Artículo de investigación

Legal sanctions and their political element

Санкції правової норми та їх політичний елемент

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Abstract

The purpose of the article is a comprehensive study of theoretical provisions on the structure of a legal norm, determining the place of sanctions among its elements and the presence of a political instrument in the sanctions. According to the purpose, the logical structure of the legal norm is defined. The importance of sanctions in the system of state instruments for combating offenses is analyzed, with the focus on their political element. Scientific works concerning the analysis of sanctions as a fundamental category of legal science in both the modern and the Soviet period have been investigated. The scope of sanctions in the context of economic reforms is considered. The judicial practice of the application of sanctions in Ukraine is investigated. Scientific research has been systematized into allocating all legal sanctions to specific groups. In the process of researching the topic of the article, the authors come to a **conclusion** that the sanction exerts state coercion to comply with legal provisions; sanction is characterized by the presence of a political element; a sanction is a mandatory element of a legal norm that provides for the type and extent of state provision of the legal norms disposition that contains the final assessment. Although the sanction can be characterized as a reaction of the state to the offense, it should still be defined as a measure of responsibility, since the reaction of the state includes other coercive measures.

Keywords: Legal norm, norm structure, political element, sanction.

Анотація

Метою статті є комплексне дослідження теоретичних положень про структуру правової норми, визначення місця санкцій серед її елементів та наявність в санкціях політичного інструменту. Відповідно до мети визначено логічну структуру правової норми. Проаналізовано значення санкцій в системі державних інструментів боротьби з правопорушеннями та сконцентровано увагу на їх політичному елементі. Досліджено наукові праці, що стосувалися аналізу санкцій як фундаментальної категорії правової науки як сучасного, так і радянського періоду. Розглянута сфера застосування санкцій у умовах проведення економічних реформ. Досліджено судову практику застосування санкцій в Україні. Систематизовано наукові дослідження щодо виділення усіх правових санкцій у певні групи. В процесі дослідження теми статі, автори приходять до висновку про те, що за допомогою санкції здійснюється державний примус до виконання приписів правових норм; для санкції є властивим наявність політичного елементу; санкція є обов'язковим елементом норми права, що передбачає вид і міри державного забезпечення диспозиції правової норми, яка містить кінцеву оцінку. І хоча санкцію можна охарактеризувати як реакцію держави на правопорушення, проте слід визначити її все ж мірою відповідальності, оскільки реакцією держави будуть і решта примусових заходів.

Ключові слова: правова норма, структура норми, санкція, політичний елемент.

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Introduction

The relevance of the study is due to the theoretical and practical importance of research on problematic issues related to the development of systematic ideas about the nature and features of legal norms. The norms of law belong to the fundamental legal categories, as they are of particular importance for the legislative process, creating the basic mechanism for the legal regulation of social relations. The study of structural elements of the legal norms today is of interest to scientists.

Scholars have expressed many different points of view regarding the structure of a legal norm in different periods of society development, and the understanding of the law and its structure are radically different in the continental law family and the common law legal family.

It should be noted that the logical structuring of legal matter with the identification of all components of the legal norm is especially important at the stage of lawmaking, which, in turn, encourages the legislator to keep in mind that the established rules should always be accompanied by a mechanism for their implementation, so that there are no such rules, the clarity of enforcement of which is not provided with sanctions. Otherwise, the law loses its regulatory potential. Therefore, the agenda is to examine whether such an instrument exists in the country as legal sanctions and the political element therein.

Today, the issue of the existence of a human rights protection mechanism is particularly relevant. Therefore, special attention needs to be paid to the quality of the legality of the legal norm and its provision with measures of state coercion.

Given the current difficult economic conditions of Ukraine, the legal aspects of the activity of the state are of particular importance, and therefore all facets of legal relations, in particular those related to law enforcement in the system of state bodies, need special attention, since their purpose is to protect legal orders of the states from violations and to promote the restoration of law and order.

Many publications of general theoretical and sectoral nature are devoted to sanctions and responsibilities as fundamental categories of legal science. However, the amount of research not only does not reduce the number of controversial issues, but also on the contrary, puts forward new ones that require proper reflection and analysis. This depends on improving the legislation and its effectiveness, developing a mechanism for implementation.

Ensuring the inviolability of state legal orders and protecting them against unlawful encroachment is achieved through the implementation by the state of its own prerogative to hold violators to account with the application of appropriate legal sanctions. It is difficult to overestimate the importance of research in a country on such an instrument as legal sanctions against crime and the availability of a political instrument.

