

INTERPRETATION OF LEGAL RESPONSIBILITY AS A UNIVERSAL INSTRUMENT OF PROCEDURAL LEGAL RESTRICTIONS

Boris V. Makogon¹, Irina V. Savel'eva², Anzhelika I. Lyahkova³, Anna A. Parshina⁴, Aleksey S. Emel'anov⁵

^{1, 2, 3} Belgorod State University, Russia

Makogon@bsu.edu.ru

⁴ The Rostov Institute of Protection of Businessman, Russia

⁵ Southwestern State University, Russia

ABSTRACT

The article deals with the issues concerning the definition of "legal responsibility" concept, various author's approaches are studied and a synthesized definition is proposed that claims to be a universal one in the field of procedural legal restrictions.

Keywords: responsibility, legal responsibility, limitation, power restriction.

INTRODUCTION

Nowadays, the theory of legal responsibility in state and legal science is quite developed one, which, however, does not level a significant, to some extent conflict-related tension in the applied sphere, including the absence of a clear legal definition of legal responsibility, a general and an absolutely doctrinal one.

The issues relating to legal liability were studied both by experts in the field of general jurisprudence theory [1; 2], criminal law and criminology [3; 4; 5], constitutional law [6; 7], and by the representatives of related branches of knowledge [8; 9; 10].

Although the attitude to legal responsibility in the "negative manner" prevailed traditionally, within the framework of which this type of responsibility is associated primarily with the illegal actions of subjects and was determined mainly by their obligation to report to the competent bodies for their illegal actions and to be subjected to the established measures of state coercion for their fulfillment, the integration of humanitarian knowledge and experience created diverse prerequisites, the catalysts for the definition of this concept, phenomenon by a positive relation of an individual, a person, a citizen to an ordered task, society, a state, the sense of self-discipline, consciousness and duty; In general, taking into account the desire of a person existing in the legal space to achieve a positive result through lawful and socially active behavior [11; 12].

METHODS

In the process of the study, the classical methodology of system and process qualitative analysis was used, in particular, the system-analytical approach to the study of research objects.

Besides, the study methodology is presented by modern tools. The study was carried out on the basis of dialectical as well as a wide application of general scientific (analysis, synthesis, induction, deduction, analogy) and private scientific methods of reality cognition. The application of general scientific methods allowed the authors to comprehend the development of scientific ideas about the theory of legal responsibility, to reveal the basic laws and the trends of its development, to determine the factors that influence the content of a claimed subject, to formulate definitions relating to a subject and meeting the requirements of modern conditions.

The use of such special methods as the comparative-legal one, the method of legal prediction made it pos-

sible to comprehend and reveal the subject of the article comprehensively.

DISCUSSION AND RESULTS

P.E. Nedbailo believes that a person is responsible not only during the performance of his duties, but with the beginning of their implementation [13]. Based on this, the conclusion is made that positive responsibility is the responsibility for the success in work.

B.L. Nazarov regards a positive legal responsibility as a continuing state, expressed in relation to the responsibility subject concerning his duties [14]. M.S. Strogovich is of the same opinion. He believes that the legal responsibility rests on a person who bears responsibility in the established chronological framework by the virtue of law. It is expressed in a person's awareness of the requirements concerning the unswerving and conscientious performance of his duties [15].

Approaching abstractly to this issue, scholars call only a responsible attitude to a case as a positive responsibility, which should be among all citizens and officials.

Thus, we state that modern legal science can operate with the term "positive legal responsibility" just like social disciplines.

At the same time, we believe it is necessary to pay attention to the circumstance in which not all scholars consider it is possible to share the opinions of the conceptual provisions proponents in respect of positive legal responsibility. In particular, according to V.A. Kuchinsky, it is hardly possible to formulate the definition of positive legal responsibility, because its semantic characteristics are very different, which eliminates not only their essential, but also their terminological unity. It is all the more difficult, if it is possible at all, not only to combine, but also to correlate positive responsibility with the legal responsibility generally recognized in jurisprudence and realized in practice, which is inherently negative (assuming conviction and punishment) [16].

However, in our opinion, the understanding of positive legal responsibility may become a fundamental one in relation to the concept of procedural legal restrictions on the activities of public authorities. We attribute this to the fact that in the interpretation of a positive legal responsibility it is necessary to note certain moments that allow and predetermine the relationship of the objective and subjective sides of legal responsibility as rational ones. Here we are talking about the interdependence of the statutory and subjective responsibility, that is, arising for a certain subject as the result of an offense commission provided in the sanctions of the current legislation standards. In this respect, the position when two important points, accountability and imputation, are singled out in social responsibility looks very interesting; It is one of the means of responsibility realization [15]. In such a coverage, a positive (an active) responsibility is understood not so much as "a sense of responsibility", but rather as "the responsibility in advance" which determines self-control, self-regulation, self-restraint and self-directedness of personality actions.

In this aspect, it is very interesting that B.L. Nazarov, along with a hardly acceptable evaluation of legal responsibility as a legitimate conduct organically connected with a sense of duty, characterize it as a force for the prevention of offenses, as the threat to use state coercion and undergo certain deprivations. They consider an active (positive) responsibility as a regulator of public relations, considering it a common responsibility in the sense that it is referred to all subjects of law, is the duty of everyone who meets certain legal criteria.

