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SOME ASPECTS OF LEGAL RESPONSIBILITY IN PUBLIC LAW

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Abstract

This article discusses the main aspects of the allocation of legal responsibility in public law. The current stage of development of the Russian Federation is characterized by cardinal transformation processes, manifested in the systemic reform of many spheres of social reality. At the same time, there is a public-private dichotomy of domestic law, which significantly affects all elements of the national legal system, in particular, legal responsibility. The latter is a qualitative indicator of the effectiveness of the implementation of human and civil rights and freedoms, the perfection of the system of checks and balances in the organization of public power, the value guidelines of the state and society as a whole. Legal responsibility occupies one of the key places in the modern legal doctrine and is traditionally viewed as a legal phenomenon, a legal concept (category) and an intersectoral institution of law (normative structure). However, now each dimension of legal responsibility requires deep philosophical understanding, holistic legal interpretation and systemic regulatory improvement. In this regard, it becomes necessary to combine certain types of legal responsibility at the macro level of the structure of law – public and private. A significant increase in the role and importance of legal responsibility in public law is due to the task of building a legal state, the implementation of the principle of mutual responsibility of the state and the individual by recognizing the responsibility of not only the individual, but also the state, its bodies and officials.

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1. Introduction

Legal responsibility in public law is an important means of realizing public interests, a reliable guard against offenses, a key instrument for ensuring public order in the state.

Despite a significant number of scientific works on the issue of legal responsibility, there are still many controversial and insufficiently developed issues of its nature. This is explained, on the one hand, by the complexity and versatility of legal responsibility, the dynamism of changes in domestic legislation, and, on the other hand, by an extremely complex security policy, political and economic situation in the country in recent years. For instance, insufficient attention has been paid to legal responsibility in public law, its principles, regulatory structure, relations with other public law institutions, the implementation mechanism, the specifics of public legal responsibility of the highest bodies of state power (head of state, parliament and government) of the Russian Federation and certain foreign states. Thus, the development and theoretical substantiation of the nature of legal responsibility in public law is an important condition for reforming the national legal system, increasing the efficiency of the implementation and application of the norms of this intersectoral institution of public law, strengthening the rule of law and establishing the rule of law in the Russian Federation.

2. Problem Statement

Some aspects of legal responsibility in public law.

3. Research Questions

Analysis of some aspects of legal responsibility in public law, views of modern legal scholars on legal responsibility in public law.

4. Purpose of the Study

Purpose – a comprehensive theoretical and practical study and analysis of the essence of some aspects of legal responsibility in public law.

5. Research Methods

The structural and logical approach, systematic presentation of the material, formal legal method, comparative legal research method were used as research methods.

6. Findings

Legal responsibility in public law as a constant element of the legal system has been an object of knowledge of thinkers, scientists, statesmen, political and religious figures from the most ancient historical eras, primarily the periods of antiquity, the Middle Ages, the Renaissance and the Enlightenment, to the present day. At the same time, the approaches of researchers (representatives of

various types of legal thinking and scientific schools) to the dimensions of legal responsibility in public law have evolved and changed, integrating and differentiating, under the influence of a number of subjective and objective factors.

At the present stage of development of social sciences, legal responsibility in public law is in the sphere of interest of representatives of philosophy, psychology, sociology, political science and jurisprudence. In the general theory of state and law, scientists focus on the theoretical foundations (models), regulations (constructions), principles (humanism, justice) and practical aspects (on the example of special subjects of public law) of the implementation of legal responsibility in public law (Strus & Popandopulo, 2013). As a result, the absence of a general theoretical study devoted directly to the development and functioning of legal responsibility in public law, causes conceptual and categorical uncertainty and law enforcement errors, in terms of the number of authors – individual and collective, which to one degree or another reflect certain aspects of the problematics.

The problematics of the nature of legal responsibility holds one of the main places in Russian jurisprudence. After all, it is legal responsibility that is the key mechanism for ensuring the fundamental rights and freedoms of a man and citizen. A thorough study of the essence of legal responsibility in public law is of great theoretical and applied importance. The establishment and development of a democratic, social and legal state makes it necessary to comprehend the debatable issues of determining legal responsibility, its features and principles, since it is it that serves as an indicator of the level of legal culture and legal consciousness of a certain society.

