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On the Principles of Sanctions of Criminal Law Norms in the Context of the Russian Invasion of Ukraine: Clarification of Definitions

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Abstract

The aim of the work was to determine the peculiarities of the principles of formation of sanctions of criminal law norms in the conditions of the Russian invasion of Ukraine. The method of analysis and research was used to interpret the works of legal scientists and determine the main theoretical approaches to the application of sanctions in international law on the example of Russia's violation of international law against Ukraine. For the detailed study of the subject the method of analysis and synthesis and descriptive method was used, as well as the method of generalization to determine the results of the research. The scientific novelty consists in the fact that the study clarifies the concept of sanctioning of criminal law norms as one of the original factors of international conflict resolution. The practical significance of the study

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consists in identifying the action of sanctions in conditions of war by Russia against Ukraine. It is concluded that, the conducted study is the basis for specifying the concept of the principles of sanctions in the international legal sphere, which is also the result of the analysis of legal works.

Keywords: globalization; criminal liability; international conflicts; Russian aggression; Russian-Ukrainian war.

Sobre los Principios de Sanción de las Normas de Derecho Penal en el Contexto de la Invasión Rusa de Ucrania: Aclaración de las definiciones

Resumen

El objetivo del trabajo fue determinar las peculiaridades de los principios de formación de las sanciones de las normas de derecho penal en las condiciones de la invasión rusa de Ucrania. Se ha utilizado el método de análisis e investigación para interpretar los trabajos de los científicos jurídicos y determinar los principales enfoques teóricos sobre la aplicación de las sanciones en el derecho internacional a partir del ejemplo de la violación del derecho internacional por parte de Rusia contra Ucrania. Para el estudio detallado del tema se utilizó el método de análisis y síntesis y el método descriptivo, así como el método de generalización para determinar los resultados de la investigación. La novedad científica consiste en que el estudio aclara el concepto de sanción de las normas de derecho penal como uno de los factores originales de la resolución de conflictos internacionales. La importancia práctica del estudio consiste en identificar la acción de las sanciones en condiciones de guerra por parte de Rusia contra Ucrania. Se concluye que, el estudio realizado es la base para especificar el concepto de los principios de las sanciones en el ámbito jurídico internacional, que además es el resultado del análisis de los trabajos jurídicos.

Palabras clave: globalización; responsabilidad penal; conflictos internacionales; agresión rusa; guerra ruso-ucraniana.

Introduction

Innovative society is being formed as postmodern development, combining the achievements of information technology and aspects of civilizational development. Various processes encompass social development and stimulate innovative achievements that could be the beginning of a new civilizational era (Kay and Goldspink, 2016).

Today's problems are global, hence the need for close cooperation and integration. Global processes cover different areas of life (Floridi *et al.*, 2018). Thus, in the face of the challenges of today's problems, communication between people is changing, in particular the transformation from the physical environment to the virtual world. New notions of human presence in space are being formed, and the concept of interaction, feedback, authenticity, the experience of existence, and communication is emerging.

That is, in the conditions of the modern world there is a need for a new interpretation of human activity in social space, established in the context of rethinking. Man, as part of his thinking, creates the conditions for improving his worldview and improves his skills in different areas to make life more perfect.

Thus, in the context of creating a "perfect world" in the new worldview, it is necessary to understand that the highest value is a man and his life. In the process of acquiring a new experience, man's idea of his limitless possibilities is formed, the realization that he "can do anything," depending on his thinking and worldview. To determine the essence of the new way of thinking, one should form a certain idea of the space in which communication is created as a manifestation of interaction, as a definition of normative and legal values.

Today's Ukraine is amid full-blown anger on the part of the Russian country. The war has no political or economic justification. Ukraine has begun the process of law reform in the context of European integration, that is, it has determined the task of bringing the legislation of the Ukrainian state to European norms.

Therefore, there is a need to streamline the new norms of criminal law policy. This trend is relevant to the scientific exploration of the legal norms of confrontation with a crime in the world meaning, so there is a question of researching the problem of determining the international principles of sanctions as a factor in the implementation of criminal law regulation in the process of Russian-Ukrainian war.

The main problem of the research is to determine the appropriate principle of punishment of criminals, which would prevent further atrocity and could stop the spread of terror. The sanctions specified in the Criminal Code (Criminal Code of Ukraine) are the main regulator of the measure of punishment for the crime, approved by a court decision. Sanctions determine the degree of responsibility for violating the law.