Methodology

The methodological basis of the article comprises approaches and methods of scientific knowledge. The systematic approach made it possible to characterize the structure of the legal norm. Achievements of the set goals and objectives within the chosen topic of the article are based on the totality of scientific methods of philosophical (dialectical, hermeneutic), general scientific (analysis, synthesis, induction, deduction, analogy, etc.) and special scientific levels (normative-analytical, method of complex analysis, comparative legal method). The method of comparative law allowed the authors to discover and analyze similar and different features of domestic and foreign studies of the structure of the legal norm, to identify the peculiarity of such an important element as the sanction and to consider their political component. Research methods have allowed to carry out scientifically sound analysis of the place of sanctions in the system of state instruments, to examine scientific works and researches on the analysis of sanctions as one of the fundamental categories of legal science, having conducted the systematization of various scientific approaches.

Results and discussions

The current state of legal science poses to scientists a number of significant tasks, determined by the next stage of development of science. The development of legal science is characterized by understanding the legal problems, including those associated with the problems of modern doctrine of law. Today, in the context of building a legal state, when the impact of globalization processes on the legal sphere (Taci, V., Danylyan, O., 2019) becomes visible (scientists call the politicization of law

one of the most significant trends in its globalization), in conditions where protection of human and citizen rights and freedoms are particularly relevant, science and law enforcement are facing numerous problems, including the rethinking of the role of law in the regulation of different relations, especially when it concerns legal, economic and political relations. And it is clear that such a rethinking without regard to the substance of the legal norm is virtually impossible. The rules of law are the main element of the mechanism of legal regulation of social relations. By representing the primary cell of legal matter, the law enshrines the various models of obligatory, permissible or forbidden behavior of subjects, regulates and protects social relations that are subject to regulation.

Traditionally, researchers have modeled a legal norm on the unity of three interrelated elements: hypotheses, dispositions and sanctions. Science has established that a hypothesis fixes the conditions of action, rules of conduct, the disposition sets out the rule, and the sanction indicates the consequences of violation of the disposition. This designation is also called the "logical structure of the norm" or the logical norm (Sibilov, M., 2008), since in most cases the three-element norm does not coincide with the text of normative legal acts and is reproduced by logical analysis. The unity of hypothesis, disposition and sanction also reflects the logic of law.

The fact of the dominance of the concept of the three-element structure of the legal norm was stated by the researchers, emphasizing that the majority of scientists, in paying tribute to the positivist tradition of legal thinking, uphold the mandatory three-element structure of the legal rule, the concept of which in the period of development of legal thought can be considered dominant in Ukraine and Russia (Pokrovskyi, I., 1998).

Analyzing approaches to the structure of the civil law in the doctrine, scientists point to the founders of the concept of the three-element structure of the legal norm Golunsky S. and Strogovich M. (Golunsky, S., Strogovich, M., 1940), who noted that the basis for developing such a concept is a thesis that law is nothing without an apparatus capable of forcing the legal norm (Verenkiotova, O., 2013).

It is well-known that the structure of a legal norm is its internal structure, which is characterized by the presence in it of relatively separate yet inextricably linked components that differ in purpose and functional role.

The structure, in fact, is a relatively independent and stable unity of the elements and their relations, which in its totality ensures the integrity of the object and the identity to itself. The structure is inextricably linked to the system. In turn, the characteristics of the object in terms of system and structure gives the essence of system-structural analysis. Conducting an analysis of a norm by its internal structure helps to clarify the meaning of the rule of conduct that it contains, which, in turn, ensures the correct implementation of the norm, contributes to the strengthening of law and order, that is, the achievement of the results the right exists for. The structure of a norm and the number of its elements depends on its nature, its specific functions and purpose in the mechanism of legal regulation and is defined differently, depending on what the norm is – a principle norm, a definition norm, a rule of conduct norm, or regulatory or security norm, which are variants of the rule of conduct.

Thus, according to the general theory of law, the principle norm (the founding norm) is a norm that establishes unquestionable requirements (provisions) of a general nature and is the result of normative generalizations, expressing the social content of all legal norms of a given group (institute, industry, etc.).

Principle norms do not contain explicit elements of the legal norms, but in some areas of law, the principle norms can directly regulate relationships that are not regulated by specific rules. Principle norms are legal provisions that express and enshrine the principles of law.

A definition norm is one that contains definitions of legal categories and concepts. It is a theoretical reflection of these concepts both at the level of general laws and in the formation of general concepts about them, and also establishes modern knowledge and ideas about such concepts, explaining their essence. From the point of view of information content, the definition norm must be brief, but at the same time contain informative content. In turn, the rule of conduct norm directly regulates the behavior of people, social relations, etc. It indicates the mutual rights and obligations of the subjects, the conditions for their implementation, the type and extent of the state's reaction to the offender. Thus, the rule norm is intended to implement at a practical level the theoretical provisions enshrined in the definition norm.

With universal recognition of the concept of the structure of the legal norm (hypothesis, disposition, sanction), scientists offer other concepts of the structure of the legal norm. One of these concepts is to distinguish five elements of the legal norm structure, including: allowed, denied, authorized, obligated, indifferent. Such a structure is justified by the fact that it is necessary for practical interests, that is, for a clear definition of a norm that requires a legal prescription (Vengerov, A., 1996).

