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Functional purpose of prohibition to abuse of law in civil code

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Abstract

This work studies the problem of abuse of civil law, stresses upon the questions of nuisance, circumvention of the law, the use of right that contradicts to its purpose and other related categories. This work uncovers social nature of nuisance as an element of the juridical conflict; analyzes the norms concerning abuse of civil rights, the system and features of specific sanctions concerning the nuisance according to the Civil Code of Russia.

Keywords: nuisance, juridical conflict, interest in nuisance, sanctions concerning the nuisance; functional purpose of the sanctions.

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Propósito funcional de la prohibición al abuso de la ley en el código civil

Resumen

Este trabajo estudia el problema del abuso de la ley civil, hace hincapié en las cuestiones de molestia, elusión de la ley, el uso del derecho que contradice su propósito y otras categorías relacionadas. Este trabajo revela la naturaleza social de la molestia como un elemento del conflicto jurídico; analiza las normas relativas al abuso de los derechos civiles, el sistema y las características de las sanciones específicas relativas a la molestia de acuerdo con el Código Civil de Rusia.

Palabras clave: molestia, conflicto jurídico, interés en molestias, sanciones relativas a la molestia; propósito funcional de las sanciones.

1. INTRODUCTION

Nuisance is one of the most urgent issues of the juridical science and practice in public order. Historical roots of this issue go back to the era of the Roman law. At that time, despite the principle of law absolution (qui jure suo utitur, neminem laedit – the one who uses his right does not abuse anybody), the issue of nuisance has already been stressed: «malititis non est indulgendum» (badness is not indulged). In modern times, as the sphere of private law relations and dispositive norms of their regulation grows, subjects of law face new opportunities to exercise their rights; in some cases these rights are exercised unfairly. Improving the countermeasures to such behavior is one of the urgent tasks of modern

jurisprudence. At the same time jurisprudence has not yet developed a general approach to the discussed category. Juridical literature has attempted to research nuisance from the position of exercise of legal right limits, purpose of rights, the principle of good faith. In some sources, arguments concerning nuisance concentrate on the place of this phenomenon in right behavior system from the positions of its lawfulness or wrongfulness. It should be mentioned that the researches of nuisance that are based on positivistic methodology and dichotomous division of law behavior on wrongful and lawful actions face logical controversies. On the one hand, the presence of legal right and its exercise is an attribute of lawful behavior. On the other side, negative consequences of such exercise makes abuse of law close to violation of law. At the same time one should understand that the solution to the place of nuisance in law behavior system dilemma, its correspondence with lawful behavior and right violation should not be end in itself. The key task is to develop an effective instrument of counteracting such behavior. We suppose that modern jurisprudence should overcome purely positivistic views on rights and address to new methodologies to research nuisance categories. One of such approaches is sociological approach and it gains popularity in jurisprudence. It proposes evaluation of the influence of law establishments on existing public relations and their effectiveness (Belyatskin, 1928).

2. METHODOLOGY

Original methodology for the research is dialectic approach that intends the existence of perception through the principles of

historicism and interconnection of the phenomenon. Several perception techniques were used to achieve the goal of the research, including analogy, analysis and synthesis, comparison, etc. Main attention in this work is given to the instrumental approach as a new methodological technique of studying nuisance category. Development of law, dogma issues has been the object of jurisprudence for a long time. Despite the fact that the jurisprudence succeeded much in it, one should remember that law is valuable only as a social regulator of people's behavior. Consequently, studying a functional assignment of nuisance prohibition, assignment of sanctions for the nuisance and estimation of their effectiveness has the highest priority for the discussion of this problem. Several ideas have important methodological value for researching the abuse nuisance issue. They include studying of purposes of rights, interpreting legal right as an instrument of law, research of the features of legal affairs of subjects concerning the formation and usage of rights instruments (Filippova, 2013).

3. RESULTS

The work focuses on three major issues: definition and entity of nuisance; issues of normative expression of nuisance category, functional role in legal law, functional role of the norms concerning the nuisance in the mechanism of legal regulation; the system of sanctions for nuisance, its functional purpose and effectiveness.

