

UDC 347.1:347.447.8

DOI <https://doi.org/10.32849/2663-5313/2021.12.01>

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Hryshchenko, Oleksandra (2021). Sanction as a legal construction in civil law. *Entrepreneurship, Economy and Law*, 12, 5–10, doi <https://doi.org/10.32849/2663-5313/2021.12.01>

SANCTION AS A LEGAL CONSTRUCTION IN CIVIL LAW

Abstract. The *purpose of the article* is to determine the essence of a sanction in the mechanism of legal regulation of civil relations.

Research methods. The work is based on general scientific and special methods of scientific knowledge.

Results. The author has studied sanctions as a legal construction in relation to legal means, which is a legal means and an instrument for the legal regulation of a certain action of the subject aimed at its active use in order to achieve the appropriate goal. It has been analyzed the legal process under which sanctions act as the main working elements of law, the mechanism of legal regulation, legal regimes and lead to juridical consequences and concrete results. The author states that the sanction category in jurisprudence is one of the most ambiguous: a) a sanction means a specific part of the legal norm, which provides for regulations on consequences, which occur in the case of non-compliance with the rule set out in the dispositive part of norms; b) a sanction means an act of a competent state body, which allows (approves, "authorizes") committing a particular action by a person; c) a sanction means those negative property effects which occur if a person commits illegal acts; d) a sanction is considered as one of the types of negative property effects imposed on the defaulting debtor in the case of non-performance or improper performance of his incurred obligation.

Conclusions. Sanctions in civil law are negative consequences established by law or contract, which are applied in the case of non-fulfillment (improper fulfillment) of a civil obligation, violation of prohibitions, restrictions, and other circumstances outlined in the law. The state ascertains sanctions through the use of coercion. Sanctions are elements of the mechanism of legal regulation of civil relations. Sanctions have negative effects for a person who has not fulfilled a civil obligation established by law or contract. Sanctions in civil law are designed to protect civil rights and interests. Sanctions are a legal construction in civil law.

Key words: elements of mechanism of legal regulation of civil relations, protection of civil rights, legal remedy, civil liability.

1. Introduction

The study of civil sanction is relevant to law enforcement in terms of civil liability because under para. 22, p. 1 of art. 92 of the Constitution of Ukraine dated June 28, 1996 (Konstytutsiia Ukrainy, 1996), fundamentals of civil liability shall be determined exclusively by the laws of Ukraine. At the same time, it is important to single out sanctions that are not means of civil liability and determine essential features of sanctions in civil law; it allows distinguishing them from other legal categories that is critical to law enforcement when settling the issue of a concurrent application of several related legal constructions to legal relations. Maintaining an effective legal mechanism of the legal regulation of civil relations is impossible without imposing sanctions. The current civil legislation

of Ukraine lacks a legal definition for the concept of "sanction". The Civil Code of Ukraine (further – the CC of Ukraine) uses the concept of "sanction" once in p. 1 of art. 354: "Deprivation of the ownership right to property (confiscation) may be applied to a person by the court decision as a sanction for committing a crime in the cases specified by the law". Thus, the study of the essence of sanctions in civil law through characterizing them as a legal remedy is of scientific interest.

Analysis of research and publications. The concept of sanctions has always captured the attention of law theorists. Profound studies of sanctions have been conducted by such legal scholars as V. Oriekhov (Oriekhov, 2008) et al. A domestic scientist N. Navalnieva characterized sanctions as legal remedies ensuring

the functioning of the mechanism of legal regulation of civil relations (Navalnieva, 2019a; Navalnieva, 2019b).

Modern researchers mainly analyze civil sanctions in the context of civil liability by considering civil liability as a type of sanctions in civil law or determining the essence of civil liability and the essence of sanctions, e. g., I. Kanzafarova (Kanzafarova, 2007, pp. 89–92), O. Kot (Kot, 2017, pp. 236–237), I. Romashchenko (Romashchenko, 2016, pp. 40–43).

Previously unsettled issue. The study of civil sanctions in terms of civil liability is crucial to law enforcement because under para. 22, p. 1 of art. 92 of the Constitution of Ukraine dated June 28, 1996 (Konstytutsiia Ukrainy, 1996), fundamentals of civil liability shall be determined exclusively by the laws of Ukraine.

The purpose of the research is to determine the essence of sanctions in the mechanism of legal regulation of civil relations.

2. Determining the legal nature of sanctions

The “Modern legal encyclopedia” defines a sanction (from Latin “sanctio” – an irrevocable decision) as follows: 1) a component of the legal norm which, in the case of non-fulfillment, administers measures of state influence, mainly in the form of coercion; 2) statutory procedure for the obligatory approval by a prosecutor (the court) of decisions about taking coercion measures in cases set by the law (Navalnieva, 2019b, p. 40; Zaichuk, 2010, p. 298).

