



Research Article

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The Two-aspect Theory of Legal Responsibility According to the Russian Law

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Abstract

The article draws our attention to legal responsibility as a key legal phenomenon. Theoretical aspects of a legal responsibility concept, its prospective (positive) and retrospective (negative) components and contents are considered. Authors discuss issues connected with lack of uniform approach in determining the legal responsibility and the reasons the term is not understood clearly. Discovering key components of legal responsibility, the author's vision of the problem's solution and key definition is offered and a definition of a legal responsibility concept is formulated as authors see it. On the basis of such analysis and on the example of the legislation of the Russian Federation, authors reveal some establishment features and solutions of legal regulation as well as offer the ways of implementing their vision. Authors formulate a conclusion that the legal responsibility is currently a rather voluminous, yet contradictory legal phenomenon which is not possessing sufficiently in legislative regulation.

Keywords: *Legal Liability, Positive Responsibility, Negative Responsibility, Mixed Legal Liability, Resignation, Legal Status, Legal Duties, And Officials*

1. Introduction

Owing to a significant amount of researches, conducted on legal responsibility in the Russian jurisprudence, its principles, purposes, and fundamentals are covered in detail; its implementation mechanisms are studied well. However these researches are very versatile and lead to versatile understanding and determining the legal responsibility, thereby there is a set of controversial and debatable theoretical issues. Some scientists see the essence of legal responsibility in applying sanctions against the offender, others – in a bearing with known social "inconveniences", adverse effects; the third consider it to be a special law-enforcement relation between the state and a person acting illegal and bearing responsibility respectively; the fourth reduce legal responsibility to punishment of a guilty subject, deprivation of certain benefits; the fifth – to a specific duty to be responsible for actions, to smooth down the harm done to society. Therefore, in order to consider the nature of legal responsibility, it is necessary to study its basic concept and to disclose key aspects of the studied concept definition.

2. Methods

The research methodological basis is presented by system general scientific and specific methods of knowledge which allowed considering the research object from a position of its internal logic. Use of a dialectic, historical, sociological, system and structural method allowed analyzing and generalizing theoretical concepts of legal responsibility, building the general theoretical model.

As private-law methods of theory-predictive, legal modeling, the comparative and legal analysis was widely applied. With its help comparison of various points of view concerning responsibility was carried out in regard to its manifestation in the Russian Federation law.

3. Results and Discussion

Legal responsibility is the most important institute of any legal system, one of the intrinsic aspects of the law and a necessary element of the mechanism of its implementation. Legal responsibility can be characterized as a complex, many-sided, interindustry, functional, regulatory and guarding institute of the law entrenchment and (or) making a dynamic impact on the most important public relations; in case of violation, law governs the responsibility relations arising from the legal fact of offense. Responsibility is called legal because it is based on rules of law and is constantly exposed to legal regulation; therefore it has standard legal character. The normativity of legal responsibility, as well as generally normativity of the law, includes a possibility of the state coercion. Hence, legal responsibility appears as a natural response to socially important behavior of subjects and as a result of the standard establishment of the state coercion.

Summarizing the above said, a basic concept of legal responsibility can be defined as the *right realizable activity of the state in the form of applying the corrective action of a compulsory character*.

In legal literature three aspects of responsibility are distinguished:

- 1) the internal relation of the law subject to the debt regarding the implementation of the law requirements;
- 2) responsibility of the subject which assumes an opportunity to hold the subject responsible for their actions;
- 3) applying sanctions (punishment) against the subject of law in connection with the behavior "assessment" (Avakyan, 2017; Kozlova & Kutafin, 2018)

The first and the second aspects are prospective (positive) responsibility, the third is the retrospective (negative) responsibility.

Therefore, the term "responsibility" assumes "assessment" and possible applying sanctions. If responsibility is retrospective it means there is a violation and there is a possibility of applying sanctions. If it is prospective, then there is no violation of the norms, but sanctions, all the same, can be applied for a certain behavior, in general compliance with the law. Personal responsibility includes a self-assessment the person for his own actions, and the assumption of possible positive or negative assessment from the outside. Thus, an assessment which is expressed as coming from the inside (person's own responsibility for his actions) and from within (assessment by law representatives) takes place.

Legal responsibility acts as the closing link and is expressed by bearing with adverse effects for the participant of legal relationship in case of non-compliance with the established duties. Here responsibility can arise, for example, from the fact of an offense or for a perfect act and by that be characterized as being of retrospective (negative) quality.

