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Application Of Financial Sanctions By Economic Courts: A Comparative Legal Analysis

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Abstract

This article provides a comparative legal analysis of the mechanisms for applying financial sanctions, judicial fines, penalties, and astrente by economic courts in the Republic of Uzbekistan, the Russian Federation, and the Federal Republic of Germany. It examines the legislative basis and procedural procedures for the imposition and enforcement of financial sanctions, identifying their legal nature and practical application. Based on an analysis of current legislation and law enforcement practice, proposals are formulated for improving the legislation of the Republic of Uzbekistan, including the legislative codification of the institution of astrente.

Keywords: Financial Sanctions, Judicial Fine, Penalties, Astrente, Tax Sanctions.

In the context of the intensive development of market relations and the increasing complexity of economic activity, the issue of effectively enforcing judicial decisions and preventing violations in the sphere of business activity is of paramount importance. One of the key instruments of legal influence on participants in economic relations are financial sanctions applied by economic courts: judicial fines, penalties, tax sanctions, as well as the institution of astreinte, which has become widespread in continental legal systems.

Economic courts of the Republic of Uzbekistan, being specialized judicial bodies in the sphere of entrepreneurial and other economic relations, have a



diverse arsenal of financial and legal sanctions¹. At the same time, an analysis of current legislation and law enforcement practice reveals significant gaps: incomplete legislative codification of certain types of sanctions, the absence of unified criteria for their proportionality, and the insufficient effectiveness of enforcement mechanisms – all of which reduce the legal impact of financial sanctions on the behavior of business entities.

A comparative legal study of these mechanisms allows us to identify the most effective legal solutions and substantiate proposals for improving national legislation. The legal systems of the Russian Federation and the Federal Republic of Germany, which possess developed doctrine and extensive law enforcement practice in this area, were chosen as the objects of comparison.

The methodological basis of the study consists of the comparative legal method, systemic-structural analysis, the formal legal method, and the historical and teleological methods of legal interpretation.

The comparative legal method is used to compare the mechanisms for the imposition and enforcement of financial sanctions in the laws of Uzbekistan, Russia, and Germany. Systems analysis is used to identify the relationships between the substantive legal grounds for sanctions and their procedural implementation.

The theoretical foundations for the application of financial sanctions in economic litigation have been developed by domestic and international scholars. In Uzbek legal scholarship, this issue is addressed in the works of F.B. Ibratova, who has explored issues of procedural coercion in the activities of economic courts², and S.S. Saidaliev, who systematized the types of sanctions applied in

1 Старженецкий В. В., Очирова С. Б. Влияние санкций на разрешение внешнеэкономических споров: сохранение status quo или поиск альтернативных юрисдикций? //Международное правосудие. – 2020. – №. 4 (36). – С. 144-167.

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resolving economic disputes³. D.Yu. Khabibullaev points out that the effectiveness of the sanctions mechanism in economic legal relations directly depends on the degree of certainty of the legislative criteria for their appointment⁴.

In Russian legal doctrine, V.V. Yarkov made a significant contribution to the development of the theory of judicial fines, having examined the nature of procedural coercive measures in arbitration proceedings⁵, and S.V. Sarbash, who analyzed astrent as one of the most effective mechanisms for ensuring the execution of judicial decisions⁶. R.S. Bevzenko substantiates the need for widespread use of judicial penalties in order to overcome the debtor's evasion of fulfilling obligations in kind⁷.

In German legal science, the works of K. Larenz and C.-W. Canaris, who developed the doctrine of proportionality of sanctions in commercial law, are of particular interest⁸, as well as research by R. Zöller on the enforcement of judicial decisions within the framework of the ZPO⁹. A comparative analysis of astrent in French, German and Russian law is carried out in the work of M.A. Tserkovnikov, who established that the effectiveness of this institution is determined primarily by its discretionary nature and the court's ability to promptly adjust the amount of the sanction¹⁰.