Another area of the concept is the selection of only two elements in the legal norm. Moreover, the combinations vary. There are two distinct elements in the legal norm: a disposition that points to certain mandatory behavior and a sanction that indicates the consequences that would occur in the event of a breach of obligatory behavior (Sorokin, P.A., 2005).

The view was also expressed that regulatory norms consist of hypothesis and disposition, and law enforcement – of disposition and sanction (Marchenko, M., 2007; Cherdantsev, A., 1996). However, criminal law, civil law and many other areas of law argue against this view.

The possibility of transforming one element of the legal norm into another, depending on the angle of view of the elements of the legal norm are examined. For example, Radko T. believes that under certain conditions a sanction can act as an independent legal prescription, especially when it comes to the norms of criminal law (Radko, T., 2015).

Some researchers do not identify sanctions as an element of the norm, but do identify rules that set sanctions (S-laws). They distinguish between rules that set sanctions for non-compliance (DS-laws) and rules that determine how sanctions are applied (MS-laws). It is noted that although most of the duties are related to the threat of sanction, in some cases, the obligation is not supported by sanctions (for example, by the legislature) (Bogdanovskaya, I., 2006). In the view of scholars for the legal opinion of countries of the common law, which does not distinguish between elements of the structure of the legal norm, such considerations represent a step that brings this doctrine closer to the level of continental legal doctrine.

Also interesting are studies that highlight new types of sanctions and the use of sanction as a criterion for the formation of an independent industry in law. The existence of an independent form of sanctions by some researchers is emerging as a sign of the existence of a separate branch of law.

One of the most important features of the legal norm is that it is “systemic, that is, not in a chaotic state but in a particular organization – in the system. At the same time, the legal norm specializes in the performance of certain functions: regulatory, protective, encouraging and others” (Morozova, L.A., 2003).

However, at present, only one structural analysis can satisfy neither science, nor more so practice. There was an urgent need to characterize the individual elements of the legal rules, to know their functionality. The law is valuable not only because its norms are general rules of conduct, but also because these rules summarize the typical activities of people, based on their historical social experience, that they perform important functions for society, providing it with regulation and order, directing the actions of people to commit the most expedient and reasonable acts.

Therefore, the study of individual elements of legal norms, clarification of their peculiarities, knowing ways, forms and methods of implementation, will undoubtedly contribute to a more effective use of legal rules.

Proponents of recognizing the three-element composition of a legal norm consider sanction an integral part of the rule. According to scientists, sanction is an independent element of the norm, without which the latter is powerless (Drobiazko, S.H., Kozlov, S.V., 2005).

Fatkulin F. also noted that sanction is an immanent element of the legal norm that determines the extent of its state security. The author believed that since the types and measures of different security measures without which the norm ceases to be legal, their "dosage" is contained in the sanction, then any legal norm should have as one of the legitimate elements of its own structure the sanction (Fatkulin, 2002).

Another conception of the structure of a norm (pre-revolutionary and mostly modern period) is the doctrine of a two-element rule that consists of a hypothesis and a disposition. In doing so, the sanction appears to be a specific form of disposition in the form of negative consequences of a breach or failure to comply with a regulatory hypothesis, rather than a mandatory or optional element. This approach to the formation of a two-element structure of the legal norm creates a serious theoretical opposition to the classical

understanding of the structure of the legal norm. In support of their position, supporters of the two-element rule point to the inconsistency of the parts of the three-element rule. Since the elements of such a rule may be in different legal acts, its parts can be created, changed and canceled at different times (Cherdantsev, A., 1970). The inconsistency of the parts of the three-element norm is that it is not implemented as a whole. If the disposition is implemented, there is no longer a need to apply the sanction. In addition, the disposition and sanction are directed at different addressees. Analyzing this approach to determining the structure of a norm, one should note that this is not a logical legal norm, but a specific one, which is often even replaced by the concept of an article (prescription) of a legal act (Khachaturov, R.L., 2018).

The concept of a two-element legal norm, consisting of a hypothesis and a disposition or a hypothesis and a sanction, where the sanction, although acting as an independent element, but inextricably linked with the hypothesis and acting as a protective (encouraging), is also scientifically grounded. (Romaniuk, Y., 2016).

Analyzing the structure of the legal norm, we note that being a symbol of power (even in the sphere of private law relations), the legal norm by its structure shows a similar conditionality. The most revealing and demonstrative part of it is the sanction, in which the force and the political element are particularly marked.

The hypothesis, born of a casuistic tradition and closely linked to the real needs of everyday life, symbolically expresses the process of life itself. In turn, the disposition in its style and form is most prone to declarativity and formulation of general ideas, fixed in the norm.

