on them. Social order includes special orders such as moral order, economic order, state order, political order and legal order. By analogy of things, the social order that exists in every state, and which is regulated with the right, in the narrow sense of the word presents the legal order. In every state there exists the concrete set of legal norms closely linked with each other, which more or less are realized in

social relations between people that act based on them. The legal order in state does not only set the legal, sociological, philosophical or lexicographic notion, but takes something that is an excellent formed system of different elements.

Each of them has its value, its role and function. We are questioning the bodies and parts of the state organization through which the state realizes the activities of its legal order. Starting from this state bodies are carriers of partial functions and through them state implements its will which is always stronger than any subject or body in state.

Through state bodies, the state sets the general interests of the community and implements the state will through applying state liability. Anyway, the power does not belong to state bodies, but they only implement it. If the power would belong to them without any condition or limit, then all state bodies would exert tyranny. Just like the structure of the whole state-legal order is an entirety of parts, as well the function of this creature is only an entirety of partial functions interlinked and coordinated in between. The functions of certain parts are deposited in an entirety. The bodies are only carriers of the relevant part of the state activity. The distinct functions impose the necessity of the existence of specialized bodies through which they are implemented. The wide activity is done through concrete actions in the form of material and legal acts that are harmoniously interconnected.

In this way, the state-legal order is a shaped creature, a specific system of elements, where it comes into consideration the principle of general function consolidation based on partial functions. In this view, the state-legal order is only a special case of a general phenomenon, characteristic for all creatures and in general for the shaped systems of a considerable number of integral parts. With its specific function, the legal order has certain and necessary impact towards humans and the society in general. The legal order emerges from the society, but also operates in it. The feedback function shows the role of legal order and its essential destination along with its effects, which is maintaining the state. If we consider that laws in general are regulations and necessities of the interlink and mutual influence of two or more phenomena, then it follows that for the function as an inclusive dynamism of the state-legal order, which has certain consequences for the society, in reality presents parts' of laws that interlink these two entities, then the function itself is presented as an objective social phenomenon.

This objectivity is the starting point for the critic of all metaphysical, mystical and anthropomorphic dispositions of the function of state-legal order (that define the function as a "target" or a range of "targets" and similar). The norms that would have

no impact in people's behavior would be only a dead letter in the paper, and not an issue of legal norms. Related to this, legal order is a result of the unity of legal norms and people's behavior according to these norms. In this way the legal order is a form of the social order, respectively a component of it. Having in mind that the legal order is compounded by legal norms and people's behavior according to those norms, it can be divided into two constituent elements: 1. normative element; 2. Factual element; 1. The normative element is that part of legal order which is consisted by legal norms, as rules for people's behavior in certain situations and by legal acts, respectively psychic actions with which legal norms are created or the conditions for their implementation are set. 2. The factual element of legal order is the part of it which is consisted by material human actions with which legal norms are realized, respectively applied in everyday life. These material actions are done by people as legal subjects, which reside in legal relations between them, respectively social relations regulated with legal norms.

In the end, between the legal acts respectively legal norms and between them and material actions, there exist certain relations regulated with the right and that are called laws.

Therefore, legality is considered as a binding ingredient of legal order. The elements of legal order are listed strictly. Their inner content is compounded by legal norms, which are realized in people's behavior, as a factual element. The purpose of these norms is for them to come to life, respectively in people's behavior. The legal order is shaped in that way that it starts with the creation of legal rules and ends with their realization in people's behavior. So, the legal order starts its activity with the creation of more abstract and general legal norms, respectively legal acts and ends with their realization in people's behavior such as the most concrete action according to the rules, respectively individual legal norms that are applied in people's behavior. A good legal order is the one that respects the norms that it has created and that allows their change. Therefore, it is not a static phenomenon which is given once and forever, but is a dynamic content that is in motion and sustainable development as a form of social order which is consisted from real report of people, the legal order allows them to continuously change, arise and disappear, exactly as the humans that conduct it.

That constant sweep flows according to an appointed turn therefore it is called order. The report between state power and the right. The state exercises its power according to certain rules that are set by the right. They have the same value for both state bodies and institutions if they want for their acts to actually be acts of the state, and

for the citizens as well, whether they are physical or legal persons. However, it is not enough to issue rules according to which the bodies of state power have to work, but they must also be implemented strictly. Besides this, there has to be guarantees that these rules will be respected by the bodies. When with the objective right there were rules set for the implementation of state power and when the guarantees of the right implementation of this power are first and foremost found in the rules of the objective right, then we can say that the state is organized according to the principles of legal state. When we take a look on the report of state power and the right, we would distinguish three levels: 1. the state is not linked with any legal rule, but it plainly applies its personal will despite the fact whether this is the will of an individual, gathered group as party or gang etc. 2. the state establishes the right, but does not implement it in practice, respectively the acts of power formally become legal rules, but the state bodies are left with a great freedom in the aspect of the content of these rules and their implementation in actions; 3. the state implements its power in accordance with the acts it has issued.