Thus, science has developed an understanding of financial sanctions as a multifunctional legal mechanism that combines punitive, compensatory and incentive functions¹¹. At the same time, issues of comparative analysis of these

³ Сайдалиев С.С. Процессуальный порядок разрешения хозяйственных споров в Узбекистане. Ташкент, 2010. — С.98.

⁴ Хабибуллаев Д.Ю., Рашидов А.Х. Правовые основы управления государственным имуществом в Республике Узбекистан. Ташкент, 2015. — С.115.

⁵ Яркв В.В. Арбитражный процесс. М.: Статут, 2021. — С.78.

⁶ Сарбаш С.В. Обеспечение исполнения обязательств // Хозяйство и право. 2016. №3. — С.44–58.

⁷ Бевзенко Р.С. Новеллы об ответственности за нарушение обязательств // Вестник гражданского права. 2015. №4. — С.33–51.

⁸ Larenz K., Canaris C.-W. Lehrbuch des Schuldrechts. Bd. II/1. München: Beck, 1994. — S.312.

⁹ Zöller R. Zivilprozessordnung. Kommentar. 34. Aufl. Köln: Otto Schmidt, 2022. — S.890.

¹⁰ Церковников М.А. Судебная неустойка во французском, германском и российском праве // Вестник гражданского права. 2017. №1. — С.67–98.

¹¹ Babakulovna I. F., Bahodirovna A. K. Ibratova FB, Abdullaeva Kh. B. Third parties in economic proceedings: theory and practice //Editorial team. – 2016. – №. 12. – С. 7-11.



mechanisms in the context of the legal systems of Uzbekistan, Russia and Germany remain insufficiently studied.

The concept and legal nature of financial sanctions in economic litigation. The concept of "financial sanctions" in economic procedural law encompasses a diverse range of legal instruments united by a common feature: the financial impact on a person who has violated legal regulations or failed to comply with a judicial decision¹². In the legal systems of the three states under consideration, financial sanctions applied by economic (arbitration, commercial) courts include: judicial fines (procedural coercion measures), penalties and interest for the use of other people's money (civil liability measures), tax sanctions (public liability measures), and astrente - a judicial penalty of a mixed procedural and material nature.

In the Republic of Uzbekistan, the legal basis for the application of financial sanctions by economic courts is Chapter 11 of the Economic Procedure Code of the Republic of Uzbekistan (judicial fines), Articles 260–262 of the Civil Code of the Republic of Uzbekistan (penalties), and Chapter 29 of the Tax Code of the Republic of Uzbekistan (tax sanctions). In the Russian Federation, similar institutions are enshrined in Chapter 11 of the Arbitration Procedure Code of the Russian Federation, Articles 330–333 and 308.3 of the Civil Code of the Russian Federation, and Chapter 15 of the Tax Code of the Russian Federation. In German law, regulation is carried out by §§ 888–890 ZPO (Ordnungsgeld), §§ 288–289 BGB (Verzugszinsen), and §§ 369–376 HGB (trade sanctions).

Judicial Fines: A Comparative Analysis. Judicial fines as a procedural coercive measure are used in all three legal systems, but differ significantly in the grounds for imposition, amounts, and enforcement mechanisms.

In Uzbekistan, according to Article 124 of the Economic Procedure Code of the Republic of Uzbekistan, judicial fines are imposed on individuals who disrupt order during a court hearing, fail to comply with a court order to obtain evidence, or fail to appear when summoned. The fine for legal entities cannot exceed 200

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basic units, and for individuals, 50 basic units. A decision imposing a fine may be appealed to a higher court.

In the Russian Federation, Article 119 of the Arbitration Procedure Code of the Russian Federation establishes a judicial fine of up to 100,000 rubles for organizations and up to 5,000 rubles for individuals. A fundamental difference in the Russian regulation is the possibility of repeat fines in the event of continued violations, as well as the collection of fines from state bodies for failure to comply with judicial requests—a provision that has no direct equivalent in the Economic Procedure Code of the Republic of Uzbekistan.