Domestic researchers N. Kuznetsova and N. Navalnieva prove that the mechanism of legal regulation conveys the active part of brining law in line with social relations. Under specific conditions (juridical facts), the legal rule containing an abstract universally binding rule of conduct works with physical acts (omissions of subjects) and thus creates a new form – legal relations within which subjective rights and obligations of the subjects are realized (Kuznetsova, 2011, p. 47; Navalnieva, 2019b, p. 41).

Ukrainian scholars S. Pohribnyi and O. Kot have noted: “Justified the need to restore the status of the Civil Code of Ukraine as a root act for all social relations of private law nature. In order to implement the idea of having the Civil Code of Ukraine as a root act of private law, attention is paid to the necessity to reexamine the mechanism of ensuring the status of the Civil Code of Ukraine as the basic act of Ukrainian civil laws. Moreover, the mechanism grounded in part 2 of article 4 of the Civil Code of Ukraine has appeared to be ineffective. At the same time, the Civil Code of Ukraine has been amended by any laws without regard to the specifics

of the mechanism of civil regulation of such relations” (Pohribnyi, Kot, 2021, p. 106).

The author establishes that under p. 1 of art. 216 of the CC of Ukraine, an invalid transaction does not entail legal consequences, except for those related to its invalidity. In case of invalidity of a transaction, each party shall be obliged to return in kind to the other party everything it has acquired in pursuance of the transaction, or, if such return is impossible, including in cases where the acquisition consists in the use of property, work performed, or services provided, to reimburse the value of the acquired at the prices existing at the moment of reimbursement (Tsyvilnyi kodeks Ukrainy, 2003).

3. Application of a sanction to a subject of civil law

It is worthwhile mentioning that sanctions are imposed on a specific person – a subject of civil legal relations. The consolidation of a sanction in a legal norm at the very stage of regulating civil relations contributes to harmonizing civil relations, identifying those negative consequences to which a person will be subjected if he/she violates a subjective civil obligation. For example, p. 4 of art. 376 of the Civil Code of Ukraine states that if the land parcel owner (user) objects against recognition of the property right in the real estate for a person that has fulfilled or is fulfilling unauthorized construction of this real estate on his/her land parcel or if this violates the rights of other persons, the real estate shall be subject to demolition by the person that has fulfilled (is fulfilling) unauthorized construction or at its own cost (Tsyvilnyi kodeks Ukrainy, 2003).

A domestic scientist O. Dzera notes that p. 3 of art. 228 of the CC of Ukraine provides for different legal consequences of an invalid transaction. Its content shows that in case of the violation of requirements for the transaction’s compliance with the interests of the state and society, it can be held invalid. Therefore, this norm does not obligate the court to hold that kind of a transaction invalid that gives grounds to attribute it to the category of disputed transactions. If this is not the case, general legal consequences in the form of a bilateral or unilateral restitution envisaged in art. 216 of the CC of Ukraine must be applied (Dzera, 2011; Navalnieva, 2019a; Tsyvilnyi kodeks Ukrainy, 2003).

Let’s consider sanctions in the civil law of Ukraine. The author covers civil sanctions more thoroughly. The modern explanatory dictionary contains the following interpretations of the word “to sanction”: to find something legal, to approve something; (from Latin *sanctio* (*sanctionis*) – an inviolable law); approval; adop-

tion by the supreme authority; influence measures, punishment in case of breach of the law; influence measures imposed by a bank to violators of financial, cash, calculation, and credit discipline (Dubichynskyi, 2014, p. 641). The "Modern legal encyclopedia" defines a sanction as 1) a component of the legal norm which, in case of nonfulfillment, administers measures of state influence, mainly in the form of coercion; 2) statutory procedure for the obligatory approval by a prosecutor (the court) of decisions about taking coercion measures in cases set by the law (Zaichuk, 2010, p. 298).

The author shares the opinions of domestic civil law scholars that the sanction category in jurisprudence is one of the most polysemic. Firstly, a sanction is interpreted as a defined part of the legal norm, which entails regulations related to consequences which must occur in case of breach of a rule set out in the norm's dispositive part. Secondly, a sanction is interpreted as an act of the competent state body which permits (approves, "sanctions") a person to commit a particular action. Thirdly, a sanction is interpreted as those negative property consequences that occur in the case of a person's illegal actions. Fourthly, a sanction is interpreted as one of the types of negative property consequences imposed on a defaulting debtor in case of his/her nonfulfillment or improper fulfillment of the obligation incurred (Navalniva, 2019b, p. 41).