It is known that the rights and obligations of a person form their legal status, just as they create one of the fundamental elements of legal relations – their composition. Therefore, taking into account the above, any legal responsibility has all the elements of legal relations and can be considered as a type of public relations of a legal nature, regulated by the norms of law, be of a regulatory or protective nature and is expressed in compliance with the rules of conduct established by the rules of law or in the implementation of measures of coercion against the offender.

At the same time, the characterization of legal responsibility would not be complete without considering the signs of legal responsibility. In modern literature, there is no common understanding and classification of signs of legal responsibility, since they specifically form its concepts. Legal responsibility is characterized by three characteristics: state coercion, condemnation of the offense and its subject, the presence of negative consequences for the offender. In legal science, there are several concepts for determining the key (generic) attribute from those indicated above.

Legal liability is one of the coercive means applied on behalf of the state. The peculiarity of responsibility as a coercive means of influence is that it is applied on behalf of the state, by state bodies, has a legal character, is carried out in the forms specified by law and on legal grounds. According to another point of view, the main and most significant sign of legal responsibility is the conviction of the offender, since legal responsibility involves the application of coercive measures to persons who have committed offenses provided for by law in the established procedural order.

Let us note that it is not worthwhile to identify the concept of legal responsibility and legal coercion, despite their close relationship, since the first concept is always based on coercive sanctions, and the second one can be carried out without the presence of legal responsibility. Not all coercion should

be regarded as responsibility in the legal sense, since not all legal coercion should be recognized as legal responsibility, because legal responsibility is not the only means of influencing the offender, because there are other effective legal measures aimed at protecting and restoring public relations (Kotkovskiy, 2016). Moreover, legal responsibility and state coercion are closely related, but they cannot be completely identical, since legal responsibility is always based on coercive sanctions, and state coercion can be carried out outside of legal responsibility.

Regarding the legal responsibility arising within the framework of constitutional law, it should be noted that there is a differentiation of views in its understanding. It is worth agreeing with the indication of the need to distinguish between the concepts of "constitutional responsibility" and "constitutional legal responsibility", since the constitutional responsibility is broader in content. Constitutional responsibility includes all types of legal responsibility, while constitutional legal responsibility is an independent type of legal responsibility arising from violation of the Constitution and other acts of constitutional legislation. Thus, analyzing legal responsibility in constitutional law, one should define it as constitutional and legal, but not constitutional, which, in our opinion, is primarily of a political nature.

It should be noted that the question of the existence of positive responsibility in constitutional law leads to a dualism of views on the problematics. The definition of constitutional and legal responsibility as such is manifested in the priority of the protection of the most important relations and on the occurrence of negative consequences for violators of constitutional legislation. It follows from this definition that the issue of negative consequences is an unconditional statement of the existence of constitutional responsibility in an exclusively negative (retrospective) form. Let us also point out the impossibility of the existence of positive constitutional and legal responsibility, since it is based on state coercion as an integral sign of negative legal responsibility.

Interestingly, constitutional law defines not only negative legal responsibility, but also positive one, characterizing it as a sense of responsibility for their behavior, activities, and a sense of duty. At the same time, it is the positive responsibility that has the advantage, and the negative one is exclusively auxiliary in nature.

Thus, we come to the conclusion that positive legal responsibility not only exists, but also plays a leading role in constitutional law, since the proper functioning of public authorities directly affects the rule of law and the level of legality in the state.

An equally significant contribution to the development of a theoretical model of legal responsibility was made by specialists in criminal law. Like in other public-branch sciences, scientific views on the definition and understanding of positive responsibility in criminal law differ. Supporters of the concept of the existence of criminal liability only in the negative form categorically deny the existence of the positive liability, considering it exclusively as a consequence of the commission of an illegal act by a person. Criminal liability is defined as the obligation of a person who has committed a criminal offense to bear responsibility by applying measures of state coercion to them, it is also indicated that responsibility should be considered as the duty of a person to be responsible to the state by imposing deprivations of both personal and property nature on them. No less categorical are the supporters of the concept of positive criminal liability, which characterizes positive criminal liability as a requirement not

to commit actions aimed at violating socially beneficial phenomena that are protected by criminal law (Kotkovskiy, 2018).

