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POSITIVE SANCTIONS IN THE LEGAL SYSTEM OF THE RUSSIAN FEDERATION

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Positive sanctions in the legal system of the Russian Federation have been considered for a long time. But even today it is an urgent issue, because there is no common opinion on this legal phenomenon. In the legal science there is no clear definition of a "positive sanction", so many scientists are considering this issue.

In general, the sanction is thought to be a negative consequence in case of violation of the disposition. What to do with a positive sanction? Can it be a part of the legal framework? Lawyers did not come to a common opinion. Someone believes that positive sanctions are a special component of the legal structure. Someone is of the opinion that a positive sanction should not be considered within the legal system of the Russian Federation. The relevance of the problem of "positive sanctions" also lies in the fact that when in the theory of state and law it comes to sanctions, most of them per-

ceive them in a negative way, that is, as negative consequences for a person, which he must endure as a result of his unlawful behavior. But few people remember the positive meaning of the concept "sanction", which consists in the fact that in the case of conscientious implementation of legal regulations of the subject of legal relations can expect a certain reward from the subjects of law enforcement.

Positive sanctions provide, above all, legal incentives for well-deserved legitimate behavior. Many hold the opinion that it is important to use the "whip" and "gingerbread" in the legal system, where the "whip" is punishment for illegal acts, but the "carrot" of encouragement for the enforcement of legal regulations. You cannot just punish people; it will not bring the expected result. Psychologists argue that the human subconscious will deny the rule of law if it knows that this is followed only by punishment. Therefore, it is necessary to introduce a system of incentives so that a person is not intimidated, but consciously observes laws and other regulatory legal acts.

The topic of positive sanctions is discussed by many scientists, because this is an ambiguous question. Some scholars believe that in a democratic state, positive sanctions should be an obligatory element, because the legal consciousness of citizens depends on this. And if we want to ensure that citizens

of our country know and voluntarily comply with the legislation of the Russian Federation, then one should not allow that only negative aspects of legal norms are postponed in their minds.

The topic of positive sanctions is very interesting because of its ambiguity. There are many opinions of scientists who contradict each other or exist in parallel. There is no single concept of the development of this legal phenomenon. There is no clear definition of the concept of "positive sanctions". But nevertheless, one cannot deny that positive sanctions are encountered in many spheres of life of modern man.

Therefore, consideration of the issue of "positive sanctions" in the legal system of the Russian Federation is of great interest for me. It is challenging to try to study a question that has not yet been given a clear answer, for example, L.S. Mamut says, "The sanction is not only punishment. It is advisable to interpret it as any practical reaction of people to certain facts, aimed either at stimulating, encouraging desired, approved behavior (positive sanction), or at suppressing, eliminating condemned, undesirable actions (negative sanctions)". [7] But N.S. Malein criticizes the idea of "positive sanctions". He writes: "There is as yet no clear and unambiguous definition of positive responsibility, and the existing definitions allow the substitution of terms and the combination of different categories. The declaration by the responsibility of the obligation to perform the actions (duty) prescribed by law leads, on the one hand, to the doubling of the terminology: the same phenomenon is simultaneously called responsibility and responsibility; on the other hand, it introduces ambiguity in the terminology: responsibility is both the duty itself and the consequence of its non-performance, at the same time, two qualitatively different phenomena are allowed to mix." [3]

This is the problematic issue of my topic chosen. Namely, there is no clear definition of "positive sanctions", it is unclear the position of positive sanctions in the legal system of Russia, there is no single conclusion about this legal phenomenon. We will have to deal with these problems.

The Russian legal system lags far behind the foreign ones. This is due to the fact that our country had difficult periods. In the USSR, many aspects of the legal system were not considered, because there were both totalitarian and authoritarian regimes that did not intend to improve legislation and raise the legal culture of citizens. The foreign legal system has long begun to consider positive sanctions as a method of regulating legal relations. Thus, for example, C. Beccaria in the 18th century considered rewarding positive actions from the point of view of morality and law as a panacea for crimes. [8] That in our country this moment occurred in the eighties of the last century. Significant difference in time, is not it? But despite this lag, our country is determined to develop a democratic regime. After all, positive sanctions are an inseparable part of democracy, as this leads to a conscious legitimate behavior of citizens.

Let's try to define positive sanctions, so that consideration of this issue would be more accurate. Positive sanctions are approval, praise, recognition, encouragement, glory, honor, by which others reward those who act within the framework of accepted norms in society. It encourages not only outstanding actions of people, but also a conscientious attitude to professional duties, many years of irreproachable work and initiative, as a result of which the organization has

made a profit, rendering assistance to those who need it. [6] There are incentives in every kind of activity. It follows that positive sanctions can be divided into formal and informal ones. And if everything is more or less clear with informal ones, then when considering formal positive sanctions there are many questions.