In Germany, § 890 of the ZPO provides for an Ordnungsgeld (a fine for violating a court injunction) of up to 250,000 euros, while § 888 of the ZPO provides for a mandatory fine for failure to fulfill a non-property obligation (Zwangsgeld) of up to 25,000 euros per violation. A key feature of the German regulation is the possibility of replacing the fine with imprisonment for up to six months (Ordnungshaft), which significantly enhances the preventive effect of the sanction and has no equivalent in the laws of Uzbekistan and Russia with respect to economic disputes.

Penalties and interest for the use of someone else's funds. Penalties, as a form of financial sanction, occupy a central place in the civil liability system in economic relations in all three countries. However, their legal regulation reveals significant differences.

In Uzbekistan, Article 260 of the Civil Code of the Republic of Uzbekistan establishes statutory and contractual penalties; the court has the right to reduce a clearly disproportionate penalty in accordance with the rules of Article 263 of the Civil Code of the Republic of Uzbekistan. Interest for the use of someone else's funds is regulated by Article 327 of the Civil Code of the Republic of Uzbekistan and is calculated based on the refinancing rate of the Central Bank of the Republic of Uzbekistan.

In the Russian Federation, Article 333 of the Civil Code of the Russian Federation grants the court the right to reduce a clearly disproportionate penalty; however, Resolution No. 7 of the Plenum of the Supreme Court of the Russian Federation dated March 24, 2016, establishes detailed criteria for such a reduction, which are absent from Uzbek law. Article 395 of the Civil Code of the



Russian Federation stipulates interest for the unlawful withholding of funds at the key interest rate of the Bank of Russia.

In German law, § 288 BGB sets the statutory interest rate on monetary obligations at the base rate of the European Central Bank plus 9 percentage points for transactions between entrepreneurs (commercial rate), which significantly exceeds Russian and Uzbek equivalents and is aimed at encouraging the timely fulfillment of monetary obligations.

Astreinte (judicial penalty) as a special instrument of financial coercion.

The institution of astreinte, which originated in 19th-century French law as a judicial instrument for enforcing court decisions, has received varying degrees of legal codification in the legal systems under study.

In the Russian Federation, astreinte was legally enshrined in Article 308.3 of the Civil Code of the Russian Federation (introduced by Federal Law No. 42-FZ of March 8, 2015): if a debtor fails to fulfill an obligation in kind, the court, at the request of the creditor, has the right to award a monetary sum in their favor for the failure to comply with the judicial decision, the amount of which is determined by the court based on principles of fairness and proportionality to the consequences of the violation. A key characteristic of the Russian astreinte is its cumulative, accruing nature: the amount increases over time, encouraging the debtor to comply as soon as possible.

In Germany, § 890 ZPO provides for a functionally similar mechanism: if a court injunction is violated, the creditor has the right to petition the debtor for an Ordnungsgeld, which can also increase with each subsequent violation. The fundamental difference between the German model and the French and Russian ones is that the Ordnungsgeld goes to the state treasury, while the astreinte is collected for the benefit of the creditor.

In Uzbek law, astreinte in its classical sense is not explicitly enshrined in either the Economic Procedural Code of the Republic of Uzbekistan or the Civil Code of the Republic of Uzbekistan, which is a significant gap compared to Russian and German regulations. The practice of Uzbek economic courts indicates attempts to apply penalties to encourage enforcement of judicial decisions; however, this approach lacks a systemic legal basis and does not provide the cumulative effect inherent in astreinte.



Tax sanctions in economic litigation. Tax sanctions constitute a separate group of financial sanctions considered by economic courts. In Uzbekistan, Chapter 29 of the Tax Code of the Republic of Uzbekistan provides for fines for tax violations ranging from 20 to 50 percent of the unpaid tax amount, as well as a penalty of 0.033 percent for each day of delay.

Disputes over the collection of tax sanctions are subject to the jurisdiction of economic courts in accordance with Article 27 of the Economic Procedure Code of the Republic of Uzbekistan.

