

HUMAN CONDUCT AND LEGAL SANCTION

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Abstract:

Several dimensions are specific to human activity, but the most important is the normative dimension, because it imposes on individuals a certain model of behavior (ethical, religious, political, etc.) in relation to certain social values. Law represents the normative framework of social life that includes a set of rules of conduct, traditions, customs and social practices experienced over time by people and which have acquired mandatory and coercive characteristics in the normative system of society. Non-compliance with social norms and values determines a society's reaction embodied in a series of sanctions based on the coercion and social pressure that the community or society exerts against non-conformist or deviant behaviour. Legal sanctions are represented by punishments provided by legal provisions and applied through the use of coercive force by specialized agents of the state.

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Social life includes the phenomena and relationships that occur between people at any moment of their existence. The relationships between the individuals of a community are characterized by interdependencies and interactions, and the actions and relationships of the individuals have a multitude of dimensions. The most important of these is the normative dimension. [1] The conduct of an individual represents "a sequence of programmatic-active or passive attitudes, as executions of operations or programs and as expectations or abstentions in other circumstances." [2] As Prof. D. Banciu specifies, defining and evaluating the types of actions and behavior in a society, law and legal norms have an imperative character, because they establish what individuals engaged in certain social actions must do, what they can do or what not to do. [3]

The Latin adage "ubi societas, ibi jus" shows us that law cannot exist outside society and no human society can function normally in the absence of law (ubi jus, ibi societas). Therefore, in any society there is a "more or less formalized, articulated and hierarchical corpus of norms, rules, obligations and social practices that normatively regulate individual and social actions, relationships and behaviours". [4]

Analyzing the concept of law as a social and normative phenomenon, we can find that in reality law is more appropriate than its rules and sources, including two types of phenomena: [5]

- phenomena of power or authority, which are in the sphere of public, legal and legitimate authority in a society, which include a diverse palette of rules and norms (orders, decrees, decisions, laws and administrative and jurisdictional decisions);
- phenomena under power or authority, which are in the sphere of the governed, including the behaviors, behaviors and reactions of individuals and social groups (facts and behaviors of submission, conformity or disobedience and rejection) [6]

Law therefore represents the normative character of social life, which includes a set of values, norms, traditions, customs and social practices advanced and experienced over time through systematization and codification in the normative system of society. [7]

Prof. Nicolae Popa shows us that all types of human activity are subject to regulation, as they cannot be carried out unorganized and, at the same time, these rules regulate people's conduct. [8]

Social norms contain rules that address people's conduct, describing and detailing the ways in which values must be embodied in legitimate behaviors in society. [9]

Any norm also implies both acceptance and tolerance, i.e. its observance by people. If the acceptance takes into account that the elaboration of the norm was done through a joint action of the social group, its bearing is imposed as "an external constraint, since its content is rejected by some elements of the collectivity" (the elaborated norm does not correspond to any value recognized also social groups or social classes). [10]

According to another opinion, it is considered that the members of a social group accept and support the norms and rules of conduct for two reasons: [11]

- because they are appropriated and internalized in the socialization process of individuals wanting to conform to them, a feeling of guilt is created for them when they do not respect or violate them

- the members of a group expect from each other a certain behavior in accordance with the norms of the group and when they deviate from the behavior the others show their disagreement in different ways. Of course, these expressions of approval or disapproval, shown by the social group towards a certain type of individual behavior, also constitute the system of social sanctions. [12]

This is that failure to respect social norms and values leads to a reaction from the social environment, a reaction embodied in a series of diffuse or precise sanctions and based on the constraint and social pressure that the group, community or society exerts against deviant or non-conformist behaviors.

We see that for M. Ralea and T. Hariton, the sanction represents an act by which social opinion or an authorized forum takes an attitude towards the activity of a person or a group of persons and pronounces on its social value. [13] "Whenever a sanction emanates from spontaneous social opinion (from the world) it has the character of diffuse opinion", of opinion or moral sanction whenever the sanction emanates from an organized public opinion and is applied through a defined organ. It has the character of an organized sanction, the typical case of legal legal sanctions. [14]

Legal sanctions are represented by the system of punishments provided by the legal provisions applied through the use of coercive force by specialized agents of the state (police, justice, administration, etc.). As R. Maunier [15] shows, legal sanctions are the most effective, being made up of a system of fines, contraventions, civil compensation, confiscation of assets, deprivation of liberty of persons with illegitimate behaviors or even their exile, deportation or expulsion.