However, responsibility, as we saw above, exists also before a commission of an offense and is the responsibility for the appropriate execution of duties, for conscientious behavior as a responsible attitude. Thereby legal responsibility is seen as prospective (positive) and a different semantic meaning arises. The one that is most poorly studied as well as debatable.

Retrospective legal responsibility is in details developed by jurisprudence and in detail regulated by the legislation of all countries. It is worth agreeing with opinions of scientists that legal responsibility, from the moment of its emergence, is the responsibility for the past, for perfect illegal behavior (Samoshenko & Farukshin, 1971); its basis is the offense involving an obligation for

punishment execution as requitals (punishment) for its commission (Malein, 1985); at a violation of legal instructions prosecution plays an important legal role as this circumstance predetermines need to be held to the acts violating rules of law (Tarkhov, 1973; Yagudina, 2009).

Some supporters of retrospective legal responsibility hold the opinion that one should not allocate its prospective component. For example, O.E. Kutafin, I.A. Rebane, I.S. Samoshchenko, M.H. Farukshin, R.O. Halfina, etc. note that legal responsibility is by all means retrospective as use of a concept of prospective responsibility leads to the fact that the same phenomenon is called both a duty, and responsibility; the purpose of responsibility as one of the effective behavior regulators is washed away (Kutafin, 2001).

The theoretical analysis of literature allows allocating a set of beliefs concerning the understanding of retrospective legal responsibility, each of these brings a new sense to its definition. These beliefs can be systematized and marked out as the following approaches in understanding the legal responsibility: first, from a position of the state coercion where the offense is followed by applying sanctions with the further approach of negative consequences in the form of various restrictions (Ivanov, 2004). Secondly, from a position of a legal obligation acting as a legal relationship between subjects of the public relations¹.

"Legal obligation" is the measure of due, socially necessary behavior established by the law as well as a type (line) of behavior. It is the imperious form of social regulation leaning on the "power" of the state coercion (Krasnov, 1995; Matuzov & Malko, 2015). Therefore, the duty is expressed in requirements which are imposed on a person and is connected with maintenance of public order. The duty assumes such forms of expression as "active" (a duty to do) and "passive" (duty not to do). So, in case the person neglects the passive duty and does what he should not have done; or neglects the active duty and does not do what he had to do – there is a duty to bear responsibility. Responsibility, in turn, assumes negative consequences. Retrospective legal responsibility has two reasons: formal, which is provided in the precept of law and comes for its non-execution; and actual, as offense commission fact (Santana et al, 2017; Sohrabi, 2017).

Summarizing the presented positions and making a start from the basic definition of the legal responsibility, retrospective legal responsibility can be defined as *a duty of the person to undergo the negative consequences applied by the state in the form of the compulsory restrictions for violating the rules of behavior set by the rules of law.*

Supporters of prospective legal responsibility adhere to other position and consider legal responsibility to be the important and effective remedy which increases socially useful activity and makes an educational impact on the strong-willed, individual qualities of the personality and develops a sense of justice and a social and legal position of the individual (Nazarov, 1981) as "other party (instance of responsibility) controls communication between two subjects of which one party (the subject of responsibility) having free will and the choice undertakes to build appropriate behavior according to the expected model and, measures such behavior and (or) its consequences, and in case of negative assessment and existence of fault has the right to react definitely to it" (Krasnov, 1984); responsible execution of the established duties also means a conscious and vigorous activity of the person (Ivanov, 2004).

In philosophical category prospective legal responsibility assumes the positive relation of the person to the duties and the acts. At the same time, its existence is caused by need, first, to adjust the activity of each subject with actions of others, secondly, to align private interest with the general at a joint performance of certain tasks. It is necessary to support the point of view that prospective legal responsibility has the social and moral, as well as legal nature at its core (Lipinsky, 2005; Noskov, 2007).

Therefore, understanding prospective legal responsibility as internal value judgment and external assessment by other instance is traced. Based on the choice in behavior, a person makes according to the established precepts of law the decision is obvious (Lee, 2019).

Summing the above said, prospective legal responsibility can be presented as a *duty of the*

¹ For example, Cherdantsev A.F., Kozhevnikov S.N. *About a concept and content of legal responsibility/ Jurisprudence.* 1976. No. 5. Page 40-41, 45.

person to build the behavior model according to legal requirements and to live in strict accordance with the ordered rules in precepts of the law.