Informal control is exercised by colleagues, family members, relatives and friends. In order to earn informal incentive sanctions there are no clear requirements. Someone gets encouragement for cleaning in the room or getting good grades. Someone deserves praise from colleagues for pouring flowers in the office. Informal encouragement occurs much more often than formal encouragement. And it is expressed in various forms, for example, smiles, handshakes, compliments, praise, applause, public appreciation. Informal

encouragement is not enshrined in legal acts, so consideration of this issue does not present any difficulties. Informal positive sanctions are a sociological, social and moral-moral issue.

Formal positive sanctions, or as they are called incentives, differ from informal ones in that it is public approval of actions by official organizations or higher officials, for example, the government, the president, and so on. Unlike informal ones, there is a clear procedure for obtaining formal positive sanctions. Usually, it is determined by the legislation of the Russian Federation or by the charter of a certain organization. In what way is formal encouragement expressed? As a rule, this is the delivery of government awards, state prizes and scholarships, academic degrees and titles, the establishment of monuments and the delivery of certificates of honor. Formal positive sanctions are found in many regulatory legal acts, but not all of them are vividly expressed. Therefore, legally competent people should be engaged in finding and explaining them.

Formal positive sanctions are considered as leverage, which stimulates and approves due behavior of subjects. The existence of incentive sanctions is justified by the task of law, which consists both in deterring offenses, in punishing the perpetrators, in stimulating legitimate behavior, in encouraging persons acting in the public interest. [3]

In our opinion, positive sanctions are found in almost all branches of law. Earlier it was said that the legal system of Russia is on the path of improvement after a long period. Therefore, modern scientists pay special attention to positive sanctions. There is their further development or "introduction" of this or that branch of law. This is due to the fact that it is necessary to raise the cultural level of citizens of our country. Certainly, it is not easy to do this, as Russians have legal nihilism developed. And in the fight against such a problem, the method of encouragement is actively used, that is, we depart from the fact that people need to be kept in awe in order to avoid illegal acts. And slowly and correctly we develop methods of encouragement.

Labor relationships are most common in everyday life. It is simply necessary that positive sanctions be introduced in this sphere of life. And they are there. For example, article 153 of the Labor Code of the Russian Federation specifies that the employer must pay employees for work performed on a day off, non-working day or a holiday, at least double the amount. [10] That is, an employee who does work on his day off or on a holiday should receive encouragement for this, because instead of being on vacation, he performs the assignment of his employer. It is used not "whip" (punishment), but "carrot" (encouragement), people do not intimidate, but give them an incentive. But this is ideal. In practice, such a solution to the problem does not always happen. Many employers try to save and intimidate their subordinates by dismissal, deprivation of the prize, fortunately, such situations become less, since most people are educated and seek to know their rights. Encouraging sanction exists and in Art.135 of the Labor Code of the Russian Federation. In particular, the legislator specifies the legal grounds for the employer to pay employees labor bonuses or rewards. For example, they may be paid based on the position or opinion of the representative body of the workforce or when the payment of such remuneration is provided the content of the collective agreement between workers and employers. [4; 10]

To date, the issue of incentive sanctions in financial legislation is ambiguous. But since this branch of law is actively developing in the modern world, one should not allow such an important aspect of law as a positive sanction in it to be absent. Therefore, legislators are trying to develop and improve the institution of encouragement in financial law. An insignificant share of incentive sanctions in the financial legislation exists, but they are very specific. Some of the incentive

financial sanctions are to reduce the amount of legal restrictions in case of positive actions aimed at restoring the violated social relations. [2]

The financial law contains mainly measures that stimulate legal activity after the commission of an offense. So, point 3 of part 1 of Art.112 of the Tax Code of the Russian Federation (circumstances mitigating and aggravating the responsibility for committing a tax offense) states that "other circumstances may

be recognized as mitigating by a court". In the role of another circumstance, voluntary compensation for the damage caused can be made, the provision of documents indicating the facts of committing an offense, exposing accomplices in an offense, facilitating the conduct of a tax investigation, etc. These actions are legitimate, socially useful and connected with the achievement of a generally recognized result, therefore they can be considered as a basis for applying financial and legal incentives, expressed in mitigating financial responsibility. According to Art.114 of the Tax Code of the Russian Federation, in the presence of at least one circumstance mitigating the responsibility, the amount of the fine shall be reduced not less than twice as compared to the amount established by the relevant Article of Ch. 16 of the Tax Code of the Russian Federation. [2; 11]

Encouraging financial sanction acts as a measure of positive responsibility, a counterweight to foam, a fine and other negative sanctions. They can be expressed in "cancellation or reduction of tax as a legal obligation, encumbrance (that is, a legal restriction), which can" pour out "into a specific benefit for certain categories of subjects of law" [2].

