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THE CONCEPT, THE CONTENT AND THE CLASSIFICATION OF THE LEGAL SANCTIONS

Summary. The study of problems concerning legal penalties extends our knowledge about their importance, namely, the legal regulation, the way the legal rules influence on the behaviour of the society members, etc. To understand the law and the legal sanction, we should be aware not only of what the legal penalties represent under the conditions of the contemporary development of the state and society, which are their content, but their classification structure is also important, which is connected directly to the definition, penalty application and allows us to answer to a series of questions of practical importance: is it allowed or not to replace one type of sanctions with penalties of a different type, is it possible to combine different types of sanctions. The settlement of the issue is also important within the named problem: to use or not the whole diversity of legal sanctions in the mechanism of legal liability.

Key words: social sanction, legal sanction, penalty, prohibitive penalty, legal norm, stimulus measure, legal liability, safety measure etc.

Introduction. The problem of law enforcement, state coercion is closely related to legal sanctions. The research of any legal phenomenon should not wear a fragmented and separated character, but must be made taking into account its place within higher phenomena that absorb it, detecting its functional and genetic links, and other social and legal phenomena. The examination of legal sanctions in connection with the legal enforcement can provide a more objective presentation of the sanctions because their plurality and value in realizing the law are discovered, as well as it is shown the link with the state coercion and legal liability.

Legal sanctions have an important role in the exertion of legal sanction illegal acts, because, regardless of the type and efficiency, they are aimed at ensuring the realization of the established legal norms. It's hard to imagine the existence of legal punishments without legal sanctions, because it is impossible to enforce legal norms only by establishing certain rules of conduct, without establishing measures aimed at ensuring them. Thus the immediate purpose of applying legal sanctions is to ensure the enforcement of the legal provisions.

Results and discussion. In the history of law, the sanctions were a particularly important component in all legal systems. The right would not have substance and purpose without sanction. The sanction is itself the object of the legal relationship of coercion. Respecting the democratic legitimacy is an objective necessity of strengthening the rule of law. Therefore, it was correctly said that the right becomes effective only to the extent that its provisions are respected. The issue of legal sanctions is widely developed in the general theory of law and other branch sciences, however, the concept of sanction and a number of issues directly related to this issue are being discussed annually in the process of which was found a number of issues insufficiently examined. On the scale of the law tools, we can see that the legal sanction is not a legal category, but forming part of the complex field of law, it is a legal institution, with all the consequences thereof, namely, the systemic organization, its own principles which govern it. Of course we cannot consider it as a temporary element; because it has its life, existing beyond the infringement of some legal norms. Therefore, it is nowhere defined as an institution, as well as the legal liability does not receive a proper legal definition. However, the literature provides us with a variety of definitions of legal sanction.

Gh. Boboş states that „the sanction, whether it relates to the person who is the author of the illicit deed, his goods or upon the validity of any legal documents, is always carried out state coercion, with all the negative consequences that the state imposes on the sanctioned person" [4, p. 215].

Another definition is given by V. Dongoroz, according to which the sanction is „any action that a legal norm establishes as a result, in case its preceptor will be ignored", it is a consequence of non-observance precept, as his reason for being, arises from the assumption that any precept can be ignored" [6, p. 571]. In these definitions the sanction is seen as a natural reaction of the society against those members who don't respect the law. A more complex definition is given by the author Lidia Barak, who defines legal sanction as the institution that comprises a set of legal rules governing the legal relations through which the law itself is applied – and through which the actual purpose of the action that provides the legal liability of all those who violate or ignore the rule of law in order to protect civilians and the individual against the interference or the harm brought by the commission of illegal acts, in order to restore the violated rights, interests and values by the reduction of the anti-human and anti-social phenomenon, to maintain and promote legal order and the public good [1, p. 196].

According to the researcher E. Satina, the sanction is examined as a mandatory element of the legal norm that provides the type and state measures to ensure the provision of legal norms which contains the final assessment of human behavior [14, p. 22]. The notion of sanction is often equated with punishment and state coercive measures. Such design is explained by the predecessor peculiarities of the legal sanction regulation and legal peculiarities of influence in general, which, in turn, are conditioned by many factors: the level of socioeconomic development, the level of legal awareness in a certain society, habits formed, the specific legal system and many other factors. If we use the first historical sources of law, then we see easily that all special prohibitions contained in the commission of certain acts and those penalties are provided.

