

## **DURATION, SPATIALITY AND ENFORCEABILITY OF LAW**

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### **Abstract in original language**

To take effect, a law must apply to certain individuals, situated on a determined territory, and between certain periods of time, set with precision or using as a general mark an indefinite period of time, its purpose being deducted from the point of view of the evolutions in the society or changing the political regimes.

### **Key words in original language**

Law; political regim; abolition of the law.

To take effect, a law should apply to determined individuals, that belong to a given territory and in certain time, set with precision and using like a general marker indefinitely, its aims are supposed to be deducted by light of the evolution of society or political regimes change.

### **Subsection A. Duration of law**

Analyzing retrospectively we observe that in the course of time, there were laws, which lasted very long. The law of 12 Plates was in force, with some amendments, more than a millennium. Now the default rate of elaboration of laws and default of the neutralization of their effects, by leaving the force has accelerated greatly. Low cadence of issuing laws can be explained by the slowness of socio-economic transformations. Oligarchy administration of ancient Greek claimed that "who dared to propose a new law should appear in public with halter neck. If the law fell the introducer was hanged on spot."<sup>1</sup> Note this is a sacralization of the existing legislation at that time. Nobody needs to arrogate the responsibility of, let's say legislative initiative, and if someone dare to support the need for some regulations takes a huge risk, that of losing their lives if, in the reaction towards its boldness it was an adversative one.

The force of a law is manifested between the two chronological marked dates: date of entry and date of exit of force. Social facts committed before the first moment or after consuming the second one are not applied the law.

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<sup>1</sup> Popa Nicolae, Eremia Mihail – Constantin, Cristea Simona - General Theory of Law, op. cit. p.148; considering how many legislative projects does not stir the sympathy of the population, such legislation today would leave the Parliaments empty, the chosen ones being required to account for the inadvertence of election promises and their work deployed in the service of citizens.

Force of the law is the same throughout the period, in which the legislative act is into force and whenever it meet the conditions of law implementation, it will apply equally, whether it be at the beginning of the period, that is into force<sup>2</sup> or the day before its exit of force.

Date, on which a law entries into force, is set ordinarily when it is notified to the citizens. Doctrine and jurisprudence have established three criteria reporting the entry into force. After the first criterion, each state organization disposes by fundamental law or other given laws, on which the normative act, after it has traversed all the procedural steps entries into force. In our country, under the Constitution, a law entries into force three days after publication in the Official Gazette. After another criterion, coming into force is provided, expressly by the law published as being thereafter the publication in the Official Gazette, with a clear period of more than three days. Third of all, public disclosure, which is related, also the entry into force of the law<sup>3</sup> can be done through a variety of forms and official documents according to specific features. The period of three days stipulated by Romanian positive law is calculated on calendar days as opposed to legal terms, calculated on days off and starts from the day of law publication in the Official Gazette, up to the hour 24 of the third day elapsed from the publication.<sup>4</sup>

Once entered into force, the law is applicable *ex nunc*, not for other events produced before its appearance, but with these exceptions: the notions of penal policy, when a crime committed before the appearance of a criminal law, but after its appearance, the regime of impunity for this is gentle, the new law retrospectives being applicable to that criminal offense; when the Parliament released a law, whose sense is not very clear, legislative authority will release a new legal document called, for interpretation and which logically will produce effects, retroactively from the date of the generation of interpretable law, because the legislative forum did not alter the original law, but only to interpret, providing additional explanations; third case of retroactivity is met, when a law expressly indicates, that will be applied to other situations (cases, circumstances) occurred before its appearance.<sup>5</sup> It is recommended however that in a democratic society, the legislative power < exempt> the legislative system from those normative regulations.

End of the applicability of a law coincides with its exit of force. There are three ways for cessation of a law activity:

- fulfillment of term;

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<sup>2</sup> Mihai Gheorghe - Fundamentals of law I-II, Ed. All- Beck, Bucharest, 2003, p. 404-405

<sup>3</sup> Motica I. Radu, Mihai Gheorghe - General Theory of Law, Ed All-Beck, Bucharest, 2001, p97

<sup>4</sup> Popa Nicolae, Eremia Mihail-Constantin, Cristea Simona - General Theory of Law, o.p. p149

<sup>5</sup> Motica I. Radu, Mihai Gheorghe - General Theory of Law, op. cit. p97

- obsolescence;
- abolition.<sup>6</sup>

The completion of term implies that the law in question includes in its content a provision, where through establishes its validity. In the fulfillment of this period, the respective law shall cease to be active; its provisions automatically emerge in force without the need for any formality.