Assigning the necessary and sufficient punishment to the perpetrators of the crime is the key to achieving the goals set for punishment (Noonan, 2017).

Determination of the principle of sanctions in the context of the Russian-Ukrainian war is especially important because the Russian invasion is an unlawful, groundless, gratuitous crime against humanity, a violation of international legal norms and therefore there is a need to determine the responsibility for such actions both in the context of international law and the relevant Ukrainian legislation (Koniushenko *et al.*, 2022).

Scientific works highlight the procedure of elimination of deficiencies in the formation of sanctions of the Criminal Code as an important stage in the formation of criminal legislation in the process of European integration. The relevance of the research is determined by the need to establish criminal law sanctions as an important tool to influence the prevention of the spread of terrorism in society (Criminal Code Of Ukraine, 2007).

It is Russia's invasion of Ukraine that demonstrates the essence of sanctions that can actually prevent the spread of criminal activity.

The problems of the formation of normative and legislative norms in world history have been of interest to the study of many scholars (Lappo *et al.*, 2022).

Researchers have studied criminal law and the principles of sanctions as one of the most important factors in influencing criminal activity. Thus, Denisova (2004) analyzed sanctions as a factor of punishment for the perpetrator. So, based on the analysis of theoretical and methodological approaches, the main aspects of the concept of "sanctions" as a criminal law aspect of the modern representation of the political world are defined.

The article aims to investigate "sanctions" in the context of practical political meaning.

The goal defined the corresponding tasks:

1. to analyze the theoretical and methodological foundations of the implementation of sanctions as a factor of confrontation in war;
2. to find the peculiarities and reasons for the formation of normative-legal principles of the implementation of sanctions in the implementation of criminal responsibility during the war;
3. examine the factors of the formation of sanctions.

Studies of sanctions as the basis of criminal-legal responsibility are presented in many scientific works and publications. Various theoretical and methodological approaches present the essence of the problem under study in legal, socio-political, and other aspects (Kurilovská and Kordík, 2018).

Scientific works on sanctions illuminate the problematic of it in the world sense. Legal Science in Action is a conceptualization of normative-

legal foundations in the scientific discourse of Abschnitt (1916), which has been reprinted three times and translated into various languages. The corresponding work illuminates sanctions as a theory and practice of action, which is illustrated with relevant images revealing the content of historical facts. There are also theoretical generalizations in the work as a basis for defining the role of sanctions in modern warfare.

Interesting and unconventional in the context of the methodological approach of the study are the works of Galasso *et al.* (2016), Gartner (2018), and others, highlighting the peculiarity of sanctions as the essence of criminal law responsibility.

1. Materials and methods

Theoretical and methodological approaches of the scientists were analyzed for the purpose of effective research. The method of analysis and synthesis was used in the study of performative practices of Ukrainian and Russian content. In particular, the main manifestations of performance-based practices were analyzed and, according to the synthetic methods, the main features of the concepts on the research topic in the conditions of modern information society were determined.

In the process of research philosophical and general scientific approaches, principles and methods were used, which became the basis for the analysis of the concept of sanctions in the context of various aspects. The principle of transdisciplinarity reveals the content of the concept of sanctions as a socio-cultural paradox.

With the help of philosophical methods, which became the ontological basis of scientific work, in particular dialectics, we investigated sanctions as a manifestation of the postmodern politicized and globalized worldview of humanity in the conditions of modern information society and in the context of the virtual environment. The historical method is the basis for determining the factors of the formation of normative acts. The analytical method becomes the basis for determining the structural components of different concepts that characterize sanctions as a conceptual manifestation of the modern artistic and social approach based on practices. The method of generalization is applied to determine the important conceptual provisions of the study.

2. Results

An important consideration in this article is the procedural nature of this concept. It makes it possible to go beyond the political discourse itself.

In some cases, when the legislator changes the upper limits of sanctions, he thereby changes the category of the crime, which, accordingly, entails a change in a number of criminal law consequences, since the category of the crime affects many institutions of criminal law, such as parole, the application of grounds for dismissal on criminal responsibility, the limitation period for criminal liability (Brown *et al.*, 2017).