Such sanctions are expressed by punishments. The predominant importance of the prohibitions, as specific types of obligations in the early stages of establishing the positive law, is conditioned by the primary needs of social organization to prohibit its undesirable phenomena. Of course, these needs in the process of lawmaking activity receive a class character because they are interpreted by the subjective activity of a group of people, but still express the society's tendency to maintain the social order. Thus, the prohibitions and other obligations established initially by the positive law laid the understanding of the concept of sanction as its basis, as they can

exist only in the form of coercive state action and, primarily, of the punishment. However, with the evolution of legal relations, the complication of legal regulation methods takes place; some newer types of legal rules appear. Gradually the society has reached the situation when not only the legal rules of prohibition and other rules of obligation, but also those of recommendation, of stimulation, have found their place in the legal and regulatory arsenal, but the interpretation of sanctions remained unchanged.

The appearance of some new types of legal rules has conditioned and the appearance of new types of sanctions in the practical activity and therefore the sanction conceiving only as punishments and other coercive state actions have led to controversies and discussions in the general theory of law. Talking about this, S. Alexeev quite correctly criticized that, in cases when the violated situation is restored or the constraint is present by a legal obligation on the person (for example, the forced return of the object to the owner to the purchaser in good faith, the divorce, the division of property etc.) the person is not sanctioned, but rather a measure of protection is applied" [10, p. 184].

As L. Fridman, the American political scientist, states that the word sanction requires something more than punishment. It also includes stimulation. The positive side of sanctions (encouragement, stimulation) is less known because our literature scares us with the negative side. But stimulation is an important component of the legal system [15, p. 172].

Moreover, the law in its destiny is linked to the highest human values, values which are covered by standard concepts, the rule of law and the public order. The purposes are related to the social and moral order, the common good and social progress. Not incidentally, it was told that the law should lead to the happiness of the greatest number of people and avoid the greatest suffering, pain [7, p. 30–33]. Thus, we can conclude that in today's doctrine the interpretation of sanctions is much broader than the interpretation of punishments, the latter being included within the sphere of sanctions. The differences are related both to the sphere of concepts in question, as well as to different legal regime to which these two concepts are subjected to [2, p. 219].

The legal sanction isn't synonymous with the notion of coercion age, although it belongs to the general domain of constraint [5, p. 40]. The application of sanctions does not require the intervention of the public force in all situations; it is the case of cancellation repair and reparation sanctions, of those disciplines as well as of some offenses. Only when they are not executed voluntarily, the enforced execution by the coercive state force takes place. The criminal and the contravention sanctions have a coercive character. In the rule of law, to apply sanctions means an act of power resulting in a legal and political responsibility; it should be done by the competent authorities, in compliance with the letter and spirit of law, human rights and freedoms [8, p. 371].

In conclusion, we can mention that whatever definition is given to legal sanction in the specialty literature, they all analyze the sanction through its features. Thus, the legal sanction: 1) is directed to ensure the enforcement of rules of law, the maintenance of law and order; 2) is realized in the form of measures with different content; 3) not all measures contributing to the rule of law are sanctions, but only those of them containing the final assessment of the act in terms of society and the state; 4) is a compulsory element of the rule of law, is dependent on execution or non-execution of the rule of law provision, etc. We can also mention that the stimulus character of the sanction is always achieved by applying encouragement and punishment. In Russian language, for example, some notions pairs were formed from ancient times: punishment– encouragement, punishment– reward, punishment-stimulation, etc. The possible optimal ratio between incentives and punishments is a permanent record. It practically is not subject to temporary fluctuations caused by certain circumstances of internal and external social life.

The close and unbreakable bond between encouragement and punishment does not exclude the independent character of the legal stimulation. The stimulation can be applied, must be applied and it is applied independently. For example, the same person cannot be stimulated and punished for the same offense. The stimulation and the punishment can be applied one after another, but they will confirm the assessment of facts. The facts can somehow be linked, but the punishment and the stimulation will not bond with each other, but with the facts themselves. However, the stimulation and the punishment have different legal forms of legal insurance. If the penalty is generally ensured by measures of coercion, then the stimulation through the constraint measures is protected. Its enforcement is not usually necessary. But applying stimulation is provided through a number of safeguards, including the legal ones, which don't include the constraint.