Obsolescence is another situation, whereat a law ceases to be applicable. Although the law in question, has not provided any term for exit of force, or if, it stipulated but has not reached it and although it is not submissive to repeal, however, the normative act issued a period of time before, by the legislative authority and entered into force in accordance with the legislation time, cannot produce effects because it became obsolete or surpassed by the realities of life. Obsolescence puts its mark in time on such a law, as it is not topical. To better understand this, we will consider the content of the Civil Code in force at art. 655 “the one who made against the defunct a capital charge, declared by justice being calumnious.”<sup>7</sup> The present regulation represents, one of the three cases of deceased’s estate unworthy. Through Decree no. 6 / 1990 of the new regime installed at the head of the country, the capital punishment was abolished. How in this case an inheritance may be declared deceased’s estate unworthy, if he made a liar denounce, that attracted the author his death penalty, but the new legislation does not allow the pronouncement of such punishment, the provision of the Civil Code although being into force we can consider it obsolete.

The abolition of the law is the most common way of removal from the force. Depending on how it is displayed, the abolition may be: express and tacit, and depending on the size of legislative content out of force, the abolition can be total or partial.

The expression abolition is subdivided into direct abolition, when the new legislative act appeared to define precisely the law that is replaced and indirect, when the new normative act establishes only that its opposite provisions are out of force. The tacit abolition makes no reference to the cessation of force of other normative acts but the new appeared law juridifies otherwise that the old law did.<sup>8</sup>

The total abolition leads to the cessation of the effects of an entire normative act, while the partial one attracts the cessation of its action, only a part from a previous normative act. The abolition represents “an available document that can be achieved only by the state body which issued the act subject to abolition or an hierarchical body superior to this, and only by an act of the

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<sup>6</sup> Idem, p98

<sup>7</sup> Civil Code, art.655, par. 2

<sup>8</sup> Motica L Radu, Mihai Gheorghe - General Theory of Law, op. cit. p98

same legal value. (i.e. the law is repealed only by a law)".<sup>9</sup> Functions of abolition in the harmonizing of legislation are: avoiding conflicts between the regulation of the old text and the new text; excluding the possibility that two laws regulate the same circumstance; the removal of un-correlation or discrepancies between laws; cosmetization of the legislative fund through the removal from action of laws, which tend or even have become obsolete, no longer being current with the legal order.<sup>10</sup> Just like about non-retroactivity of law, we noted that there are some exceptions, such situations, that deviate from the rule are met also in case of the ultra-activity of law. One such case has in view the more favorable criminal law, that from reasons of humanistic nature of the one that legislates is applicable also after the exit of the force for the acts committed by state authorities, but unresolved by the scientific bodies, in the period when the criminal law was in force. The second case has in view the temporary criminal law, which is susceptible of application and after the completion of the period, to which was in force, only those committed and unsolved acts until the completion of that term.<sup>11</sup>

### **Subsection B. The spatiality of law**

While it is in force, a law applies in a given territory; the Romanian laws applicable in Romania, former Soviet laws apply across the USSR territory, and EU laws are put into execution within the determined space by the external borders of Member States.

By territory of the state we understand "the part of the globe, including soil, subsoil, waters and air crown, above the ground and water, on which the state exercises its sovereignty."<sup>12</sup> The soil represents the dry zone, over the area where people develop various activities, the subsoil represents the area located in the upper part of the earth's surface but also of the waters, waters include all rivers, lakes, interior ditches and maritime strip located along the coastline. For Romania, its width is 12 nautical miles. Although considered part of a state territory, the territorial sea must comply with the servitude of peaceful passage of vessels, of other states<sup>13</sup> and the air column refers to the air space situated above the waters ground and territorial sea of a state climbed up at the lower altitude of the outer space.

The boundary between states is limited, which divides the sovereignty and authority of a state, from the one of another state. These limits are set by

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9 Gorun Adrian - Philosophical foundations of law, Ed. Bibliotheca, Targoviste, p104; without the intervention of any form of abolition, practically a law is in force indefinitely, this doesn't occur if the society indifference towards its contents, so the law to descend on obsolete.

