

UDC 342.22
Received: Review paper
October 2021.
Accepted: August 27, 2022.
Corresponding author: ljupka.petrevska@gmail.com

THE STATE AS A LEGAL ENTITY

Ljupka Petrevska

Faculty of Business Studies and Law,
„Union - Nikola Tesla“ University in Belgrade, Republic of Serbia,
e-mail: ljupka.petrevska@fpssp.edu.rs

Abstract: *In this paper, the author starts from the concept of the state, and looks at the fact that the state can be the holder of rights and obligations, ie whether the state can be understood as a legal entity. The state is an organization that has a monopoly of physical force in one country. This means that only the state can, through its competent authorities, apply instruments of coercion on its territory. Thus, e.g. certain state bodies conduct criminal proceedings (police, prosecutor's office and court) and execute criminal sanctions. Coercion is exercised against individuals who have acted contrary to certain legal provisions in the field of criminal law. The state protects general social interests. However, the fact is that performing state affairs is of general, common interest. The state is a complex organization made up of a large number of people belonging to various social groups who perform various class or social affairs. The rule of law is achieved in such a way that administrative bodies (as well as judicial ones) cannot pass individual acts without concretizing and applying certain legal and other regulations. Thus, the state is an organization that has a monopoly of power and has the function of ensuring the realization of general interests and the survival of the ruling class in power.*

Key words: *state, right holder, legal entity, government*

INTRODUCTION

The state is an organization that has a monopoly of power in a certain social community; it positions itself as a power over society in order to maintain order. The concept of the state can be defined in terms of its international and national role. From an international perspective, the state is a sovereign body.

Within the European continent, there are 50 independent European countries. In addition to independent areas on the European continent, there are dependent areas and areas that are partially not recognized by the international community.

States have been constantly changing and evolving, so that today there are different state structures. For this reason, it is now possible to classify countries according to different criteria.

The modern state is an instrument of class rule, but also a way of realizing the trend towards socializing the means of production. The state is the regulator of the entire social movement, from the elements of expanded reproduction, through the maintenance of monopolies in the fields of science and culture, to expansion in the field of international relations. The state is perhaps one of the basic social organizations necessary for the survival and development of society.

1. THEORETICAL POSITION ON THE STATE AS A LEGAL ENTITY

The law considers as an entity an entity that is seen in the eyes of the law as having certain rights and privileges. Although not a human being, an entity may file a legal claim or be subject to legal obligations. For example, a partnership or corporation is considered a legal entity for law enforcement purposes. A natural person can also be considered a legal entity and can perform the functions of both. A legal entity, of course, can perform its functions only through natural persons.

The second important difference between a natural person and a legal entity is that a natural person has a limited lifespan. Typically, an individual does not live longer than 100 years or more. On the other hand, a legal entity can live longer than a natural person, in that the corporation can be inherited by the president's heirs or trust can be continued for the benefit of generations of people. A corporation or trust may continue to operate long after the person who founded it has passed away.

Another difference between a natural person and a legal entity is that a natural person can only be classified as a living, breathing human being. The definition of a

legal entity can be used to refer to a multitude of organizations. For example, natural persons differ from legal entities in that the latter consist of the deceased, unborn, partnerships, corporations, universities, societies and companies, to name a few. Legal entities can also be called "fictitious", "artificial" or "moral" persons.

Although freedom of speech is a cherished right of natural persons, it is also important for legal entities. This allows legal entities such as newspapers to print stories and opinions that may not always be to the liking of the government. Free expression has restrictions for individuals and legal entities; both can be sued for defamation and libel.

In law, the problem of the legal subjectivity of the state is considered to be one of the most complex problems in the judiciary (Spaić, 1951). That in itself is an extraordinary task. In that sense, the general truth about the state will surely remain the holy grail of all known social sciences, including law. However, it is necessary to address these issues in order to make our (world) society a safer and more prosperous place to live in. Today, thanks to the dynamics of social relations, which in the 21st century have long since crossed (inter) state borders, the understanding of the state as a legal entity in the international legal order requires the construction of a solid theoretical basis. However, the issue of state-legal subjectivity and general acceptance of the definition of the state as a legal entity in contemporary international law is even more complex. This is because the essence of constitutional subjectivity lies in the achievements of the theory of state and law, in addition to current deviations in legal theory and concrete understanding of individual authors, as well as the peculiarities of nuanced differences that *a priori* condition individual creativity.

Domination is the process of establishing rules, control, leadership or regulation. Certain forms of governance are inherent in every society, because a completely uncontrolled society, deprived of leadership and necessary regulations, is in itself a contradictory concept. In contrast, the state is not something that is necessarily inherent to society.