Classification is a system of distribution of phenomena, objects, concepts of the same type in classes, sections etc. according to certain common features. In order to create the classification of the legal sanctions we must select the classification criterion – the main peculiarity of sanctions under which they can be combined into groups. The legal doctrine provides a number of criteria underlying the identification of various types of sanctions. Thus, by their nature sanctions can be: patrimonial or not patrimonial [3, p. 17]. Certainly the patrimonial ones refer to the person's heritage, but those which aren't patrimonial refer to the person – as the subject of responsibility as well as his rights, such as: imprisonment, revocation, etc.

According to their determining degree, the sanctions can be: determined, relatively-determined, alternative and cumulative.

According to the branch of law, they are involved in, we distinguish: criminal, civil, disciplinary, administrative, financial, banking and currency sanctions.

According to their role we have: sanctions with a suppression effect and sanctions with repair effect.

According to their way of regulation, we distinguish: general sanctions (provided the framework laws, codes, etc.) and special sanctions regulated by special laws [1, p. 202].

In legal literature, the view that the classification of criminal, administrative, disciplinary and economic sanctions has dominated for a long period of time and that it highlights best the essential particularity of legal sanctions. However, as correctly noted O. Leist, this division is just the list of those branch sanctions that are applied more often than others.

According to this list, we cannot explain why patrimonial sanction may be applied simultaneously with any other of the three types. This classification also does not explain the development prospects of the sanction system [11, p. 238]. This classification is also limited because it does not contain information about the offense appreciation and mainly, – it does not match objective understanding of legal sanctions under contemporary development of society and the state, it does not include all types of sanctions, such as the stimulation sanctions, invalidity sanctions and others. The presence in the legal literature of several types of criteria for the classification of legal sanctions has caused the need to address and resolve the question about their equivalence recognition or delimitation of one of them as the main classification. The opinions of scholars in the field on this issue were divided: some consider the classifications as being equivalent, others give priority to a particular classification, for example, O. Leist proposes that a main criterion for the classification of sanctions in the restoration of the rule of law infringed as well as in the pecuniary sanctions. In reasoning

his decision, O. Leist brings the following argument. Dividing sanctions in pecuniary sanctions and sanctions used to restore the public law, it also absorbs their branch classification. Moreover, all branch sanctions have their place in the latter classification, while being exposed in the descriptive list, joining larger groups of traits, qualities, common typical features [12, p. 11–12]. The person who committed the infringement of the rule of law is subject to sanction influence represented by unfavorable consequences in legal terms, but the character of these consequences is different, which also is conditioned to some extent by the nature of the damage caused. If the damage caused can be recovered or the disturbed situation can be restored fully or partially and in the obligatory execution is still needed in a proper way, then the sanctions to restore the rule of law infringed are applied. However, the pecuniary sanctions are applied if there is a damage which cannot be removed, recovered, if the obligation execution is pointless or if there is a need to impose additional encumbrance with a general or special purpose of prevention.

According to all mentioned, G.V. Nazarenco, has elaborated the most successful classification, although this classification has some drawbacks. G. Nazarenco defines the sanctions in: positive and negative sanctions. The incentives (stimulation sanctions) and the measures to restore the subjective rights (sanctions to restore law) are part of the positive sanctions. The penalties (punitive sanctions) and the possibility of recognizing invalid actions (sanctions for invalidity) are part negative sanctions [13, p. 80].

The criteria, based on which G. Nazarenco divided the sanctions into positive and negative are not appropriate for him, so the question arises: why, for example, the sanctions for restoring the rule of law are considered positive sanctions, but the sanctions for invalidity are considered negative.

Many sanctions to restore the rule of law are related to violation of legal norms in the same way as the pecuniary sanctions, and sometimes are not less harmful than financial incentives. But G. Nazarenko puts financial incentives together with the negative sanctions and the restoration sanctions together with the positive sanctions. This contradiction is conditioned by the fact that the author meant by sanctions to restore the rule of law, all measures to restore subjective rights caused usually by contraventions and other violations of law, which also made his classification defective.

To define the positive and the negative sanctions, their peculiarities must be highlighted. The positive sanctions: 1) are measures favorable to the person to which they are applied; 2) contain a positive appreciation by society and the State; 3) are connected with positive and desirable for society. The peculiarities of negative sanction: 1) is an unfavorable consequences for the person to whom it applies; 2) contains the conviction, negative assessment done by society and the State; 3) is achieved by applying direct or indirect coercion by the state; 4) are related to illegal acts and always takes place on the liability.