The presence of significant gaps between the lower and upper limits of penalties enshrined in the sanctions of the articles of the special part indicates that the legislator has difficulty assessing the public danger of the act, the signs of which are reflected in the disposition of the corresponding article of the criminal law.

This situation is due to the significance of the range of lower and upper limits of criminal punishment in the form of imprisonment in the sanctions of the articles of the Special Part of the Criminal Code, which gives rise to a fairly wide discretion of judges. Obviously, subsequently, it will not contribute to the formation of uniform judicial practice. because of the war are violated such basic principles of criminal law as legality, equality of citizens before the law, and justice. It is unacceptable when a person is sentenced to significantly different terms of punishment for committing the same in nature and consequences, which is clearly confirmed by the materials of the criminal case in which the crime is committed.

In the Russian invasion of Ukraine, a number of sanctions were applied. In particular, since the beginning of the war, economic sanctions have been imposed in 2014, which should have stopped the aggression. Researchers study the impact of sanctions as a warning of overt aggressive action on the part of the perpetrator. Yes, when analyzing the effect of sanctions, it can be argued that it is difficult to stop the aggressor in such circumstances because it does not act according to logic. The aggressor does not stop, because he decided to commit a crime (Gertler *et al.*, 2016).

Nevertheless, sanctions economically reduce the capacity of the Russian state, and, in the end, they may hinder the advancement of Russian troops. After all, sanctions reduce revenues, making it impossible to pay for the war. Thus, when examining the authors' conclusions, it can be argued that sanctions are an effective way of inhibiting aggression, but over a period of time. When examining the Russian invasion, it can be argued that the crime is committed, but the sanctions are effective for the next few months.

When assessing sanctions as criminal responsibility, one can be more specific about the impact of sanctions on responsibility. Analysis of publications shows that 60% of judges are positive about the fact that the legislator removed the lower limits of sanctions because this expands judicial discretion and gives more choice to the judge when imposing punishment, implementing his principle of individualization; 15% of

judges support this idea because these changes reflect the main direction of criminal law policy - humanization of the criminal law. Only a third of judges (30%) have a negative attitude towards this innovation because it causes various difficulties in the application of the new criminal law.

Court practice shows leaves the possibility for the judge to set the punishment for a particular person, taking into account the specific circumstances of the case, guided by legal conscience. A survey of judges showed that 86% of them are guided by inner conviction in any case, and more than 60% take judicial practice into account (Oswald, 2018).

Analysis of criminal sanctions enshrined in the legislation of foreign states shows an ambiguous approach to their construction, due to the belonging of the state to a particular criminal legal family (Troshani *et al.*, 2018).

In other words, the level of differentiation of criminal responsibility through sanctions in the legislation of different countries varies, which is associated with the peculiarities of the formation and development of their criminal legislation.

In the criminal legislation of some countries, there is a maximum differentiation of criminal responsibility, with limited judicial discretion (Italy, France); in the legislation of other countries, the differentiation is minimal, which contributes to the determination of trends related to sanctions: First, the formation of sanctions is determined by the types of punishments enshrined in the Criminal Code.

As already noted, some of the penalties specified in the law are applied very rarely, some are not applied at all. Hence there is confusion about the types of punishments included in the sanction and their essence; Secondly, the undeveloped mechanism of construction of sanctions, and their inconsistency with each other both at the level of criminal law norms and at the level of articles of the Criminal Code; third, there is excessive variability in the sanctions of certain criminal law norms, and, on the contrary, in a number of others, there is a lack of alternatives.

In the legal literature, there are proposals aimed at solving these problems. Even before the adoption of the Criminal Code, a mechanism for the construction of criminal law sanctions was developed. Jurists investigated sanctions and argued that crimes of the same type have a single nature of the public danger. Therefore, first, it is necessary to assess the typical features for a crime, which cannot exist separately and affect the content of the sanction. This requires a unified assessment of all the typical features inherent in a particular type of crime, which is achieved by comparing them to each other. The resulting evaluation is an absolute value and determines a certain sanction.

Thus, it follows that one of the most significant features of the corpus delicti of a crime, enshrined in the disposition of a criminal-law norm, depends entirely on the absolute value. Such a sign is determined by ranking the signs of one type of a crime (for example, infliction of harm to health - its degree, etc.). The main feature is the typical type of punishment, which is established based on the average ranking of the penalty measure as the median of the sanction.

