



Research Article

PROCEDURAL BASIS FOR THE APPLICATION OF MEASURES OF LEGAL INFLUENCE, THEIR NECESSITY AND PLACE IN THE SYSTEM OF PROCEDURAL MEANS

Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

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Submission Date: January 09, 2022, **Accepted Date:** January 20, 2022,

Published Date: January 30, 2022

Crossref doi: <https://doi.org/10.37547/tajpslc/volume04issue01-05>

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ABSTRACT

This article discusses the procedural basis for the application of legal sanctions, the need for a legal sanction and its role in the system of procedural means, its application by the court, the application of legal sanctions against legal entities and citizens, as well as legal norms and principles, law enforcement acts, agreements, legal facts, subjective rights and legal obligations, prohibitions, privileges, incentives and penalties, documents on the exercise of rights and obligations, etc. The article also analyzes such issues as financial and legal sanctions, suspension of operations on bank accounts, transfer of offenses to the state revenue, certain types economic activities of the licensing authority, the liquidation of a business entity.

KEYWORDS

Subjective rights and legal obligations, prohibitions, privileges, incentives and penalties, legal sanction, legal facts, bank accounts, transfer of offenses.

INTRODUCTION

We all know that any society consists of mutual social relations between its members. These relationships can be between employer and employee, colleagues,

friends, and other members of the community. Democratization of society in our country in 2005 and modernization, reforming and modernization of the



country, further liberalization of the judicial system, reducing the interference of regulatory authorities in the activities of business entities, their legal and to ensure the protection of their legitimate interests, it is necessary to prevent unreasonable restrictions on entrepreneurial activity. As a result, Decree of the President of the Republic of Uzbekistan № 3619 dated June 14, 2005 “On measures to further improve the system of legal protection of business entities” was adopted. From July 1, 2005, this Decree introduced the procedure for applying legal sanctions to business entities only through the courts, and the list of legal sanctions was approved by the Annex to this Decree. This list includes the following remedies:

1. Termination of activity.
2. Suspension of activities. Except for cases of suspension of activities for a period of not more than ten working days in connection with the prevention of emergencies, epidemics and other real threats to the life and health of the population.
3. Suspension of operations on bank accounts, with the exception of cases provided for by law.
4. Application of financial sanctions. With the exception of cases of imposing a fine for late payment of taxes and fees, as well as admitting guilt in an offense committed by an economic entity and voluntary payment of penalties for financial sanctions.
5. Transfer of offenses to the state.
6. Suspension or revocation of licenses (permits) to engage in certain types of entrepreneurial activities for a period of more than ten working days (with the exception of licenses issued by commissions of the Cabinet of Ministers of the Republic of Uzbekistan and the Central Bank of the Republic of Uzbekistan).

Termination of the activities of a business entity is a measure of legal force applied in the event of carrying out activities without a permit (license) or carrying out activities prohibited by law, as well as in other cases provided for by law. In other words, the activity of a business entity is carried out only on the grounds provided for by law. Below we will consider the grounds for the termination of the activities of business entities provided for by law. It should be noted that the liquidation of a business entity - a legal entity is a laborious stage: the appointment of a liquidation commission, registration of property, publication of an appropriate announcement in the media, satisfaction of creditors' claims. Several in their work and the activities of an individual entrepreneur who has committed gross violations of the law can also be terminated only in court. The activities of an individual entrepreneur may also be terminated on the basis of a court judgment providing for the deprivation of the right to engage in entrepreneurial activity.

According to Article 45 of the Criminal Code of the Republic of Uzbekistan [1], the deprivation of a person of a certain right means a ban on the accused from engaging in any activity during the period appointed by the court. The type of such activity is indicated by the court in the indictment.

In accordance with Article 10 of the Law of the Republic of Uzbekistan “On Nature Protection”, suspension or termination and re-profiling of objects of local importance, as well as cancellation of permits for the use of natural resources, are carried out in court.

Law of the Republic of Uzbekistan “On Forests” In case of violation of the requirements of forest legislation, the right to use the forest in accordance with Article 40, as well as forests and other natural objects may be limited, suspended or prohibited for the purpose of protection, conservation and reproduction.



In turn, in accordance with Article 32 of the Law of the Republic of Uzbekistan “On the protection and use of wildlife”, in the interests of protecting wildlife, the rights of lands, forests, water users, water consumers and subsoil users should be limited, and obligations may be imposed in accordance with the law.

Suspension of operations on bank accounts is a measure of legal force applied by economic entities in order to ensure the fulfillment of the requirements of officials in case of non-compliance with the obligations established by law. In accordance with the Tax Code of the Republic of Uzbekistan, the suspension of operations on the bank accounts of the taxpayer is carried out only on the basis of a court decision, with the exception of cases of detection of money laundering and terrorist financing.