Another important classification in the specialty literature is the classification of sanctions into: substantive and procedural. The value of the proposed classification is that it includes not only the substantive law, but also the law of proceedings. The existence of the procedural sanctions of law is not recognized by all, which is also motivated by its position that procedural law is a form of existence of substantive law. Establishing the legal norms, the State has also established rules to achieve them – procedural rules, which have a special object of regulation, including social relations that arise during the implementation of all branches of law rules.

Making procedural rules, in turn, ensures a certain degree of procedural sanctions. The material and procedural legal norms, as well as substantive and procedural sanctions, on the one hand, cannot be considered separately from each other, on the other hand, it is unfair to not acknowledge the existence of procedural sanctions, once the rules established by achieving procedural actions require the insurance of the regulatory means and their violation leads to the occurrence of certain legal consequences, many of which have features of legal sanctions.

The procedural sanctions are usually understood as unfavorable consequences of non provisions of the procedural rules and are classified in restoring law and punitive sanctions. In such an approach appear the same weaknesses that were referred to the research of the sanctions applied in the substantive law.

Conclusion. Based on the foregoing, we conclude that the sanction appears as a legal category that is found in various branches of law. Despite the sanctions' role and the place in our legal system, this concept is not as judiciously as it seemed to us, yet sufficiently developed from the theoretical point of view. According to the rules of law violated, the legal sanctions acquire specific meanings. Therefore, in any society, the legal rules and legal sanctions are central in the means of coercion and social control. However, they prove to be ineffective and become ineffective if there is no guarantee that they have been understood, followed and respected by individuals or social groups to whom they are addressed. Moreover, they are the main way that protects and organizes by legal constraint the living conditions of society.

They contribute to mitigating potential elements of conflict, to ensure compliance with legal rights and obligations, mutually limiting the actions of the individuals, as well as to restore the social order and the disrupted normative acts and illegal acts. However, the realization of the law does not have to be reduced to sanction, because the law is achieved mainly through the legal liability, which in turn is a real legal institution that does not reduce the sanction, its aims are multiple, related to true human values, the sanction being just one of the tools for achieving legal liability, but not only one.

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Бостан И. Понятие, содержание и классификация правовых санкций

Аннотация. Исследование проблемы правовых санкций дает возможность расширить наши знания об их значимости, в частности о правовом регулировании, о способе воздействия правовых норм на поведение членов общества и другие. Для понимания права и правового санкционирования необходимо осознать не только то, что представляют собой правовые санкции в условиях современного развития государства и общества, каково их содержание, но и структурировать их классификацию, которая непосредственно связана с определением, применением санкций и позволяет дать ответы на ряд вопросов практического значения: допустима ли замена санкций одного вида на санкции другого вида, возможно ли сочетать санкции разного вида. Кроме того, в рамках указанной проблемы важным представляется разрешение такого вопроса: используется ли все разнообразие правовых санкций в механизме юридической ответственности.

Ключевые слова: социальная санкция, правовая санкция, наказание, запретительная санкция, правовая норма, мера поощрения, юридическая ответственность, мера безопасности.

Бостан І. Поняття, зміст і класифікація правових санкцій

Анотація. Дослідження проблеми правових санкцій дає можливість розширити наші знання про їх значущість, зокрема про правове регулювання, спосіб впливу правових норм на поведінку членів суспільства тощо. Для розуміння права та правового санкціонування необхідно усвідомити не тільки те, що являють собою правові санкції в умовах сучасного розвитку держави та суспільства, їх зміст, але й структурувати їх класифікацію, яка безпосередньо пов'язана з визначенням, застосуванням санкцій і дозволяє дати відповіді на низку питань практичного значення: чи припустима заміна санкцій одного виду на санкції іншого виду, чи можливо поєднувати санкції різного виду. Крім того, у рамках зазначеної проблеми важливим є вирішення такого питання: чи використовується все розмаїття правових санкцій у механізмі юридичної відповідальності.

Ключові слова: соціальна санкція, правова санкція, покарання, заборонна санкція, правова норма, міра заохочення, юридична відповідальність, міра безпеки.