The article needs to analyze the property nature of sanctions in civil law because most sanctions are characterized by such nature. Therefore, according to p. 2 of Art. 625 of the CC of Ukraine "a debtor that delayed to fulfill the monetary obligation shall pay the debt amount given the established rate of inflation for the whole term of delay plus three per cent of annual interest of the delayed sum, unless another interest is established by the agreement or the law" (Tsyvilnyi kodeks Ukrainy, 2003).

Sanctions may entail both negative property consequences and negative personal non-property or organizational consequences. Thus, "if the personal non-property right of a natural person is violated in a newspaper, a book, a film, a TV or radio program, etc. which is going to be released, the court may forbid to release the relative information (p. 1 of art. 278 of the CC of Ukraine). According to para. 2, p. 1 of Art. 110 of the CC of Ukraine, "a legal entity shall be liquidated by the decision of the court on the recognition of the legal entity state registration ineffective due to violations made in the course of its creation, which cannot be removed, as well as in other cases provided by the constituent documents" (Tsyvilnyi kodeks Ukrainy, 2003).

Foreign legal scientific literature provides five definitions of the term "sanction". A sanction is considered as a part of the legal norm, which has a reference to measures of state coercion (influence) related to a violator. A sanction is a state measure applied to a violator of the established norms and rules, forms, and measures of liability specified in legal norms, which have a punitive nature. A sanction is a permit, approval of something by the competent authority. A sanction is a coercive measure designed to ensure imposition and fulfillment of responsibility for an offense. A sanction is an encouragement (Navalniva, 2019b, p. 42).

Some scholars regard sanctions as "a coercive measure intended to achieve the objective and exercise responsibility for an offense coincides with its interpretation as a state measure applied to the violator of established norms and rules". As for encouraging sanctions, it is worth mentioning that their existence is controversial in scientific law literature (Navalniva, 2019b, p. 42).

In terms of characteristics of sanctions as a legal construction in correlation with legal remedies, it is essential to consider a sanction as a legal construction in correlation with legal remedies through which the legislator ensures the effectiveness of the mechanism of legal regulation of civil relations. A Ukrainian scientist of private law M. Sibilov defines "a legal remedy as a complex legal phenomenon, which is based on law and embodies its regulatory effect and, at the same time, is a relevant instrument of legal regulation and a subject's particular action focused on its active use to achieve a specific goal (interest)" (Sibilov, 2014, p. 404).

The author analyzes legal remedies which are characterized by M. Sibilov, who determines seven levels. The first level comprises legal remedies which stipulate a legal status of persons immanent in private law (a legal entity of private law, private-law legal personality of persons). The second level comprises legal remedies which ensure the body of objects of private law. The third level comprises legal remedies which ensure the emergence and functioning of private legal relations (juridical facts of private law, transactions, subjective rights, and obligations). The fourth level comprises legal remedies which ensure the statics of property relations. The fifth level comprises legal remedies which ensure the creation of objects of human creative (intellectual) activity. The sixth level comprises legal remedies which ensure the dynamics of property relations. The seventh level comprises legal remedies which ensure the protection of rights in the field of private law (Sibilov, 2014, p. 408). The article's author holds that the same levels should be applied in civil law.

Civil sanctions may be attributed to legal remedies which ensure the protection of civil rights and interests. Thus, p. 7 of art. 376 of the CC of Ukraine envisages that “in case of essential deviation from the project, which contradicts the public interests or violates the rights of other persons, or essentially violates construction norms and regulations, the court, upon the plaint of a relevant state body or a local government, may oblige the person who has fulfilled or is fulfilling construction to undertake necessary reconstruction. If such reconstruction is impossible or the person who has fulfilled or is fulfilling this construction refuses to conduct reconstruction, this real estate, upon the court decision, shall be subject to demolition at the expense of the person who has fulfilled or is fulfilling construction. The person who has fulfilled or is fulfilling unauthorized construction shall be liable to reimburse expenses related to bringing the land parcel to the previous condition. Summing up the above, it is essential to mark that the application of such sanctions as the demolition of an object of unauthorized construction and reimbursement of expenses related to bringing the land parcel to the previous condition focuses, first of all, on the protection of public interests and private interests of owners of land parcels” (Tsyvilnyi kodeks Ukrainy, 2003).

Thus, following parts 2–4 of art. 352 of the CC of Ukraine “if the owner of the historical and cultural monument does not take measures for its preservation, particularly due to impossibility to create the necessary conditions for this, the court may decide on its buyout on a claim of the state body for protection of the historical and cultural monuments. In case of the urgent need to create conditions for the monument of history and culture preservation, an action for its buyout may be filed without the warning. The bought-out monument of history and culture shall become the property of the state. In this case, it is occurred protected civil legal relations aimed at securing a monument of history and culture through civil remedies, in particular, by applying such a civil sanction as the buyout of the monument of history and culture” (Tsyvilnyi kodeks Ukrainy, 2003).