10 I. Mrejeru apud Mihai Gheorghe - Fundamentals of law I-II, op. cit. p409-410

11 Mihai Gheorghe - Fundamentals of law I-II, op. cit. p410

12 Drăganu Tudor - Constitutional law and political institutions, the elementary Treat Vol I, Ed. Lumina Lex, Bucharest, 1998, p192

13 Idem, p192

demarcation, mounds and palisades of earth or other natural signs. If the border between two states is a flowing water, the limit between countries will be established by common agreement or in the absence of agreement, the area where water depth is the widest will be considered as border. If the boundary between states is a lake, its center line will be fixed as boundary, and if, over the water, which constitutes the border a bridge is built, the border will be at the middle of that bridge.<sup>14</sup>

The principle of territoriality of the law stipulates that the state law is applied also on the surface of ships or aircraft to that state, to their own citizens. This means that on an aircraft or a spacecraft, the behavior of the ones from there is submissive to the jurisdiction of the state that owns the aircraft.<sup>15</sup>

### **Subsection C. The enforceability of law**

Normative acts are issued for people, for people's interest and they are watching the modeling of human behavior by general rules.

In the implementation of law "in space and over the person function the territoriality principle derived from the sovereignty one - frequently called <the principle of territorial supremacy>. In its chastity, all persons (citizens or foreigners) are subject to the state in which territory it stood."<sup>16</sup> Exceptions to the principle of territoriality are the following categories of persons, whom apply the law of its proper country, but not that of the state in which territory there are found: people, who enjoy the extraterritoriality, foreigners and stateless persons and citizens stood overseas.<sup>17</sup>

Persons that enjoy the extraterritoriality own the diplomatic immunity or are treated in the legal regime of the consuls. Diplomatic immunity involves exemption of people who formed the diplomatic body but also of those assimilated to it by state jurisdiction, on the territory where it deploys its activity. Diplomatic immunity has in its content, both materialized jurisdictional immunity, in the inviolability of persons, and inviolability of houses, namely buildings, diplomatic missions, inclusive their vehicles. If, however a person, who benefits from diplomatic immunity violates the state laws, where it exercises its diplomatic activity, the administration of that state will declare it persona non grata, which draws its recall by the state, which sent on a mission or if it does not happen, he will be expelled.<sup>18</sup> The consulate agents of some foreign countries benefit also from some

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14 Mihai Gheorghe - Fundamentals of law I-II, op. cit. p412

15If aboard of a spacecraft, national legislation it's prevail against astronauts, probably in the decade of the seventh century of the last century, in the period of hard land, a defluctive behavior of one of the astronauts should be entered also in the incidence of American law, even if offense was committed on the surface of the Earth's natural satellite.

16 Gorun Adrian - Philosophical foundations of law, op. cit. p107

17 Motica L Radu, Mihai Gheorghe - General Theory of Law, op. cit. p101

18 Mihai Gheorghe - Fundamentals of law I-II, op. cit. p. 415.

privileges and set immunities, on the basis of reciprocity. Regarding the legal status of the foreign stand on the territory of another state, there are three types of governing it: a national system, based also on reciprocity, where through to the foreign, the host state gives the same rights as proper citizens, except those to elect and be elected; a special procedure by which the rights of foreigners are set specifically by international treaties or other agreements; the system of the most favored nation clause, which is the result of bipartite agreements and under which, the foreigners of a certain state stand in the territory of other countries have other facilities (customs, trade) compared to other foreigners, stand concomitant in the territory of that country.<sup>19</sup>

The application of criminal law is done also on the principle of territoriality, with three exceptions applicable to persons in accordance with following principles: the personality of the criminal law, this being the opposition to the Romanian citizen or stateless persons with residence in Romania in case that they commit some crimes, outside the country; the reality of criminal law, the laws with Romanian criminal provisions being applicable to foreigners, which outside the territory of our country have committed acts provided by the legislation of Romanian criminal law, if they were directed against any Romanian citizen or to the Romanian State; the universality of criminal law, that is applicable to foreigner, who's abroad, or to the stateless person with residence in Romania, that are committing a crime, punishable by law of the country, in whose territory the act was committed and the author is found in Romania.<sup>20</sup>

Law aims to provide a social order that the entire society should benefit from on the whole but also each human individual in part. Source of misunderstandings, of conflicts and losses generated by default it is not in nature where we live, but in the way of approaching life by people. By its laws, the legal system tries to stem all these events or even reduce the weight of negative effects.

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19 Motica L Radu, Mihai Gheorghe - General Theory of Law, op. cit. p. 102.

20 Idem, p.103.