3.1. Purpose of law and nuisance issue

The idea of interpreting right as a juridical tool is not new. In 19th century German jurist Rudolf Ihering interpreted right as an interest protected by legal act (Ihering, 1991). French scientist L. Duguit (1909) interpreted right from the positions of solidarism and social functions theory. V.P. Domanzho stated that in the field of civil law the idea of solidarity was accompanied by the modification of the concept of guilt and civil responsibility; according to modern views on this issue civil responsibility is when the goal the empowered person is trying to achieve differs from the goal intended by the source of right. An empowered person should not fully use the right, ignoring other persons' interests; empowered person carries responsibility (such as the responsibility not to conduct action that will harm other persons) and negligence of this responsibility is considered guilt and is followed by compensating harm (Domanzho, 1913). These ideas have also been reflected in Russian law: in 1922 in Article 1 of the Civil Code of RSFSR (Russian Soviet Federative Socialist Republic), in 1961 in Article 5 of Basics of Civil Code of RSFSR, in 1964 in Article 5 of the Civil Code of RSFSR and was represented as a principle of the impermissibility of the use of law contrary to its purpose. Despite the absence of «nuisance» formula, the laws mentioned above acknowledged the prohibition of nuisance. The nuisance was interpreted abroad in similar ways. Thus, Article 7 of the Civil Code of Czechoslovakia stated that nobody could abuse his or her rights if it harmed interests of the society. According to data given by Byers (2002) Supreme Court of Japan stated in one of its sentences that it

was prohibited to execute legal right if it was unwise and the harm, dealt by it was worthwhile. Jurist from Yugoslavia Radmila Kavaievich-Kushtrumovich interprets nuisance as the execution of law that contradicts to the moral dominant in the society (Shram, 1997). According to Janko Janev's opinion, nuisance is lawful, but it is immoral execution of legal right that contradicts its meaning (Yanev, 1980). Interpretation of the category «exercise of right against its purpose» as synonym to the category «nuisance» is not accurate.

Nuisance has been historically interpreted as exercise of right that was aimed at harming another person. Such interpretation was written in the Civil Code of Germany from 1896 (hereinafter – GCV). According to Paragraph 226 of GCV «It is unacceptable to exercise the right, only with the goal of harming other person». Article 2 of the Civil Code of Switzerland from 1907 states: «Every person has to act on the basis of good faith while exercising the right. Obvious nuisance is unacceptable». Even though this source possesses term «Good faith» and not «nuisance», it is obvious that in both cases the main idea is that such exercise of right is unacceptable as it is immoral from the subjective aspect. A similar position is held by the Louisiana state court as it bases sentences on the idea that nuisance requires several conditions: the right is exercised only to harm another person or such motive is dominant; the absence of serious lawful interests that require juridical protection; exercise of law violates norms of moral, good faith, justice or exercise of right for the aim different from what the right is designed for (Yiannopoulos, 1994). The concept «exercise of right contrary to its purpose», apart from the category of nuisance, has

an objective character as it intends such exercise of rights that does not meet regulatory norms, specific legal and public interests legal rights are designed for. In addition, the presence of harm or the aim of dealing it does not always define the analyzed concept. In terms of law system of the Soviet Union this principle interpreted as unacceptable actions, which were both harmful and profitable for the persons involved but contradicted to the Soviet ideology. For instance, such actions included rental services as the law did not allow the citizens to use their accommodation for receiving non-labor incomes. It cannot be interpreted as a nuisance.

The category «exercise of right contrary to its purpose» has public-private nature and it is aimed at exercising legal rights that feature state and public interest. The existence of such principle in the law system of the Soviet Union was caused by the specific features of socialistic ideology and state-planned economy. At the same time attempts to interpret this principle in the same way in modern Russia are arguable. In our opinion, such interpretation contradicts to non-mandatory origins of civil law and mitigates the value of legal rights, giving it obligation character instead of ensured opportunity. In modern civil law which is based on the principle of exercise of civil rights by personal will and personal interest, legal civil right has only one purpose – to satisfy the interests of the empowered person. The same approach should be used concerning the correlation of the nuisance and circumvention of rights. Numerous decisions of the European Court of Human Rights homologated these concepts. Thus, in Emsland-Starke case Court came to conclusion that the decision on

the issue of nuisance requires specific conditions under which the norms are not violated and the aim of these norms is not met; a subjective aspect which is represented by the intention to get the advantage by creating artificial conditions that are necessary to getting this advantage (Cerioni). Analysis of the cases which feature positive sentence of European Court concerning nuisance by circumvention of right shows that the manipulations with legal rights occur in public relations when state interest is disturbed (getting tariff concessions, taxation, etc.). Thus, the prohibition of such actions in circumvention of rights and the prohibition of exercising rights contrary to its purpose have public legal nature and it is the main distinction from private law principle of the unacceptability of civil rights nuisance (Ennektserus, 1961; Polyanskaya, 1950).