In cases stipulated by law, public authorities have the right to apply to the court with an application to suspend operations on bank accounts.

You can only suspend the expenditure part of operations on bank accounts. Payments to the budget and wages, benefits, as well as expenses for compensation for harm to health or life caused by an accident at work are not included. Thus, only first-class costs can be excluded.

Financial and legal sanctions include sanctions aimed at collecting funds from business entities for failure to fulfill obligations to pay taxes and other obligatory payments to the budget and extra-budgetary funds.

In other words, financial and legal sanctions are compulsory measures of the state in monetary form and are paid to the budget in the manner prescribed by administrative and financial regulations, to taxpayers (legal entities and individuals) by the competent state bodies and their officials, to ensure the financial

interests of society and the state, recovery of non-received cash receipts to the budget and extra-budgetary funds, as well as aims to bring to justice the perpetrators of tax offenses. The application of financial sanctions has property and moral consequences for persons found guilty of committing tax offenses.

Financial sanctions imply adverse consequences for business entities for violating the relevant requirements of regulatory documents, that is, the payment of various fines. Business entities complied with the instructions of the regulatory authorities based on the results of inspections, and in other cases financial sanctions are not applied to them.

An application for the imposition of a financial sanction may be filed with the court by the supervisory authority authorized to impose a financial sanction in accordance with the law. Such bodies include the State Tax Service, the State Customs Service, the State Committee of the Republic of Uzbekistan on Antimonopoly Policy and Development of Competition and its territorial bodies and others. The following documents shall be attached to the application (application) for the imposition of financial sanctions:

Documents on the basis of which the verification is carried out (decision of a specially authorized body coordinating the activities of regulatory bodies), except for cases when such decisions are not provided for by law;

Decision of the bodies of inquiry (inquiry), if the investigation is conducted within the framework of a criminal case;

Inspection procedure;

Test plan;

An act or other attached documents drawn up based on the results of the audit;

The protocol and the decision on consideration of the audit materials, if their compilation and adoption is provided for by law;

Evidence of service or sending a copy of the decision to the defendant and other relevant documents.

The issue of transferring the objects of the offense to the state revenue is decided by the court considering the case of the offense. The objects of the offense may be turned into state revenue only in cases provided for by law. It should be noted that the procedure for seizure, accounting, storage, evaluation and sale of property transferred to state revenue, as well as its destruction was approved by the Cabinet of Ministers on July 15, 2009 № 200 “Regulations on the procedure for seizure, sale or destruction of property transferred to the state revenue”. This Regulation is transferred to the state revenue, including:

- 1) on the basis of court decisions in criminal cases, a part of the property related to the objects of a criminal offense and weapons, as well as material evidence;
- 2) on the basis of decisions of courts in cases of administrative offenses, in terms of property related to the offense, objects and weapons, as well as material evidence;
- 3) part of the property seized in order to secure property claims in the course of inquiry, preliminary investigation or trial on the basis of court decisions in criminal cases, which is intended to cover the damage caused to the state;
- 4) on the basis of decisions of the bodies of inquiry on the termination of the case, a part of the property related to the objects of a criminal offense and weapons, as well as material evidence;

- 5) tobacco products exported from the Republic of Uzbekistan, as well as imported into the territory of the Republic of Uzbekistan, transported through its territory (except for international transit), not marked with an excise stamp, based on decisions of the customs authorities; and alcoholic drinks;
- 6) tobacco products and alcoholic products stored, sold, illegally produced without excise stamps on the basis of decisions of tax authorities;
- 7) on the basis of decisions of the Department for Combating Economic Crimes under the General Prosecutor's Office of the Republic of Uzbekistan and its local bodies.

The licensing body has the right to apply for the suspension or termination or revocation of licenses (permits) for the right to engage in certain types of entrepreneurial activity for a period of not more than ten working days only in cases provided for by law.

When considering such applications (applications), the courts should be guided by Articles 22-24 of the Law of the Republic of Uzbekistan “On Licensing Certain Types of Activities”, which list the grounds for suspension or termination and revocation of a license. In accordance with Article 22 of this Law, a license may be suspended in the following cases:

- 1) in case of violation by the licensee of the conditions of the license provided for by the license agreement;
- 2) non-compliance by the licensee with the decision of the licensing authority to impose on the licensee the obligation to eliminate the identified violations.

In accordance with Article 24 of this Law, a license may be revoked in the following cases:



- 1) the licensee did not submit to the licensing authority a document confirming the payment of the state fee for the license, or did not sign the license agreement within three months from the date of sending (submission) of the notice of the decision to issue the license;
- 2) when the licensee applies for revocation of the license;
- 3) when it is established that the license was obtained on the basis of forged documents.