With the emergence of the state, its first definitions appear. In the old century, the state, together with law, was studied from a philosophical point of view, as well as other phenomena at that time. Today, the state is studied by numerous social

sciences, each from its own point of view. So, there are different aspects of defining a state. What can be said is that there are numerous definitions of the term state in both legal and political theory, and that the words that denote this creation have changed during different historical periods.

Thus, there is no short and generally accepted definition of a state. The state can be defined as a basic political organization in a global (complete) society, a special political apparatus separate from civil society, which has the greatest, sovereign, power over the population living in a given territory, and this power is based on the right to legitimate use of physical monopoly violence and which enjoys at least minimal support from its own people. The state, therefore, means a perfect social and legal creation that has legal subjectivity. It was created with a specific goal, and it is achieved by performing specific tasks of state bodies (Vukadinović, 2006).

The state is a historical category, it was created once, but it will disappear. Today's attempts to create various alliances, such as the European Union, which give certain benefits and open borders between member states, tell us about that. States have been constantly changing and evolving, so today there is a diversity of state structures. For this reason, it is now possible to classify countries according to different criteria.

In functional definitions, states have two forms. An approach is used, according to which the state is a set of institutions that work on achieving goals, objectives and tasks. The second is the post-accession approach, which determines the state in terms of the consequences of its actions and, more importantly, how the social order is maintained (Dunleavy, P., O'Leary, B., 1987).

Based on the previously mentioned two definition strategies, the same authors determine the following five important characteristics of the state (Dunleavy, P., O'Leary, B., 1987):

“The state is a recognizably separate institution or set of institutions, so different from the rest of society that it creates a recognizable difference between the public and private spheres.

The state is the sovereign or supreme power, within its territory, and by definition, the ultimate authority for all laws, that is, binding rules backed by

sanctions of coercion. Public law is created by state officials, and it is supported by a formal monopoly of power.

State sovereignty extends to all individuals within a given territory, and applies equally, even to those in government positions and participating in law-making. Thus, sovereignty is separated from the personnel, which at any moment takes a certain role within The staff of the modern state is, as a rule, hired and trained to manage in a bureaucratic way.

"The state has the ability to provide money (through taxation) to finance its activities from the income of citizens."

Defining the state as a social organization implies determining the specific characteristics that distinguish the state from other social organizations. Thus, the state is clearly different from other social organizations in the following (Vincent, 2009):

- monopoly control over the means of violence;
- territoriality;
- sovereignty;
- impersonal structure of government;
- legitimacy.

The second meaning of the state, he points out, is that the state is not just an apparatus of political power, but represents a political community that differs from other communities in certain features. Thus, in the opinion of the authors who represent the state, this implies a legitimate territorial political community with the highest authority (Lukić, R., Košutić, B., 2008).

CONCLUSION

Legal entities are persons who have legal capacity related to the possibility of being holders of rights and obligations. If we start from comparing legal and business capacity, the conclusion is that legal capacity is a natural ability and is guaranteed by the legal order to all people, and it is modern because it lasts as long as the person who bears it. This ability belongs to a natural person without any

additional factual or legal actions. Business ability is a direct consequence of age and the ability to reason, so it cannot be obtained in advance, but is gradually acquired.

The definition and notion of the rule of law is a very topical issue today, and in previous years it has been a particularly topical issue in countries where the concepts of real socialism and socialist self-government have collapsed.

Today, the terms state and law are used in everyday communication, and people without legal education understand that it is a certain organization or code of conduct. In fact, the state is a government that, through legal norms, orders people to behave in certain circumstances, which means that it forces many to behave in a way that they would not otherwise behave. The notion of the state can be roughly concluded from this, and as it is emphasized in this paper, the notion of the state is difficult to define, and the definitions among legal scholars are numerous. What they agree on are the basic elements of the state, population, territory and state government.

REFERENCES

1. Dunleavy, P., O'Leary, B. (1987). *Theories of the State: The Politics of Liberal Democracy*. London: The Macmillan Press.
2. Vinsent, E. (2009). *Teorije države*. Beograd: Službeni glasnik.
3. Vukadinović, G. (2006). *Teorija države i prava 1*. Novi Sad: Univezitet u Novom Sadu.
4. Lukić, R., Košutić, B. . (2008). *Uvod u pravo*. Beograd: Službeni glasnik.
5. Spaić, V. (1951). *Država kao pravno lice*. Ahriv za pravne i društvene nauke 3.