Sanctions reach a high degree of precision, regularity and systematization in the social and normative order of various societies. That is why Durkheim sees in these sanctions the main means of achieving social control and coercion. [16]

We must specify that the legal sanctions evolve depending on the type of solidarity and the degree of social organization. [17] Legal sanctions must be applied only according to the normative acts in force, within the limits they provide and directly

proportional to the crime committed. C. Beccaria specified, in the Theory of Punishment: "only laws can determine the punishments for crimes [...]; a punishment that exceeds the limit set by law means a just punishment plus another punishment". [18]

The specialized literature attributes the following characteristics to the legal sanction:

- the repressive-afflicting character, in the sense that the sanction is a form of social retribution, of retaliation for the antisocial act committed;
- legal character. Sanctions are applied only according to the normative acts in force, within the limits provided by them and directly proportional to the offense committed;
- the preventive character, which represents a feature of the legal sanction, because the very regulation of the sanction in the legal norm, aims at a social prevention;
- the educational character of the sanction refers to the social recovery of the perpetrator. As M. Djuvara said, "moral correction is obtained through the very reaction of one's own conscience: the goal of the punishment is then achieved." [19] Moreover, as specified in the criminal law, the punishment is a coercive measure and a means of re-educating the convicted.
- the reparative character, which highlights the fact that, by applying the sanction, the aim is to restore the violated values.

Legal sanction is an attribute of the state and fulfills the following functions:

- the sanctioning function, of coercion, assumes that any sanction uses coercion because no one is willing to carry out the sanction willingly.
- the educational-preventive function. The legal sanction fulfills both an educational function and the prevention of some acts that constitute violations of the normative legal commandments. By applying and executing the punishment, the aim is not to cause physical suffering or humiliate the convicted person, but to correct him, to prevent the commission of other criminal acts. [20]
- the function of exemplification and intimidation - is related to the fact that the application of the sanction determines a positive influence on the members of a community prone to commit acts that contradict the rules of the law. A sanction is given both as an example and as an intimidation. [21]

- the legal sanction also fulfills a reparative function, in the sense that once applied, the aim is to repair the damage caused by the violation of the law, as well as to restore the social values violated by the commission of the deed that does not comply with the law;
- the elimination function. As the criminal legal doctrine specifies, the punishment ensures the definitive or temporary isolation of the offender or even his removal from social life.

[22]

The purpose of the legal sanction is closely related to its evolution, and its role is to ensure the effectiveness of the legal order. A certain social discipline is ensured by the sanction. The sanction generally guarantees the observance of the legal order in society.

Behind the legal system there is always a system of guarantees that we call sanctions. Punishment, as a sanction, constitutes a means of social defense with a curative character, which aims at the general prevention and healing of the offender; against people who commit crimes, society is obliged to react by virtue of the right to prosecute the perpetrator. [23]

In order to achieve general prevention, the certainty of repression and not its severity is sufficient. A doctrine that emerged at the beginning of the 20th century from the concern to promote a criminal policy able to meet the demands of an effective fight against the criminal phenomenon, was called the "doctrine of social defense". [24]

Today, under the conditions in which criminological research finds a worrying increase in the phenomenon of crime, of the feeling of insecurity that has appeared and developed in different countries, a new doctrine regarding the repression of criminals is taking shape, called "contemporary neoclassical doctrine". [25]

Sanctions make law not just a binding moral order, but an effective social order. Legal sanctions contribute to smoothing out possible elements of conflict, to guaranteeing the respect of rights and obligations, by mutually limiting the actions and conduct of individuals and to repairing the social damage due to illegal actions, by sanctioning the guilty. Sanctions allow the European Union to respond to challenges and political developments that are contrary to its objectives and values. The sanctions applied by the European Union may target: terrorism; nuclear proliferation activities; violations of human rights and freedoms; the deliberate destabilization of a sovereign country; the annexation of a foreign territory; cyber attacks etc.

Sanctions apply to both individuals and legal entities. Any legal sanction tends to ensure the effectiveness of the legal order and when it is applied in a particular case, the sanction aims, above all, at the general interest. The legal sanction, through its complexity, represents a phenomenon that has preoccupied the most enlightened minds of all times and various scientific studies have been carried out. All those who studied the issue of law, Socrates, Plato, Aristotle, Cicero, Hobbes, Locke, Kant, Hegel, etc., directly or indirectly touched on the issue of sanction in law. In modern societies, the association of legal sanction with the idea of evil, of aggression, is limited because society's reactions can be not only negative but also positive. In this sense, Prof. Nicolae Popa highlights "in both situations, but especially in their positive form, sanctions that are based on a harmonized system of values and assessment criteria constitute a strong element of social control." [26]

As Hugo Grotius showed, the right of society to punish those who violate the rules of conduct, disregarding them, is a manifestation of reason and must remain closed within the boundaries of justice and humanity. [27]

Conclusions

1. The right has its origin "in sanctions" and at the time of its birth it represented a collection of prohibitive sanctioning rules that aimed, in principle, to create the sensation of fear.
2. The law enforcement process cannot be separated from the idea of sanction, punishment, liability, because liability and sanction are, were and will remain genuine instruments for the realization of the law.
3. The law is intended to regulate, through its norms, human conduct, the social relations that arise between individuals, members of a community, of a society.
4. Legal norms and sanctions represent the main way by which the public authority protects and organizes, through legitimate coercion, the living conditions of society.

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