Consolidating with V.A. Kuchinsky we believe that if we are consistent, we must recognize this responsibility as an element of the legal status among subjects and call it not as an active or a positive, but as a statutory one (stipulated by the rule of law sanction) arising among a particular person in connection with an offense commission. Statutory responsibility, recorded by the norms of objective law, is a legal form - a universal scale of social restriction of actions that contradict an achieved level of social freedom. With regard to subjective responsibility, it should be noted that it acts as a perfectly defined legal measure limit-

ing the personal freedom of a particular person (an offender). In other words, subjective responsibility is always concrete in its manifestations, and the statutory variety has a general, abstract, regulatory character and is the potential responsibility. Arising in accordance with the law, provided that a person commits an established offense, the subjective responsibility is the duty of a particular offender to suffer the adverse consequences of his offence.

As for the structure of statutory (objective) legal responsibility, one can not fail to notice here a certain confusion of moral and legal regulations. In fact, a legal importance in this case is provided to the moral obligation of law observation.

Theoretical provisions on the law contain enough evidence that it can define only single specific duties using a typical legal rule, but it can not impose a general duty of law observation. The legal requirement to observe the law is devoid of meaning and content. This duty can be imposed on an individual only by morality [17].

At the same time, the structure of the statutory responsibility is obviously not devoid of certain merits, since it highlights an objective existence of the legal norm recorded in the sanction concerning the possibility of legal entities to suffer unfavorable legal consequences if they commit specific unlawful acts. We believe that this approach is appropriate to strengthen and optimize legal responsibility in the procedural and legal activity of public entities.

The differences between statutory and subjective responsibility are the differences between the proper and the existent one. Unlike statutory responsibility, subjective responsibility, which is the form of an objective law realization, can not be regarded as the regulator of social relations. However, subjective responsibility fulfills the functions of both private and general prevention with its implementation. In this regard, all the contradictions in the analysis of legal responsibility are generated by significant methodological miscalculations, which are manifested primarily in the fact that different legal concepts are confused and identified (responsibility, recovery, punishment, sanction), their interrelation and mutual influence are not taken into account, a legal phenomenon and the forms of its manifestation, realization and provision are not delineated. Legal responsibility as a form of social responsibility should be based on the initial assumptions and the sense of a general social phenomenon only. It is impossible to give an example from life, when the meaning of the species concept would be opposed to this generic concept, so that the same concept had the opposite meaning in different spheres of human life [18]. Consequently, legal responsibility is also a positive phenomenon as a form of social responsibility.

A legal prescription that found its addressee and is perceived by it becomes an internal basis of motivation for his responsible behavior in the legal sphere. The violation of the obligations by a citizen recorded in regulatory enactments leads to the occurrence of the adverse consequences for him provided by sanctions.

One of the reasons for the narrow, negative interpretation of legal responsibility is rooted in a simplified understanding of this phenomenon essence, when the nature of this responsibility origin, its essence, the mechanism and the methods of implementation, conditioned by the recognition of an offender's fault by a competent state body, are not taken into account or merged with other legal phenomena.

We consider it is necessary to clarify that the theory of legal responsibility has various approaches to its definition indeed. But, in our opinion, they are one-sided, only some single sign is emphasized in them. For example, the position according to which legal responsibility is a form of state coercion is widely widespread.

Indeed, considering the legal responsibility carefully and arguing, it is almost impossible not to pay attention to its state-compulsory nature. But, we emphasize this only as a corresponding specific feature, but not an objective content, through which an integral phenomenon can be revealed. This feature is mediated by the fact that in the case of an offense the coercion type and extent are determined by the sanctions of

rule of law. In general, the process of responsibility implementation is controlled by a state and, if necessary, a state body that has special competence may forcefully apply an appropriate penalty to an offender. However, this does not mean that the compulsory nature of liability should be regarded as a mandatory presence in each specific case of its power-coercive influence implementation on an offender by a law enforcement agency [19].

It seems that legal responsibility as an obligatory sign of procedural and legal regulation of public authorities should be understood on the basis of a broad, generally social approach of a positive nature. Its statutory and subjective varieties should be separated.

Due to the apparent need of a methodological problem solution concerning the search of a new trend in the process of strengthening the limits of public authority activity optimization, we believe it is possible to determine legal responsibility as the relations between an individual, society and a state, conditioned by the norms of substantive and procedural law, within which the mutually claimed requirements are actualized consciously. These requirements are based on the sanction of a legal rule with adverse legal consequences for the social and public subjects who committed an offense.

CONCLUSIONS

Legal responsibility is considered by us as an obligatory sign of procedural legal regulation of public authorities and should be understood on the basis of a broad, generally social approach of a positive nature. Its statutory and subjective variety should be separated.

Based on the abovementioned arguments, we propose to treat legal liability as the relationship between an individual, society and a state, conditioned by the norms of substantive and procedural law, within which mutually claimed demands are updated consciously based on a legal rule sanction that implies unfavorable legal consequences for social and public subjects who committed an offense.

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