The existence of a trend towards the allocation of positive criminal liability in the science of criminal law is the basis for further theoretical developments in this area. Thus, having analyzed the approaches of theorists of various branches of law, it can be concluded that positive legal responsibility is the behavior of a person of a lawful nature, which meets the requirements of regulatory legal acts and requires the fulfillment of duties imposed by the state on the subject of law. Proceeding from this, it is possible to determine the signs of positive (prospective) legal responsibility, which distinguish it from negative (retrospective) one. These signs include:

- is established by the state in the incentive norms;
- is applied by authorized bodies and officials on the basis of the rule of law;
- is a means of stimulating the necessary lawful behavior and state conviction;
- provides the subject with the opportunity to obtain additional social benefits of a material, personal or organizational nature;
- is a form of implementation of incentive sanctions;
- is implemented in a strictly defined procedural form.

Unlike negative (retrospective), the implementation of positive (prospective) legal liability is aimed at the lawful behavior of a person, the formation of which is the goal of negative (retrospective) legal liability. According to our position, the study of the nature, essence and specifics of legal responsibility in public law should be based on modern scientific approaches to understanding legal responsibility and public law, and also take into account the content of such a concept as a public legal obligation. Taking into account the conceptual differences in the views of various scientific schools regarding the problem under study, one should proceed from such a theoretical and methodological basis that legal responsibility, like any other type of social responsibility, is the only one and covers voluntary (positive, prospective) and state compulsory (negative, retrospective) forms of implementation.

Based on the study, the following signs of legal responsibility in public law were identified and substantiated:

- a) is based on the norms of public law (constitutional, administrative, criminal, financial, administrative procedural, criminal procedural, etc.), has formal certainty and clear criteria;
- b) can be regarded as the duty of the subject, in relation to which it is defined, to act in a certain way;
- c) this type of responsibility is not just guaranteed by the state, but is directly related to its activities;
- d) when implementing in the public sphere, state coercion or persuasion is most often used;
- e) the consequences of the occurrence are approval and (or) encouragement, from state bodies, or condemnation and punishment.

Legal responsibility as a legal institution is a certain system of individual legal norms, thanks to which legal order is ensured and the commission of new offenses is prevented. This concept can be classified as functional, that is, those that directly affect various branches of law. At the same time, if we

talk about the public aspect of legal responsibility, then we can say that it affects those relations in the public sphere that are formed by the state and arise as a result of the commission of offenses. It is thanks to this mechanism and the understanding of this category that the protection of legal norms is ensured.

The norms of various types of responsibility form its subinstitutions. A sub-institution should be understood as a set of norms of a separate branch of law the implementation of which is aimed at regulating various types of social relations. Let us also note the fact that the functional connections of the institutions of legal responsibility help reflect the interdependence of not only individual sub-institutions of legal responsibility, but also other related legal institutions. There are several approaches to the classification of the functional relationships of legal liability subinstitutions. The types of such connections include genetic, subordination and coordination ones. In addition, within the limits of genetic relations, the theory distinguishes internal ones, which reflect relative social relations, and external ones, which characterize the proximity of theoretical constructions of various types of legal responsibility. Let us emphasize that the institution of legal responsibility has both internal and external functional ties. We believe that such a classification is correct, since it reflects the interaction of the institution of legal responsibility with other legal institutions in general, as well as reflects a similar relationship between the sub-institutions of the institution of legal responsibility within individual branches of law.

This position can be argued by the fact that genetic ties (internal and external) play an important role in this institution, since they manifest themselves in the analysis of institutions of legal responsibility of related branches of law. So, in particular, legal liability for hooligan actions is provided for by both criminal and administrative offenses legislation. In this case, the genetic link will be expressed in the degree of guilt of the person of the offender. The interaction of the institution of legal responsibility with the institution of the head of state, the institution of parliamentarism and the like is considered no less important.