Economic Procedural Code of the Republic of Uzbekistan In accordance with article 215, the supervisory authorities have the right to apply to the courts for the application of legal sanctions. Cases on the application of measures of legal influence are considered according to the rules provided for by this Code, taking into account the specifics specified in this chapter.

Economic and procedural code of the Republic of Uzbekistan In accordance with article 215, an application for the application of a measure of legal force is submitted to the court in writing and signed by the applicant or his representative.

An application for the application of a measure of legal influence must contain:

- 1) the name of the court to which the application is submitted;
- 2) the name (last name, first name, patronymic) of the persons participating in the case, their location (postal address) and place of residence;
- 3) the name of the controlling body that established the fact of the offense;
- 4) the circumstances on which the stated claim is based;
- 5) evidence confirming the grounds for the claim;

- 6) normative legal acts providing for liability for actions (inaction) of a legal entity or citizen, which are the basis for applying to the court;
- 7) application of the applicant;
- 8) information on compliance with the procedure for pre-trial settlement of a dispute with the defendant (filing an application), if this is provided for by law for this category of disputes;
- 9) list of attached documents.

When considering cases on the application of measures of influence to legal entities and citizens (hereinafter referred to as measures of influence), the controlling body is obliged to prove the circumstances that are the basis for the application of measures of influence.

According to generally accepted rules, legal behavior is such behavior that complies with the rules of law and does not contradict them, is not limited by law and acceptable code of conduct [2].

An offense is a socially dangerous act committed by a capable person in the form of action or inaction, contrary to the requirements of the law and causing harm to a person, property, state and society as a whole [3]. Such an act may harm or jeopardize legally protected social relations.

M.N. Marchenko emphasizes in his works that there is a legal and factual side to harm. The legal side of the offense consists in the violation of the subjective rights of the participants in the legal relationship or the obstruction of the fulfillment of the legal obligations of the subjects of law. The actual side of the offense is manifested in the infliction of material or moral harm to the participant of the legal relationship [4].

Any offense cannot be grounds for prosecution or enforcement. To be prosecuted or brought to criminal



responsibility, this socially dangerous act must be prohibited by a specific regulatory legal act. Enforcement measures are similar in nature to legal liability, meaning that the purpose of both is to prevent the subsequent commission of an offence. According to the scientific literature, responsibility is a multifaceted concept. The concept of philosophical responsibility is at the same time a category of law and ethics, reflecting the social and moral-legal attitude of the individual to society and determined by the fulfillment of moral and legal obligations by him [5].

Responsibility can be political, legal or ethical. Legal liability is understood as the punishment of the offender, the elimination of the negative consequences caused by it and the deprivation of certain rights and privileges.

Legal liability is the application by the state of coercive measures to the offender on the basis of sanctions provided for by law. These measures include: personal (deprivation of liberty); property (fine); can be organizational (deprivation of certain rights; dismissal).

Legal liability is divided into types of offenses: criminal, civil, administrative, disciplinary [6].

In conclusion, we can say that the procedural basis for the application of legal sanctions are the appeals of regulatory authorities, and the material basis is an offense. A necessary condition for the application of legal sanctions is the presence of guilt. As for the guilt of a legal entity, it can be expressed in the guilty actions of an employee in connection with the performance of labor functions. If the guilty act is committed through no fault of an individual employee, the responsibility for it lies with the various divisions of the legal entity. However, in any case, the fault of a legal entity is not the fault of an individual, but of the

whole community, since the imposition of full or partial compensation by a legal entity on a guilty individual does not change anything in essence.

Any offense cannot be grounds for prosecution or enforcement. To be prosecuted or brought to criminal responsibility, this socially dangerous act must be prohibited by a specific regulatory legal act.

The need for law enforcement measures and their application by the court is explained by the fact that the submission to the courts by regulatory authorities of evidence confirming the violation by a legal entity or citizen of the requirements of regulatory legal acts opens a wide path to ensuring the rights of entrepreneurs. Because today there are cases of arbitrary, unreasonable and excessive debiting of money from the accounts of entrepreneurs by tax and other regulatory authorities. To prevent such cases, it is more effective to resolve these issues in court. Also, when considering cases on the application of measures of influence against legal entities and citizens (hereinafter referred to as measures of influence), the supervisory authority is obliged to prove the circumstances that led to the application of measures of influence.

Analyzing the data on law enforcement measures, I would like to make the following proposal: it is argued that cases on the application of measures of legal influence are not economic disputes arising from administrative legal relations, and a proposal is made to transfer this category of cases from economic courts to administrative courts. This is due to the fact that cases on the application of legal sanctions arise from purely administrative and legal relations, and in this category of cases, the state body performing the function of control, of course, acts as a party. If this body reveals a certain violation of the law in the exercise of its supervisory functions and establishes

the existence of grounds for taking certain measures in relation to an economic entity, it applies to the court.

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