As a domestic scholar N. Navalnieva has proved, “a polysemic concept of a sanction belongs to any negative consequences prescribed by the legal norm, e. g., prevention measures, precautions, protection measures or responsibilities” (Navalnieva, 2019b, p. 43). A domestic scientist I. Romashchenko rightly notes that

“despite a broad interpretation of negative consequences, not all protection methods result in negative consequences, and not all protection methods result in an unfavorable outcome for offenders”. For example, due to the recognition of the right, an offender may not be subjected to negative consequences. In case of contesting the person’s ownership, his right is protected by its recognition; however, it does not affect the person who does not recognize the right. In this context, one can assert that not all ways of the protection of civil rights are sanctions (Romashchenko, 2016, p. 42–43). In fact, not all ways of the protection of civil rights and interests are civil sanctions.

N. Navalnieva has analyzed the features of legal remedies, which can assist in identifying the features of civil sanctions as legal remedies in the mechanism of legal regulation of civil relations. In N. Navalnieva’s opinion, legal remedies have the following features:

1) they express all general resumptive legal ways of securing the interests of a legal subject, accomplishing desired objectives (the way a social value of the constructs and law in general is manifested);

2) they reflect informative-energy qualities and resources of law that gives them special legal effect focused on eliminating obstacles to meeting interests of the participants in legal relations;

3) they act as the basic working parts (elements) of the effect of law, the mechanism of legal regulation, legal regimes (i. e., a functional part of law);

4) they lead to legal effects, specific results which have a particular degree of the effectiveness of legal regulation;

5) they are guaranteed by the state (Navalnieva, 2019b, p. 44).

4. Conclusions

Sanctions in civil law are negative consequences established by law or contract, which are applied in the case of non-fulfillment (improper fulfillment) of a civil obligation, violation of prohibitions, restrictions, and other circumstances outlined in the law. The state ascertains sanctions through the use of coercion. Sanctions are elements of the mechanism of legal regulation of civil relations. Sanctions have negative effects for a person who has not fulfilled a civil obligation established by law or contract. Civil sanctions are designed to protect civil rights and interests. Sanctions are a legal construction in civil law.

Prospects for further research involve studying the ways of exercising and protecting subjective civil rights.

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САНКЦІЯ ЯК ПРАВОВА КОНСТРУКЦІЯ В ЦИВІЛЬНОМУ ПРАВІ

Анотація. Метою статті є визначення сутності санкції в механізмі правового регулювання цивільних відносин.

Методи дослідження. Роботу виконано на підставі загальнонаукових та спеціальних методів наукового пізнання.

Результати. Досліджено санкції як правову конструкцію у співвідношенні з правовими засобами, що є інструментом правового регулювання певною дією суб'єкта, спрямованою на активне його використання з метою досягнення відповідної цілі. Проаналізовано правовий процес, у якому санкції є основними працюючими елементами дії права, механізму правового регулювання, право-

вих режимів та приводять до юридичних наслідків, конкретних результатів. Констатовано, що категорія «санкції» у правознавстві є однією з найбільш багатозначних, під нею розуміється: а) визначена частина правової норми, у якій передбачені приписи стосовно наслідків, що мають настати в разі недотримання правила, викладеного в диспозитивній частині норм; б) акт компетентного на те державного органу, яким дозволяється (схвалюється, «санкціонується») можливість вчинення певною особою відомої дії; в) ті негативні майнові наслідки, які настають у разі вчинення особою проти-правних дій; г) один із різновидів негативних майнових наслідків, що покладаються на несправного боржника в разі невиконання чи неналежного виконання прийнятого ним на себе зобов'язання.

Висновки. Санкції в цивільному праві – це певні негативні наслідки, встановлені законом або договором, які застосовуються в разі невиконання (неналежного виконання) цивільно-правового обов'язку, порушення заборон, обмежень та в інших випадках, встановлених законом. Санкції забезпечуються державою шляхом застосування примусу. Санкції є елементами механізму правового регулювання цивільних відносин. Санкції призводять до негативних наслідків для особи, яка не виконала цивільний обов'язок, встановлений законом чи договором. Санкції в цивільному праві спрямовані на захист цивільних прав та інтересів. Санкції є правовою конструкцією в цивільному праві.

Ключові слова: елементи механізму правового регулювання цивільних відносин, захист цивільних прав, правовий засіб, цивільно-правова відповідальність.

The article was submitted 08.12.2021

The article was revised 29.12.2021

The article was accepted 19.01.2022