In Russia, tax sanctions (Articles 122–126 of the Tax Code of the Russian Federation) are also considered by arbitration courts. The Plenum of the Supreme Arbitration Court of the Russian Federation has developed detailed criteria for assessing mitigating circumstances that can reduce the penalty to a minimum. In Germany, tax disputes are heard by specialized financial courts (Finanzgericht) within a separate administrative justice system, which fundamentally distinguishes the German model from the Uzbek and Russian ones.

The comparative analysis allows us to formulate several key conclusions about the status and development trends of financial sanctions in the economic legal proceedings of the three countries.

First, all three legal systems demonstrate a general trend toward strengthening the role of financial sanctions as a tool to encourage good faith behavior among economic participants, rather than simply as a form of retrospective liability. This trend is most consistently implemented in German law, where the system of Ordnungsgeld, Zwangsgeld, and commercial interest rates forms a comprehensive preventive and punitive mechanism. In Russian law, a similar function is realized primarily through the institution of astrent. This trend is least pronounced in Uzbek law.

Second, a fundamental problem in the legal regulation of financial sanctions in Uzbekistan is the lack of legislatively established criteria for their proportionality. While Russian legislation and judicial practice (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 7/2016) have developed detailed guidelines for determining the amount of penalties and astreinte, Uzbek courts lack such regulatory guidelines, which leads to inconsistency in law enforcement practice.



Third, the absence of the astrente institution in Uzbek law represents a significant gap, reducing the effectiveness of the enforcement of economic court decisions on non-property claims. Russia, which adopted this institution in 2015, demonstrates its significant potential for stimulating the effective enforcement of judicial decisions: between 2016 and 2023, Russian arbitration courts granted over 12,000 applications for astrente, and the average time for voluntary enforcement of decisions on non-property claims decreased by 34% [12, p. 89].

Fourth, the delineation of jurisdiction over tax disputes in Germany (financial courts) and in Uzbekistan and Russia (economic/arbitration courts) reflects different concepts for the organization of specialized justice systems. The German model ensures a higher level of specialization of judges in tax law, but creates the risk of fragmentation of the unified justice system for economic cases. The Uzbek and Russian models of concentrating economic and tax disputes in one court system appear more appropriate from the point of view of access to justice and uniformity of practice.

Conclusions. A comparative legal study of the mechanisms for applying financial sanctions by economic courts in Uzbekistan, Russia, and Germany allows us to formulate the following conclusions.

First. Financial sanctions applied by economic courts form a diverse system of legal instruments united by their pecuniary impact on the violator and combining punitive, compensatory, and preventive/incentive functions. The German legal system has the most developed and differentiated sanctions mechanism, while the Russian legal system has the most dynamically developing one.

Second. The legislation of the Republic of Uzbekistan on economic proceedings requires fundamental improvement in terms of financial sanctions. The first step is to legislatively enshrine the institution of astrent in the Economic Procedural Code of the Republic of Uzbekistan and the Civil Code of the Republic of Uzbekistan, following the Russian model (Article 308.3 of the Civil Code of the Russian Federation). This measure will provide an effective tool for enforcing the actual enforcement of court decisions on non-pecuniary claims.

Third. The Plenum of the Supreme Court of the Republic of Uzbekistan needs to develop clarifications containing criteria for the proportionality of



penalties and other financial sanctions, similar to Resolution No. 7/2016 of the Plenum of the Supreme Court of the Russian Federation. The lack of such regulatory guidelines leads to inconsistency in the practice of economic courts.

Fourth. It is advisable to consider increasing the maximum fine for legal entities for malicious failure to comply with economic court orders, as current fines often do not provide adequate deterrent action against large economic entities.

Fifth. Germany's accumulated experience in the specialization of financial courts merits long-term study. However, given the current stage of judicial development in Uzbekistan, concentrating economic and tax disputes within the economic court system remains optimal, if judges become more specialized in tax matters.

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