In order to determine the regulation of the sanction, it is necessary to determine the essence of the sanction. The sanction is a certain part of the legal norm, which in case of its violation implies the application of state influence in the form of coercion.

Thus, Melnyk (2022) believes that the sanction is a part of the norm of the Special Part of the Criminal Code, which characterizes the characteristics of responsibility for the crime specified in the disposition. Aladekomo (2022) defines the sanction as an indication of the negative consequences arising from the violation of legal norms.

Chachko and Linos (2022) argue that a sanction is a certain direction of a rule that determines the degree of state coercion.

The sanction is important in determining the punishment for the crimes caused by the Russian invasion of Ukraine, because it makes the punishment individual, taking into account the general norms. That is, the sanction allows you to determine the measure of punishment in the process of its assignment. In war, it is necessary to determine the severity of the crime, the category of the crime, the person who committed the crime, and the circumstances that change the measure of punishment.

Also in war, international organizations must be enlisted to determine the measure of the crime. That is, it is important to determine the procedure for sanctioning punishment. The sanction helps the court to determine the measure of punishment, taking into account different circumstances. The legislator imposes punishment according to the specific circumstances and takes into account the necessary measure of punishment. The punishment is individualized because it takes into account all of the circumstances that have occurred virtually.

In some circumstances, in particular, as with war, that is, under special circumstances, the sanctions provide for additional penalties that meet the additional circumstances. Sanctions are imposed in accordance with the principles of humanity and moral standards. They must be fair in the context of criminal responsibility under international law.

3. Discussion

Legal perception of sanctions is relevant at the time of the invasion of Ukraine by Russian troops. Sanctions are one of the most relevant varieties of legal responsibility, most accurately representing the values of modern society. This statement may or may not be true. Let us try to understand the relevance of the principle of sanctions as a type of legal responsibility in the conditions of modern military conflict, as well as define the meaning of law in the sociological and political aspects.

Modern socio-humanitarian studies are reflected in the context of various scientific and sociopolitical approaches. Thus, sanctions are seen as a form or type of criminal-legal responsibility as a socio-cultural phenomenon. Many researchers interpret a sanction as a political action that forces certain actions, so the sanction is seen as a political decision. The main purpose of a sanction is to bring the offender to justice. Accordingly, there must be a human reaction, that is, social interaction takes place. Hence, a sanction is a manifestation of the social aspect.

Take into account that every person creates his or her own idea of the world, his or her own visual picture of the world, which is a set of general reflections of personal worldview perception of the world, formed in the process of development of the historical and cultural epoch. Sanction acquires new features and forms and expands the range of its action in the conditions of the Russian invasion of Ukraine.

In the modern world, the sanction is an ambiguous political-legal phenomenon, because it is difficult to define its political or social meaning. Such aspects of sanctions are also determined by the existence of different attitudes and principles, a variety of methodological attitudes and principles.

The sanction reflects political, social, and artistic actions in the context of the modern military challenge, which is the main substantive phenomenon of criminal-legal responsibility. The political and social aspect is most important in the formation of the concept of presence in space, which is a reflection of responsibility.

In general, the proposals on the consideration of sanctions in the work are interesting for further scientific research. However, due to the presence of certain shortcomings, they cannot be fully supported. Speaking about the signs of a crime, it is impossible to single out the main one, since all the signs in the composition of a crime form a system reflecting its public danger.

At the same time, they in the aggregate are the basis of criminal responsibility, which in accordance with the Law is the commission of an act that contains all the features of a crime. The legislator, defining the basis of criminal liability, does not single out any of the signs of the most significant.

Chachko and Linos (2022) believe that initially the sanctions should be set by the logical rule of matching the upper and lower limits of one category of crime. The author proposes the introduction of two more categories of crimes - minor and exceptional gravity. According to this, crimes of low gravity should provide for custodial penalties in the sanctions. For crimes of minor gravity, sanctions should range from 2 months to 2 years of imprisonment.

In general, while agreeing with Gartner (2018), we note, however, the excessive categorization of crimes. There is no need, in our opinion, to single out a category of exceptional gravity. Punishment through life imprisonment and the death penalty can be provided for especially grave crimes. Crimes of minor gravity, when combined with crimes of minor gravity, should be classified as criminal.