Bringing the head of state or a member of parliament to criminal responsibility is in genetic connection with political and constitutional legal responsibility. It should be noted that the links between the institution of positive legal responsibility and other legal institutions are more difficult to identify as compared to negative ones, but they can be determined. For example, it is possible to trace the genetic link between the institution of positive legal responsibility and the institution of elections (Tsurina, 2013). The proper performance of duties by the head of state or individual deputies of parliament entails his possibility of re-election for the next term. As a legal phenomenon, legal responsibility in public law finds normative consolidation as an interbranch institution of public law. The institution of public legal responsibility should be understood as a set of relatively independent regulatory and protective, material and procedural norms of public law that streamline a separate qualitatively homogeneous group (type) of interrelated social relations arising from the functioning and implementation of legal responsibility in public law. At the same time, the sectoral institutions of legal responsibility, due to the presence of common features and qualities with other similar sectoral institutions, allow us to conclude that the institution of legal responsibility is inter-sectoral in nature, since there are internal genetic links that make it possible to form the most complete picture of the essential characteristics of this institution:

- is based on the guilt of the offender;

- its main content is the compulsory imposition on a person of the obligation to undergo state condemnation for an offense committed by them;
- public condemnation of the person who committed the offense;
- the obligation to incur, in the event of the imposition of a punishment provided for by law, adverse consequences, consisting in privations of a personal or property nature.

The foundation of this subsystem is the legal norm itself, which can be called a connecting link within the entire system of legal responsibility, not only in public law. The general system of legal responsibility consists of types of legal responsibility, which can be distinguished into a separate subsystem and subspecies of certain types of legal responsibility as separate elements.

The essence and content of legal responsibility in the public sphere can be expressed through the fundamental principles that are formed within the framework of public law, establish the degree of responsibility of a certain circle of people and express the content of such responsibility (Ovsepyan, 2005).

The legal doctrine has repeatedly emphasized the direct relationship between state institutions, the mechanism for applying legal norms, as well as ensuring human rights with such a category as “principle”. It is not for nothing that the legislator, when forming key regulatory legal acts, always indicates the principles in accordance with which certain legal relations are implemented.

Based on the above, we consider it appropriate to emphasize that the principles of legal responsibility in the public sphere should reflect not only the current state of affairs in the settlement of these legal relations, but also reflect the development trends of the public sphere of state power. However, it is also worth mentioning that the concept of "principle" itself is an objective-subjective category and its formation depends not only on the content of the current legislation that regulates the public sphere, but also on those points of view that are formed in science and find their application in practice. This interpretation of the concept under consideration serves as a certain reference point for both the legislator and the subject of legal relations, since this is how the connection between theory and practice is displayed (Khachaturov & Lipinsky, 2007).

7. Conclusion

Thus, the areas of modern public law can normally exist and function only with their own institution of legal responsibility. The question of the independence of the type of legal responsibility in public law depends on the development of a particular industry or sub-branch of public law. Based on the results of studying the doctrinal approaches to understanding legal responsibility in certain branches of public law, there is every reason to assert that constitutional responsibility is the basis for further improvement and formation of other types of public legal responsibility. Criminal and administrative ones traditionally remain the most developed both in theoretical and practical aspects; however, they continue to develop mainly in the context of their state-compulsory concept. Financial one requires in-depth theoretical research, systematization of legislation and unification of rules of application.

Therefore, on the basis of understanding the pluralism of interpretations of the nature of legal responsibility in various social, humanitarian and sectoral legal sciences, we proposed a theoretical and

legal construction of legal responsibility in public law based on the dualistic concept of legal responsibility and the doctrine of the public-private dichotomy of objective law. Thus, legal responsibility from the point of view of public law can be characterized as an obligation to comply with established norms, through the legal behavior of the subject of public relations, which is guaranteed by state persuasion and coercion. This concept is implemented through lawful behavior, and such behavior is approved by the state, and in case of violation of the norms, the violator undergoes various restrictions of both material and non-material nature. In turn, the institution of public legal responsibility is a set of relatively independent regulatory and protective, material and procedural norms of public law that streamline a separate qualitatively homogeneous group of interrelated social relations arising from the functioning and implementation of legal responsibility in public law.

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