2.1.d. Legal State and the Rule of Law

The acts of power are considered as acts of state's will only if they are formally and materially in accordance with the objective right. The power can do only the things it is authorized for with the objective right, while for decisions there are defined procedures which the power (government) must abide. Then we say that state power is connected with the legal order, while state activity has been put under legal control. Only then we can talk about a legal state and the rule of law. We must keep in mind that the right is at the same time norm and fact, since the right emerges from fact („*ex facto oritur ius*").

As a norm, the right is a rule about what must be done, while as a fact, the right is a force, power upon others. In the legal state it is aimed for the fact to be as close as possible towards the right. Therefore, the force in the legal state has to be in the service of the right. If it is the opposite, that the right is in the service of force, then we can't talk about legal state. In the contemporary state, at least when we talk about the internal state order, the cases of open and obvious violation of human rights are very rare. The cases when violence and injustice are camouflaged with the right are more common. The legal state is realized only when there exist efficient tools to stumble every violation and disrespect of rights, whether it comes from individuals or state bodies. When we look the action of state power from the angle of the individual, legal state is one where individuals are citizens. As to what extent will citizens rights be realized, that depends exclusively from the regularity of the activity

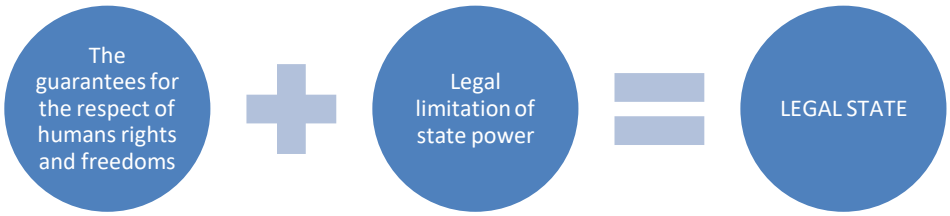
of state power. It is important for that power to provide the equality of access towards all members of the community, despite the fact of which group they belong to. Except this, we should have in mind that rules, norms and laws are implemented by people. Often the implementation of these rules depends only from them, from their psychic, education, and especially their morality. Thus it follows that the existence of the legal state is depended from the same things. The state performs its activity through its organs, which consist of applying legal norms or creating legal norms, and take different material actions which precede the right or are based on it. Therefore, the state can be an organization that only applies the norms or it can be an organization that applies and also creates the norms, or an organization that takes different material actions based directly or indirectly on the right. We have to make the difference between states' role when they itself creates the right, from its role when the right is created by others. Said otherwise, it is not necessary for the state to create the right, because this can be also done by someone else, such as the international community (international organizations and states), but the state must always apply it. The application of the right by the state is dual, and has to do with the appliance of dispositions and the imposition of sanctions. Imposition, the performance of state power, has been understood as creation and application of the right and this has to be differentiated from the material actions of state, which directly or indirectly have to be based on the right.

The doctrine of state and the rightrequested the guarantee of a written document about this.[1]

With other words, the legal state is identified with the state of right, i.e. it implies some kind of state, power, which is based on the right. In the case of legal state, as a state of the right, we will implicate two important elements:

1. The guarantees for the respect of human's rights and freedoms;
2. Legal restriction of state power.

[1] *Hyrje në të drejtën publike*, lectures prepared by:Romeo Gurakuqi, ArencaTrashani, Shkodër - Tirana, 2009, p. 189.



If we elaborate the last element is results that "Every action of state power should be regulated in advance with the right (with legal norms)". From this it results that all legal actions, executed by the state, should be regulated with the right and the report between state-citizens as well.[1] In the legal state, the conditions for human's rights and freedoms have to be concretized in strong legal basis, and in mechanisms for the realization of their protection. "Everything is legal if it is not prohibited with constitution and law." This institution, this category is relatively new in the legal doctrine. The main element of the concept of legal state is the separation and limitation of state power. There is no absolute power. It is limited by the law, which sets the frame of its scope.