3.2. The content of nuisance. Functional purpose of principle of unacceptability of abuse of law

To answer the question of the functional purpose of unacceptability of nuisance we should address the features of the phenomenon of nuisance. As it was mentioned above, European juridical practice the concept of nuisance is explained through such legal categories as the purpose of exercising the rights, consciousness, etc. One should understand the unacceptability of nuisance is caused not only by the negative consequences of exercising the right, but by empowered person's awareness about the negative consequences. We agree with L. Enneccerus in his mention that «the exercise of rights

that harms another person is not forbidden. It is impossible to exercise some of the civil rights without harming other persons». The nature of legal rights explains the necessity of introducing sanctions for nuisance. Russian and German juridical doctrines lead to the conclusion that the purpose of the exercise of rights is the criteria for introducing sanctions. It should be mentioned, though, that the purposes are one of the things that determine a person's behavior pattern. Interest is deeper criteria. Hegel mentioned that nothing but interest is exercised. The interest has an objective-subjective nature. Lukashuk (2000) mentions that studying the necessity and formation of interest is a subjective process. Its objective side is defined by objective necessity. Another objective side is that the interest is formed the possibility to exercise it in existing conditions. Due to the fact that realizing necessities has partly subjective character, subject's understanding its interests can differ from objective necessities and optimal interests. If we interpret legal right as a juridical tool used to carry exercise interests it is obvious that this tool can be used in the wrong way and bear negative consequences. It was mentioned earlier in this work that in conditions of market economy and existing dispositive model of legal regulation, it is impossible to say about purpose of legal right that is designed by the state. Civil law regulates individual interests and thus expresses egoism of subjects of law. That is why the Civic Code of the Russian Federation (hereinafter – CCRF) mentions a principle of exercising rights according to a person's will and interest. At the same time, civil egoism must have adequate borders. Interaction of subjects should be based on the idea of the balance of interests. It means that legal right has a specific purpose –

the support of such balance (Shundikov, 2002; Khashev A et al., 2017).

Nuisance is the behavior that violates such balance. At the same time when we study such behavior we should not only pay attention to the subject's interests and which actions were exercised, we should also pay attention to the interests and actions of the affected party. In other words, nuisance cannot be studied as an isolated element and studied as an element of conflict interaction of subjects of law. The conflict-logical approach allows us to estimate the behavior of both sides of conflict. S.A. Beliatskin mentions that criteria of nuisance is not easy to be established and they key to it is comparing interests. Nuisance occurs only when the egoistic interest of the empowered person and their exercise caused violation of the rights and interests of the other side of juridical relations. The aim of the interests can be different and it is not always aimed at harming other persons. Thus, Temmerman (2011), while studying Belgian juridical practice on cases concerning nuisance found that this phenomenon covers the cases when the possessor of right consciously chooses the most unsuitable for others way to achieve the goal among all of the accessible interests; cases, when right is exercised without proper interest and the harm from it exceeds the benefits; cases when the possessor of right creates specific expectations for third parties but does not fulfill them. Consequently, nuisance can be interpreted as a single interest to deal harm or as several interest, including lawful ones. However, the second instance, includes exercise of legal interests by humiliating right of the counteragents to get advantage for no reason. Such qualification

requires us to take into account the interest and rights the harm was dealt to. If the person tries to get advantage in the public sphere, harms public interests secured by law, by exercising rights it cannot be interpreted as a nuisance. Such actions can be qualified as a circumvention or law violation. Nuisance occurs if the victim of a violation is private interests protected with civil code.

It should be added (in context of legal regulation of unacceptability of nuisance) that the process of interest formation and choosing of appropriate right is a subjective process. Consequently, the source of law cannot predict all of the possible instances of exercise of legal right and strictly regulate them. It uncovers the main difference the right to regulate prohibition of violation of law and nuisance. Violation of law covers such actions that were originally designed by the source of law as socially harmful and were restricted by prohibitions. The restriction on exercise of right in a similar way is impossible. Exercise of right should be considered conscientious until the opposite is proven. It follows that the main idea is to produce techniques that will counteract to the instance when the conscientious exercise of a right is violated. Nuisance should not be prohibited, it should be restricted by the principle of the unacceptability of nuisance. The source of law should define the principle and basic criteria which will be used by courts in cases concerning nuisance. The majority of law systems that feature the principle of the unacceptability of nuisance in one or another form corresponding norms have evaluation character and it is the reason for the criticism concerning juridical discretion. However, juridical discretion has objective character as it

was proven by the information mentioned above. Right cannot regulate and prohibit in detail the things it cannot predict, especially in the sphere based on freedom and initiative. That is why norms concerning nuisance in civil law work as a mechanism of correction Lenaerts (2010), which allows the reaction on specific cases of civil relations nuisance without declining its dispositive origins.