Today, scholars view sanction as a structural element of the legal norm (Great Ukrainian Legal Encyclopedia, 2017). In legal science, sanction is understood primarily as a consequence of an offense, but it is also used in the broadest sense and in various meanings.

In science, the concept of sanctions retains controversy over the definition of its content and types. This is explained by the ambiguity of the term. It should be noted that sanctions mean both a part of the legal norm, a measure of responsibility, as well as a permit, a measure of security, and more recently, encouragement.

Depending on the specialization of legal norms in the branches and institutions of law, their sanctions are classified into constitutional, criminal, administrative, civil-law, financial, criminal-procedural, civil-procedural, customs, budgetary and other types.

The study of legal sanctions as a separate legal category is of particular scientific interest, first of all, due to the close connection with the concept of legal responsibility, which has been under discussion for a long time; secondly, due to the objective need for an in-depth study of legal sanctions due to the fact that the state of legislative regulation of relations related to the application and implementation of legal sanctions is currently inappropriate in our country, which causes different practice of the application of accountability measures and differing judicial practice in this regard.

The lack of regulation of this issue by the law directly affects the quality of law enforcement practice, which is the final indicator of the state of the legislation regarding its ability to perform its own function in the normative regulation of social relations through the level of such qualities as consistency, systematicity, logic, etc. Attention should be drawn to the fact that the number of appeals to court, for example, concerning the collection of amounts owed from payments to the budget, including financial and legal sanctions, and appeals against decisions on the application of the latter, despite their reduction, remain significant.

However, the judicial practice in disputes over the application of sanctions is different, which is mainly due to the ambiguity and confusion of the legislation, which leads to different interpretation of its rules by law enforcement entities, including the courts, as well as misidentification with the rules of economic and administrative law. In addition, the number of appeals to the court of individuals and legal entities to appeal against decisions of public authorities regarding the determination of obligations to pay obligatory payments to the budget, in particular – legal sanctions, indicates a significant level of disagreement of taxpayers with such decisions.

Today, due to various scientific studies of this issue, it is possible to distinguish legal sanctions into the following groups: sanction as an element of the legal norm; sanction as adverse effects; sanction as a means of coercion; sanction as an indication of measures of state coercion; sanction as reaction of the state; sanction as a measure of state coercion.

Thus, the plurality of the meaning of the term "sanction" indicates a particular combination of several features that, depending on the particular legal situation, prove to be key.

Therefore, the question of sanctions of a legal norm is organically related to the question of legal liability, just as the question of subjective law and legal obligation is inextricably linked to the question of the disposition of a legal norm or the question of the conditions of validity of a legal norm related to its hypothesis.

Determining the essence of the relation of legal liability and sanction of the legal norm, it should be noted that this relationship is defined as the relationship of form and content, where the content is the logical essence of the law: evaluation - value, message - conclusion, cause - consequence, rule - enforcement and form a structural model of the legal norm: hypothesis - disposition - sanction. The structure of the regulatory model reflects the logical formula of law. Through sanction, the logical essence of responsibility becomes forceful in influencing the subjects of social relations. It is here that the political element of the sanction of the legal norm is manifested.

If there is a right, there is a duty, which means that there is a responsibility for its fulfillment. The existence of a right and a duty, in turn, implies a presence of liability. The legal manifestation of liability in sanctions is carried out in the form of certain legal consequences.

Therefore, a sanction is a way of giving responsibility by legal force, a way of giving a right to the coercive power of a higher authority – the state, a way of providing a logical form of action of the right by its own reality, a coercive force, capable of influencing the behavior of the subjects of social relations.

Through disposition, the logical essence of responsibility acquires a legal form of existence, and through sanction the logical essence of responsibility acquires the force of coercive influence on the subjects of social relations.

Conclusion

Considering the structure of the legal norm and examining the sanction as one of its important elements, we can reach the following conclusions.

A sanction is an important structural element of a legal norm that contains the type and extent of adverse compulsory legal consequences that may arise in the event of a subject violating a rule determined by the disposition of the norm. The sanction must be understood first and foremost as a consequence of the offense. In addition to understanding a sanction as part of a legal provision that contains indications of various types of state coercion, it should be considered as a measure of legal liability applicable to the offender and associated with other types of misconduct, the commission of which causes a negative reaction by the state, with its inherent political overtone.

A sanction is a mandatory element of a legal norm that provides for the type and extent of government provision of a legal provision that contains the final assessment. It acts as a negative reaction of the state to the violation of the legal norm, which arises only in the presence of unlawful behavior or improper implementation of the generally established rules. However, not every unlawful conduct entails the application of sanctions, but only one that is recognized and regulated by the legislator as a violation. Although the sanction can be characterized as a reaction of the state to the offense, it should still be defined as a measure of responsibility, since the reaction of the state will be other coercive measures.

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