2.1.e. Independent Judiciary in Legal State

The legal state is identified with an independent judiciary; the independent judiciary is an institute of the legal and democratic state that has to provide citizens' protection from the arbitrary power, the efficient protection of human's rights and freedoms, and the objective arbitration of courts in the solution of public and private disputes.[2] As a rule, the rights and freedom of citizens are guaranteed and as such they are a basic prerequisite to guarantee the human dignity, within a community such as the state. Human's rights and freedoms regulate the relations between the citizen and the society as a whole. In contemporary conditions, the notion "human's rights and freedoms" is identified in the national level, and the international one as well. Through the internationalization of human's rights and freedom it is thought that these freedoms and rights are a category that stays upon the state, categories that enjoy international protection.[3] All actions of state power, regarding to the field of human's rights and freedoms have to be based on laws, the positive right of that country, otherwise all actions of that state will be marked as inexistent, flimsy and

[1] Osman Ismajli "*Fillet e së Drejtës*", University of Prishtina, Law Faculty, Pristine, 2004, p. 88.
[2] FAMA College, Arsim BAJRAMI-*PARLAMENTARIZMI (Comparative aspects)*, Pristine, 2010, p. 288.
[3] Stefan Buxhakoski "*Fillet e së drejtës si disiplinë shkencore*", Publishing house "Çabej", Tetove, 2007, p.32.

unrecognized[1] for that society. According to this it appears that the citizen is equal in report with the state and others, he is an equal subject and we have the legal report between the state and the citizen.

But, in this case we have a double responsibility of the individual – citizen and the state. The implementation of human's rights and freedoms in the end is a legal characteristic that the state will respond for the refusing in giving legal aid, the realization of their freedoms and rights, respectively their protection. In this way we have the reports between the state and individuals – citizens and this has to be realized and protected based on mutual responsibility.

From this it results that the state can't impose anything because we have to do with the equality of the citizen in report with other subjects, respectively with the power.

3. Conclusion

In legal doctrines, when it comes to the context of the state of law, then it involves the existence of legal norms, but not only the existence but also the implementation of such norms in the general social practice.

In other words, in the state of law we should have the systematization of legal norms and their hierarchy among themselves. Enforcement of the law is and should be the exclusive activity of the authorized state organs, in this context without excluding the legislative, executive and judicial activity.

In the state of law, as a rule, legal norms must be applied on a voluntary basis by the subjects of the law, as the state has requested through the legal norms, otherwise we are dealing with the enforcement of the law by subjecting the country's sanction . On the other hand, in the state of law, we must also have juridical awareness, without the recognition of the right, we can not have the domination of the state of law. The primary element of the subjects of the law is juridical awareness , where on the basis of juridical awareness, the subjects of the law get in a position to respect the law or violate it.

[1] Osman Ismajli "*Fillet e së Drejtës*", University of Pristine, Law Faculty, Pristine, 2004, p. 98.

4. Bibliography

(1945). The UN Charter.

(1948). Universal Declaration of Humans Rights and Freedoms.

(1966). International Pact on Civil and Political Rights. Adopted by UN's General Assembly.

(1966). International Pact on Economic, Social and Cultural Rights. Adopted by UN's General Assembly.

(1994). Humans rights in the International Right, basic acts of the Council of Europe and KSEB. Publication of the Albanian committee of Helsinki. Albinform, Tirana.

Radomir, Llukiq & Dr. Budimit, Koshutiq (1986). *Fillet e se Drejtes/ Introduction to law*. The Bureau of Textbooks and Teaching of Kosovo. Prishtinë.

Osman Ismajli (2004). *Fillet e së Drejtës/ Introduction to law*. Pristine: University of Pristine, Law Faculty.

Zenaid, Gjelmo May (2008). *Teoria E Administratës Publike*/ Theory of Public Administration. Pristine, p. 23.

Владо Камбовки/Vlado Kambovki (2010). *Судско Право/ Judicial Law*. Скопје.

Kurtesh Salihu (1998). *E Drejta Kushtetuese. book I/ Constitutional Law. book I*. Prishtinë: University of Prishtina, Law Faculty.

(2009). *Hyrje në të drejtën publike/ Introduction to Public Law*, lectures prepared by: Romeo Gurakuqi, Arenca Trashani, Shkoder-Tirana.

Fama, College & Arsim, Bajrami (2010). *Parlamentarizmi (Comparative aspects)*. Pristine.

Buxhakoski, Stefan (2007). *Fillet e së drejtës si disiplinë shkencore/ The Beginnings of Law as a Scientific Discipline*. Tetove: Publishing house Çabej.

Fejzulla Berisha (2015). *Hyrje ne te drejten/Fillet e se drejtes/ Introduction to law.* UNHZ – Law Faculty, Peje.