In jurisprudence attempts to consider legal responsibility in the unity of the two of its aspects – the prospective and the retrospective - are also made. A.M. Bogoleyko considers them as two forms of realization of legal responsibility, at the same time considering that responsibility is uniform (Bogoleyko, 2005). According to D.A. Lipinsky "legal responsibility ... includes responsibility for future behavior (positive, voluntary), and responsibility for past illegal behavior (negative, state, and compulsory responsibility). Restricting the legal responsibility to merely negative reaction of the state significantly narrows a problem of legal responsibility, as well as the essence of law and reduces responsibility to a punishment for offense and also excludes it from the mechanism of legal regulation and formation of lawful behavior" (Lipinsky & Shishkin, 2014). Thus, in essence, the functioning of legal responsibility extends to all scope of the law and in such quality promotes an increase in its efficiency (prospective aspect). Therefore, it is possible to present the sanction in the form of the final expression of legal responsibility, but not as the only area of its manifestation (Eskandarian et al, 2016; Rakhmatulloevna, 2016).

Some researchers claim that legal responsibility proves in dynamics and pass from one aspect (prospective) to another (retrospective) as the law performs a regulatory function, as well as guarding ones (Krasnov, 1984). At the same time, these aspects can be designated as "preliminary" being an educational responsibility; and "subsequent", as being the result of the negative behavior of the person. Moreover, measures of responsibility stimulate respectable behavior (encouragement), desirable for public legal relations, and suppress undesirable and inadequate behavior (punishment) (Oikhov, 2006).

However, opponents of the mixed model specify that in this case there is an identification of negative responsibility to psychological and strong-willed prerequisites or to the understanding of a responsibility (Leist, 1981); the duty provided by the law to take actions is identified with consequences of its non-execution and will conduct to terminological confusion; it focuses on the dissolution of the nature of legal responsibility that in turn creates impressive confusion in the law, at the same time its role in the scientific and practical relation is small (Baiting, 2001).

It is thought that prospective legal responsibility is primary in relation to retrospective and is a necessary condition for its emergence. The last comes before the first when the person commits an offense. Retrospective responsibility exists as a potential threat; it cannot come if the person behaves consciously and legally. The person undertakes prospective responsibility in advance. "In advance" in this case acts as an insurance or a guarantee. Thereby, prospective responsibility is always possible.

4. Summary

1. The public relations which are settled by rules of law are protected by the state. State regulation of the public relations is a prerequisite of establishing legal responsibility which plays a significant role in the formation of the constitutional state, acts as the most important institute of the legal system and the main hand of the law and the integral element of its implementation. Therefore the state estimates degree of danger and the nature of influence then undertake measures to prevent a certain sort of behavior by means of banning it and applying sanctions.
2. Legal responsibility represents the complex of legal system mechanisms and by that is an important element of the law; it promotes regulation of the public relations by means of the instructions established by the Constitution and the laws adopted on its basis. Such categories as normativity, complexity, functionality, protection are inherent in it. It gives the participants a chance for legal relationships, a chance to choose the established norms of the behavior including obligations for their observance.
3. All variety of approaches to defining a legal responsibility concept can be expressed as three basics: 1) responsibility as a measure of the state coercion (retrospective responsibility); 2) responsibility as guarding legal relationship (prospective responsibility); 3) responsibility as an all-social phenomenon (set of retrospective and prospective

responsibility). Structurally legal responsibility consists of prospective and retrospective component representing dialectic unity of forms and measures of realization which are consistently interconnected among themselves.

5. Conclusions

Legal responsibility in its full is the responsibility for the past, the present, and the future. It is worth agreeing that "prospective responsibility without retrospective could not perform the regulatory functions, as it would have formal character. In the same way, it is impossible to present retrospective responsibility without prospective. If no requirements are imposed upon the person, then the condemnation for non-execution of socially useful actions is impossible" (Butnev, 1985). Therefore, the independence of the specified functions of the law causes their mutual addition as in case of insufficiency one of them; another loses the main property – the definiteness – and creates conditions for uniform understanding and application of the law. Therefore its consideration through a prism of two specified aspects which can work both independently, and alternately, will be the most appropriate, full and productive understanding of legal responsibility.

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