3.3. System and functional purpose of sanctions for nuisance

We have ascertained that nuisance is an element of juridical conflict and leads to violation of the balance of interests of legal right subjects (by causing direct harm or creating unfounded advantages). It follows that the general direction of law sanctions applied to the unfair possessor of the right should be realized through returning relations to the original balanced condition. There have been continuous arguments concerning types of juridical sanctions and the balance of protection measures and responsibility measures in Russian juridical science. However, the question of delimitation of these measures is not very principal. Both protection and responsibility measures always have a double effect depending on who this effect is aimed at. For the body that violates rights the measures of state influence express condemnation and punishment, for the victim – acknowledgement and protection of his or her rights and interests. Nuisance is socially unwanted behavior type and thus sanctions always bear the effect of condemnation. For instance, primary sanction for nuisance is the disclamation of protection of this right is negative by its formulation. It

should be added, though, that private right does not have punishing function and thus condemnation element is not defining. A great role is performed by protective function. Both protection and responsibility measures persuade the aim of protecting the rights and interests of the victim and thus are protection measures (Khasheva et al., 2017).

Article 10 of CCRF does not present sufficient list of possible sanctions for nuisance. Unconscientious exercise of law can be followed by full or partial disclamation from protection of right, repayment of harm and other legal measures. Specific measures are contained in other chapters of CCRF. One the basis of functional measures purpose protection measures can be divided into two groups: preventive and restraining measures and restorative measures. The first group includes such legal consequences as disclamation from the protection of law and its types, restrain of actions that violate right or create the threat of such violation, distress of legal right. The second group includes repayment of material and moral harm; restoration of conditions that existed before law violation; acknowledgement of empowered person's act as obsolete one (Matantsev, 2012). Preventive measures are used when nuisance has not yet harmed rights and interests of other persons, but created a real threat of it and is being aimed at restraining of such harm. Restraining measures are aimed at restraining unconscientious actions in future that harm other persons. In many cases, these measures are enough to stop violation of right and corresponding juridical conflict. However, in cases when restrain of unconscientious action is not enough to resolve the conflict restoration

measures are required. Such measures can be implemented independently and together with restraining and preventive measures.

3.4. Separate sanctions for civil nuisance features

Distress from the protection of law is the primary legal sanction for legal nuisance mentioned in Article 10 of the CCRF. The source of law does not explain the content of this measure while scientific literature has undertaken several attempts to define its content. Soviet civil law specialists O.S. Joffe and V.P. Gribanov mentioned that the highest limit of this sanction is distress of right, the lowest limit is disclamation to protect the specific form of the exercise of law. On practice disclamation to protect right means disclamation to satisfy right possessor's request to protect his or her right. In the context of procession procedures such request can be presented as a claim, or counterclaim to victim's claim. Disclamation to protect right in the form of claim can have double meaning. The first one is representative meaning and is aimed at restraining the appearance of negative consequences of the nuisance. For instance, unconscientious logo registration similar to the already registered mass media company and claim from mass media aimed at the non-admission violation of mass media rights. The second one is restraining meaning to stop wrongful actions. For instance, unconscientious stockholder refuses to satisfy demand on giving publicity the information about stock holding, unconscientious buyer meets denial when he or she asks about the refund on good of appropriate quality. It should be mentioned that

