

CHAPTER 7 :

Application of the law in terms of time and place.

The new law is applied in terms of time between the date of its issuance and the date of its repeal, just as national law is applied within the borders of the state's territory.

- ✚ **Application of the law in terms of time.**
- ✚ **Application of the law in terms of place.**

1. Application of the law in terms of time :

The application of the law in terms of time is through the principle of the non retroactivity of the law and the principle of the immediate effect of the law. A law is only applicable when it enters into force and has not been repealed.

a. The principle of non-retroactivity of the law :

A law can only be applied to an act that occurs after the law was adopted. This is a well-established legal principle, derived from the adage that ignorance of the law is no excuse.^[1]

The law applies immediately upon its issuance. It does not apply to facts or actions in the past, nor does it apply to legal situations after its repeal. That is, the new laws do not apply to the past and are limited to what happens starting from the day they come into force.^[2]

However, there are some exceptions to the principle :

- ✓ If the legislator explicitly stipulates that the law applies to the past.^[3]
- ✓ The criminal law that is best for the Person Accused of a Crime.^[4]
- ✓ Interpretive laws.^[5]
- ✓ Laws related to public order and public morals.^[6]

b. The principle of direct effect of the law :

The new law applies to legal relationships and legal situations whose effects have been formed, have not completed their formation, or have expired except under it. And excluding the application of the old law after its abolition.^[7]

There is only one exception to the principle, which is that the old law continues to apply after the new law, regarding current contractual obligations that were subject to their formation by the old law (effects and expiration)^[8]

1- حسن كيرة، المرجع السابق، ص 340.

2- محمد حسين منصور، المرجع السابق، ص 289.

3- محمد حسين منصور، المرجع السابق، ص 293.

4- هشام عبد الحميد الجميلي، الدفوع الجنائية الإجرائية والموضوعية في نطاق قانون الإجراءات الجنائية وقانون العقوبات، الطبعة الأولى، دار الفكر والقانون، المنصورة، مصر، 2007، ص 179.

5- محمد حسين منصور، المرجع السابق، ص 293.

6- أنور سلطان، المبادئ القانونية العامة لطلبة كلية التجارة، دار لنهضة العربية للطباعة والنشر والتوزيع، ط 4، لبنان، 1983، ص 181.

7- محمد حسين منصور، المرجع السابق، ص 303.

8- محمد حسين منصور، المرجع السابق، ص 305.

2. Application of the law in terms of place :

National law applies to people in the state's territory, and this is the principle of territoriality of laws. It has been international custom for countries to waive this principle and apply their national law to their citizens who are abroad, and this is the principle of the personality of laws.

a. The principle of territoriality of laws :

The territorial principle (also territoriality principle) is a principle of public international law which enables a sovereign state to exercise exclusive jurisdiction over individuals and other legal persons within its territory.^[1]

It includes both the right to prosecute individuals for criminal offences committed within its borders, as well as the right to arrest and apprehend individuals within its territory. Its corollary bars states from exercising jurisdiction within the territory of other states without their express consent, unless such an exercise can be based on other principles of jurisdiction, such as the principle of nationality, the passive personality principle, the protective principle, and possibly, the principle of universal jurisdiction.

The principle of territoriality of laws is not absolute, as there are some exceptions to it :

- ✓ The Penal Code is usually applied to crimes committed in Algerian territory, but it can be applied to crimes committed abroad if they fall under the jurisdiction of the Algerian criminal courts, so they may be pursued and the perpetrators prosecuted. Every person outside Algerian territory who has committed a crime against the Algerian state (counterfeiting money) will be pursued and tried in accordance with Algerian law.^[2]
- ✓ According to international custom, diplomatic missions are exempt from being subject to national law.^[3]
- ✓ The Algerian judicial authorities may summon any foreign person if he is a party to the lawsuit.^[4]
- ✓ Legal rules relating to fundamental rights, public freedoms and constitutional duties apply only to every Algerian.^[5]

1- محمدي فريدة -زواوي-، المرجع السابق، ص 116.

2- انظر المادة 03 من ق ع ج، والمادة 588 من ق إ ج.

3- محمدي فريدة -زواوي-، المرجع السابق، ص 116.

4- انظر المادة 1/41 من ق إ م إ ج.

5- انظر المواد من 34 إلى 83 من دستور الجمهورية الجزائرية الديمقراطية الشعبية.

b. The principle of the personality of laws :

Applying national law to all its citizens, even if they are abroad, and national law does not apply to foreign nationals residing in the national territory.^[1]

The state's right to sovereignty over people who hold its nationality is a right that lacks effectiveness whenever it is challenged by another state's right to sovereignty over its territory.^[2]

International custom allows states to apply the principle of personal laws to foreign nationals who are legally present in their territory, provided that this does not conflict with their national legislation.

المصطلحات بالعربية	English terms
تطبيق القانون من حيث الزمان	Application of the law in terms of time
تطبيق القانون من حيث المكان	Application of the law in terms of place
مبدأ عدم رجعية القوانين	The principle of non-retroactivity of the law
مبدأ الأثر المباشر للقانون	The principle of direct effect of the law
مبدأ إقليمية القوانين	The principle of territoriality of laws
مبدأ شخصية القوانين	The principle of the personality of laws

1- محمد حسين منصور، المرجع السابق، ص 285.

2- سمير عبد السيد تناغو، المرجع السابق، ص 636.