And if everything is clear with the labor and financial law, or rather with the presence of positive sanctions in them, then it is not so simple with criminal law. It would seem, what positive sanctions can be discussed in criminal law. Why encourage people who violate the law? It would seem that in the criminal law should contain only penalties, and this is entirely logical. But this is not so. Encouraging sanctions in criminal law are connected with the release of the subject from liability or with a reduction in the volume of legal rights. Positive sanctions in criminal law are very specific as sanctions of encouragement, exemption from criminal liability, reduction of the term of punishment, replacement of arrest for correctional labor and so on are used.

Thus, for example, a person voluntarily released a stolen person is released from criminal liability if his act does not contain any other offense (note to Article 126 of the Criminal Code of the Russian Federation). Such a provision of the criminal law enables the offender to think better, correct the mistake made,

regulate his behavior in accordance with the requirements of criminal law. Similar notes are formulated to art. 204-206, 208, 222-223, 228, 275-276, 278, 291, 307 of the Criminal Code of the Russian Federation. [9] The Criminal Code clearly shows a tendency to stimulate positive behavior in the post-criminal sphere. Exemption from criminal liability in connection with active repentance, in connection with reconciliation with the victim, in connection with the expiry of the limitation period, along with other conditions, directly depends on a positive, based on observance of the requirements of the criminal legal norms of conduct. For example, a person who first committed a crime of minor gravity may be exempted from criminal liability (Article 76 of the Criminal Code). If the law enforcer comes to the conclusion that it is impossible to be released from criminal liability, these circumstances are taken into account by the court as mitigating punishment. Promotion is sometimes realized in the form of exemption from punishment. Thus, pregnant women, women with young children, are granted a respite from serving their sentence. In the event that the convict has refused the child or evades his upbringing, the court can cancel the postponement of serving the sentence. Further, after the child reaches the age of fourteen, the court releases the convict from serving the sentence or replaces it with a milder form of criminal punishment, or takes a decision to return the convicted person to the appropriate institution to serve the remaining part of the punishment. The decision of the court in this case depends on the convict's aspiration to have a child, from fulfilling her duties for his upbringing. Thus, from the lawful behavior based on observance of the requirements of criminal law, one is released from punishment, i.e. application of incentive sanction. Analysis of the Criminal Code shows that it has established the following types of incentive sanctions: - with the voluntary refusal to bring the crime to the end - in the release of criminal responsibility for the crime (Article 31 of the Criminal Code); - with active repentance, during reconciliation with the victim - in release from criminal liability (Article 75-76 of the Criminal Code of the Russian Federation); -

in compliance with the requirements set forth in the notes to articles 126, 204-206, 208, 222, 223, 228, 276, 276, 278, 291, 307 of the

Criminal Code of the Russian Federation - in release from criminal liability; - when applying compulsory measures of an educational nature to minors - in exchange for punishment (Article 90 of the Criminal Code of the Russian Federation); - with approximate behavior during the serving of punishment in the form of correctional labor, restriction of freedom, detention in a disciplinary military unit or imprisonment - in conditionally early release from serving a sentence (Article 79 of the Criminal Code); - When a woman fulfills the obligation to raise a minor child - to grant a delay in serving the sentence and in the further replacement of the remaining part of the punishment by a milder punishment or in release from serving punishment (Article 82 of the Criminal Code of the Russian Federation). In addition, incentive sanction is expressed in the early removal of criminal records, as well as in accounting for mitigating circumstances associated with positive behavior, when imposing punishment. [9]

Yes, undoubtedly, the position of positive sanctions in the legal system of the Russian Federation is not yet clearly defined. But the examples I have given prove that I do not look at all contradictions, positive sanctions are present in almost all spheres of a person's life. Certainly, if our state stands in the way of developing democracy, then positive sanctions are not a separate part of the structure of the legal norm. Many modern scholars come to the conclusion that positive sanctions are an inseparable part of the legal system. In our opinion, it is necessary to develop an incentive institution, as expanding the scope of its activities can create and develop new types of promotion, as well as the development of the potential of this legal phenomenon. Encouraging sanctions should be on a par with negative ones in order to focus on ensuring the triumph of legality and due order in the conditions of Russian society. Positive sanctions have a beneficial effect on the behavior of citizens, are a kind of catalyst for its change in the direction of respect for citizens of the norms of the existing law, the struggle of a significant number of them with the processes of legal nihilism. This highlights the role and importance of positive and negative sanctions in society, reduces their role in the rank of the necessary values, the active and creative use of which leads to the harmonization of interpersonal relations in society and the state.

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