sending specific requests to court can be undertaken before person's right have been violated (The seller does not satisfy unconscientious buyer's demands). If the court does not accept the claim it automatically acknowledges lawfulness of the defendant's actions. Another meaning is gained by disclamation to protect right when demand of empowered persons to protect his or her right is realized through counterclaim. In this case disclamation to protect right cannot be considered as an independent sanction for nuisance as the person who committed nuisance does not addresses to the court. It is a tool that enables appropriate sanctions to be applied despite the formal conscientious behavior of the defendant. Specific type of disclamation of protection of rights is estoppel principle. Several CCRF norms contain prohibition to refer to circumstances, that van be used to acknowledge deal as an invalid one, if behavior one of the sides acknowledged the deal valid despite vices (Article 166, 173.1, Article. 431.1 CCRF). It cannot be ignored that full disclamation from protection of the right always has a positive effect. For instance, in binding relations when the rights of one person stand against another person's responsibilities full disclamation from protection of right will liberate counteragent from responsibilities and thus the balance of interests will be violated. In this case important role is given to partial disclamation from protection of right. It can be seen in Article 333 of CCRF which allow courts to lower penal sum if it does not match the consequences of duties are violated. The lowering penal sum court does not violate relations and instead stabilizes them. In terms of lowering penal sum court does not protect law. In terms of payment the court protects rights.

Partial disclamation from protection of the right is an alternative to acknowledging one-sided deals. It should be mentioned that the use of laesio enormis doctrine and other criteria to identify one-sided deals does not always correlates with the interests of the sides. It is obvious that one-sided deals always feature imbalance of interests. It cannot be ignored, though, that in some cases contestation of such deal will be profitable to counteragent and can be used by the debtor to gain advantage over creditor. For instance, unconscientious person can agree on a credit on huge percents to pay other debts and then send a claim to court and avoid paying high credit interests. Partial refuse from protection of right can be used as a correction tool that saves debtor's responsibilities and allows both sides to satisfy their interests. Distress of legal right can be interpreted as a measure of last resort. As it was mentioned above Soviet civil jurists interpreted this consequence as one of disclamations to protect right. However, neither previous, nor existing civil code does not mention it as a general sanction for nuisance, but it does not mean that this sanction is not applied at all. Several specific legal norms contain legal consequences that intend deprivation of legal right. For instance, Article 10 of CCRF of the Law (1998) «Of Limited Liability Companies», the members of the society that own minimum ten percent of charter capital can demand the exclusion by a court of stockholders who violates his or her responsibilities Legislation interprets nuisance as a basis to end exclusive rights on a trade mark. Article 1512 of CCRF contains the possibility to litigate and acknowledgement invalid legal protection of a trade mark if the action related to trade mark registration are acknowledged as nuisance. Even though it does not mean direct

deprivation of legal right, acknowledgment of legal protection of trade mark invalid will decline its registration and eventually results in loss of rights on trade mark. An opinion can be found in Internet that the use of deprivation of rights as a sanction contradicts to the nature of the nuisance and does not reach original goals as deprivation of right for using it in nuisance the subject will be unable to exercise this right according to original interest. Such point of view can be agreed on only in case nuisance bears single-time character. Indeed, it is impractical to deprive a person of right as following legal acts can bear socially useful character. However, it does not pay attention to instances when right is constantly used to harm other persons. Under such circumstances the victim will have to prove each time the fact of nuisance and the judge will have to object to it, making thus sanctions useless. Such actions would require deprivation of legal rights as it lost social value for the one who owns it. It is doubtless that such measure should be used in exclusive cases and only if such violation persuades the goal of harming other persons has systematic character. An important restorative measure is compensation of material and moral harm. Article 1064 of CCRF contains general delict right: harm caused to the identity or property of the individual should be compensated in full size by the person that caused harm. However, Article 10 of CCRF contains the possibility of losses compensation. Losses are interpreted as a material harm in the form of real harm or lost opportunity. Compensation of both types of losses or one of them is chosen depending on the situation. Nevertheless, the law does not feature compensation of non-material (moral) harm. Consequences of nuisance may harm moral of all citizens and reputation of juridical

bodies. Even though moral harm compensation is written down in Article 150 of CCRF that can be used in cases that feature nuisance, there are no norms concerning reputational harm compensation.

4. DISCUSSION

The functioning vision of nuisance problem can also resolve several questions of theoretical and practical character. The research allows us to give a more detailed definition to the studied phenomenon and delimit it from related categories. For instance, criminal and administrative law use «competence nuisance» category which is similar to the category we study but has a different meaning. «Competence» as a category in public right distinguishes from interpreting legal right as an instrument of satisfying personal interest. Competence is always exercised in terms of corresponding power in public interests and has objective character. It follows that misuse of competences is a direct violation of legal norms and not subjective manipulation with the possibilities the law gives. Functional approach towards the analysis of legal norms concerning nuisance can specify the criteria of delimiting nuisance and violation of right categories. As it was mentioned above in terms of positivistic data perception the main criteria of distinguishing nuisance and violation of right are formal rightfulness and exercise of legal rights. This work has revealed new aspect: violation of a right is interpreted as socially harmful actions and the source of law introduces direct sanctions for them. Exercise of right is considered nuisance only in the process of law