Developing this position, Grodska (2017) notes that “a private” means of reducing the entropy of the legal complex could be a principled transition from the preferential use of an alternative to certain sanctions in the construction of legal norms to the preferential use of alternative absolutely certain sanctions. Such a solution is inappropriate for some authors because this, in their view, could seriously limit the freedom of judicial discretion and the possibility for a thorough differentiation of the responsibility. This disadvantage, according to the researchers, can be largely compensated by means of legal techniques.

Other scholars are less categorical, they propose a return to perfectly defined sanctions only for some varieties of a criminal act, for example for acts committed in the field of organized crime. The position of Kay, who notes that as part of the strengthening of the fight against corruption and organized crime, the issue of this type of sanction becomes relevant.

In his opinion, one of the main lines of criminal policy in case of subsequent reform of the criminal law in the part concerning sanctions of criminal law norms should be the reduction of the number of alternative sanctions. Certain sanctions through imprisonment should become more widespread, which is due to the socio-psychological perception of this type of punishment by the population.

Continuing the scholarly discussion, we should turn to the view of Potapchuk (2020), who proposes the construction of a step-by-step system of sentencing. He believes that it is possible to establish an absolutely certain punishment for this type of crime, abstracted from the presence of mitigating and aggravating circumstances. Thus, punishment is formed, which is calculated as an arithmetic mean according to the minimum and maximum limits of the sanction.

Further steps and decreasing the punishment are determined. To define the step of increasing the punishment it is necessary to divide the range

between the received average and the maximum limit of the sanction by the number of all the aggravating circumstances of committing a crime. The step of decreasing the sanction is calculated in the same way, the distribution is made by the number of all possible mitigating circumstances.

The number of sanctions multiplied by the number of burdensome circumstances proven in the case. The concrete punishment to the person found guilty of committing a crime, in particular during a military invasion by the Russian army, is appointed by means of the sum of the received average punishment and the total amount of increase of the punishment and the difference of the total amount of its decrease.

In this case, the basis of the calculation is the sanctions of the current criminal law, which require revision. However, in the assignment of punishment, it is necessary to take into account also the personality of the guilty.

Proposals related to the search for a mathematical correlation of crimes and punishments, with a full formalization of the process of sentencing, require further elaboration and coordination with international legislation.

In the process of individualization of punishment judicial discretion cannot be replaced by anything. At the same time, some formalization by the legislator of such discretion would lead to greater stability of judicial practice, its uniformity, strengthening of the rule of law, and maximum realization of the principle of justice (Potapchuk *et al.*, 2020). Summarizing the above views, it should be noted that a balance between judicial discretion and the formalization of the process of sentencing should be observed in the construction of sanctions. The sanction, on the one hand, should ensure the principle of diversity of criminal responsibility, and on the other - its individualization.

Conclusions

Rethinking the very content of the concept of “right,” the presence of obligatory characteristics that distinguish one artistic branch from another (for example, language), make the principle of punishment one of the varieties of modern politics and at once a socially significant act. In this way, the boundaries separating the political and legal spheres are overcome, making it possible to implement the principle of sanction. At the same time, sanctions, being universal and cross-species in nature, represent a kind of crossroads of interdisciplinary studies: jurisprudential, political, psychological, and sociological.

The correlation of law enforcement by the framework of the law with the freedom of choice of measures of criminal-legal nature should be optimal,

corresponding to the principles of legality, justice, and equality of citizens before the law. The rules of construction of sanctions developed in the science of criminal law, which exclude the difference between the minimum and maximum values of a certain type of punishment, should be taken into account by the legislator when reforming the criminal law. In joining this position, we note that it is necessary to reduce such a significant difference in sanctions, including those that enshrine criminal responsibility for the commission of grave and especially grave crimes.

To summarize, we emphasize that criminal-legal sanctions should reflect the legislative assessment of the public danger of unlawful action in the context of military invasion. However, as our analysis shows, in the current legislation sanctions do not always reflect the nature and degree of public danger of deeds, in connection with which it is necessary to thoroughly review them, since our state has not had in practice war crimes, so it is difficult to evaluate the effectiveness of sanctions.

Improvement of criminal-legal regulation with individualization of punishment implies consistent reforming of sanctions of criminal-legal norms based on the principle of inevitability of criminal liability taking into account the degree of public danger of a crime and the harm caused.

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