enforcement activities. That is why the source of law cannot establish prohibition for nuisance and is aimed at establishing the unacceptability of such behavior. In this context new basics for delimiting misuse of the dominant position on markets and other competitive misuses from nuisance. The analysis of the Federal law (2006) «Of protection of competition» revealed that all of the actions described in it are prohibited by law, which means they are prohibited by nature. Such an approach is explained by the fact that the discussed misuses harm both private and public interests, while nuisance is aimed at harming private interests protected by the government. In addition, the «competitive misuse» category has more objective character while nuisance is unacceptable due to the nature of subjective side. The problems raised in this article are useful for studying the problem of unacceptability of nuisance in family relations. Family and civil relations have genetic interrelation. At the same time the approach towards legal decision of the problem of nuisance differs. Distinct from civil law, Article 7 of the Family Code of the Russian Federation (1995) contains the principle of unacceptability of exercise of right contrary to its purpose, which is not equal to the principle of unacceptability of a nuisance as it was mentioned above. Family law interprets misuse of parental relations as a basis for the declamation of parental rights. At the same time legal practice interprets misuse of parental relations as inappropriate exercise of parental rights. It is included in category of violation of family law, but is not included in nuisance. In addition, deprivation of right cannot be considered the only possible instrument. All of it suggests that the legislation of the Russian Federation and the practice of its exercise from the position of

forming of general approaches towards counteracting to unconscientious behavior in the sphere of private right.

Theoretical approaches allow us to highlight several practical measures on improvement of counteracting nuisance and introduction of corresponding changes into legislation. In addition to the principle of unacceptability of exercise of family rights contrary to their purpose and the necessity of fixing the principle of unacceptability of misuse of family rights the changes should also be introduced to civil law. In particular, it is necessary to exclude positions concerning circumvention and competitive statements from norms concerning civil nuisance. It is necessary to write down in law the possibility of compensation of moral and reputational harm caused by the nuisance. Finally, it is necessary to perfect the culture of exercise of right. Court is a main source of counteracting nuisance and thus court practice should develop adequate approaches to qualification of nuisance and estimation of the effectiveness of applying sanctions for nuisance. We have made it clear that each sanction needs specific functional estimation and applicability for specific situations. The measures aimed at saving existing legal relations and restoration of balance of interests, eliminating thus conflict, should be the basis for the development of nuisance issue.

5. CONCLUSION

The phenomenon of nuisance has been causing arguments among jurists for centuries. The problem is complicated due to the fact

that it contains two opposite origins – formal compliance with laws on the one hand and contradiction to its social nature on the other hand. Ignorance of this fact will result in one-sided research of this category. That is why the perception of the concept of nuisance is connected with its juridical-social nature. Nuisance is an unacceptable exercise of legal right as it is an instrument of realization of interests, is connected with harming private interests protected by government. Nuisance cannot be studied in isolation from conflict legal interaction of subjects of law. Functional approach allows us to widen the limits of studying nuisance category, including in it such problems as the purpose of norms of civil law concerning the unacceptability of nuisance, the social concept of nuisance, the functional purpose of sanctions for nuisance. Functional aspect of instrumental approach allows us to study nuisance as an element of conflict of law and pay attention to both empowered person and the victim of nuisance, its rights and interests as it has to be taken into account while qualifying the action as a nuisance. The analysis of functional role concerning nuisance makes it possible for us to identify its functional purpose as an instrument of correction used in conditions of dispositive principle with the aim of eliminating negative outcomes. Sociological approach on sanctions concerning nuisance bring us to two important conclusions. The first conclusion is that the main purpose of all sanctions is the resolution of juridical conflicts by balancing the interests of the sides of the conflict. The second conclusion is that each sanction has a specific functional purpose (preventive, restraining, restorative). Effectiveness of each measure and its applicability for the solution of an each case should be defined by the law enforcer. In

should be said that the sociological interpretation allows wide perceptive possibilities for the general theory of law and for the separate branches of jurisprudence. It can be used to analyze other types of legal behavior in civil law and other spheres. Russian jurisprudence has not yet formed integral idea of legal behavior. Its formation, especially in context of specific of the sphere and new methodological techniques, is a perspective scientific direction (Ioffe, 1964).

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