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Problems of understanding legal responsibility in modern law science

The article reviews problematic aspects of understanding legal responsibility within current theoretical concepts in theory of law. Authors investigate the contents of such term as «legal responsibility» from perspectives of negative and positive approaches to defining this legal category. Representation of legal responsibility is considered in a form of a complex phenomenon, including two forms of realization: voluntary (positive) and state-forced (negative), from perspective implying unity of positive and negative aspects. Special attention is given to the study of native scientific literature, describing the viewpoints of Kazakh scientists in matters of understanding legal responsibility. It is concluded that the absence of agreement of opinion does not allow to formulate the definition containing all the characteristics of the studied phenomenon. However, the authors make an attempt to build up such a definition.

Keywords: social responsibility, legal responsibility, retroactive (negative) aspect of legal responsibility, perspective (positive) aspect of legal responsibility, forms of realization of legal responsibility, legal obligation, offence prosecution, state enforcement measure, corrective action, good behavior, commendation, concept of the unity of legal responsibility.

For many years, special attention in legal science has been traditionally given to the problems of legal responsibility. Despite the fact that a great number of scientific works is devoted to the study of legal responsibility, there is no concordance in legal science about the definition of this vital legal category. Legal responsibility is a complex and many-aspect phenomenon, due to a number of different and frequently contradictory approaches to its understanding, the contents of the term defining it remain to be one of the most speculative problems. Regarding this situation, A.S. Mordovets points out: «The problem of legal responsibility deserves careful attention. However, there is no concordance of opinions within scientific community about the notion of the legal responsibility so far. There are over ten different definitions of it» [1; 211].

In law theory, legal responsibility acts as one of the integral parts, forms of types of social responsibility. Social responsibility itself, in turn, is understood as a specific property of social relations, which is manifested in human activities and is expressed in the awareness or a possibility of the awareness of the socially significant consequences of his actions. Along with legal responsibility, social responsibility includes moral, political, public and many other forms and types of responsibility. In addition, the category of responsibility is not only used in legal science. This term is also used by social sciences, in particular, philosophy, psychology, sociology and others, it is used to characterize different phenomena and depict different sides of subjects' behavior [2]. It is important to note that legal responsibility is simply one of the forms of social responsibility, i.e. social and legal responsibilities interact as the general and the specific.

The study of problematic matters of understanding legal responsibility in modern law science, in our opinion, is to be started with defining semantic value of this notion, without it there is no possibility of conducting a valid analysis of its legal contents. A number of dictionaries denotes the term «responsibility» as «the obligation to take responsibility for the consequences of the actions taken; the possibility of being punished for the poor performance in the result of a certain activity» [3; 740], «the obligation, imposed or taken by someone, to report about one's certain actions and take the blame for possible consequences» [4; 603], «the necessity, obligation to report on one's activities, actions» [5; 468]. Judging from the above mentioned definitions, it is possible to conclude that philologists reveal the contents of responsibility via the category of «obligation», narrowing down this many-aspect phenomenon. In foreign theory and practice, for example, along with the enlisted meanings, phenomenon of responsibility includes a lot more meanings: liability, answerability, reasonability, precision, dependability, etc [6; 12]. The existing gaps in contents cannot correct the situation with the number of present variety of diverse definitions of the term of legal responsibility, which we are about to examine.

Nowadays, there are different approaches to defining this legal category. The most general vision, in our opinion, is reflected within the view that separates the concept into the following groups: retrospective (negative) approach to the definition of legal responsibility; perspective (positive) approach to the definition of legal responsibility, and the miscellaneous approach which is closely related to both, uniting the general

ideas of positive and negative sides. In addition, each of those groups has its own approaches, which to some extent, brings even more discord and contradiction to the attempts of formalizing universal definition of legal responsibility [7].

For a long time, the theory of law included only one point of view in understanding legal responsibility, which is now named retrospective (negative) legal responsibility. Its essence is the point that legal responsibility can only be attributed to already committed offensive action (legal offence). Being historically first to start its development, the negative aspect of legal responsibility includes a huge variety of opinions about the definition of legal responsibility and its legal nature.

One of the first definitions of the retrospective aspect of legal responsibility was formulated by O.S. Ioffe and M.D. Shargorodsky, revealing it as «the measure of state enforcement, based on legal and social judgement, expressed in the application of the set negative consequences involving restrictions of private or proprietary nature» [8; 312].

I.S. Samoshchenko and M.Kh. Farukshin understand it as «the obligation, as the result of legal responsibility, taking place in the situations, when a person definitely evokes negative consequences of his/her behavior, when those consequences act as the negative reaction of community to the actions of this particular person» [9; 42]. S.N. Bratus points out that «legal responsibility is state substantiated enforcement of duty fulfillment» [10; 85]. According to the opinion of O.E. Leist, «legal responsibility is the use of state enforcement measures, stipulated by the penalty of the norm violated in a specified procedural order, to the person committing the offence» [11; 97].

N.I. Matuzov and A.V. Malko understand legal responsibility as «legal relations, emerging from the offence, taking place between the state, represented by its special bodies, and the offender, who is imposed to suffer specific penalties and negative consequences for violating the regulations of law» [12; 447]. A.B. Vengerov perceives it as «the law established measures of treating the offender, including negative consequences, used by the state bodies in state established manner» [13; 101]. In turn, V.V. Lazarev considers that «legal responsibility is the measure of state enforcement for committing offence, involving the penalties of private or proprietary nature» [14; 241].

The author V.S. Nersesyants has his own point of view, defining legal responsibility as «measure of legal enforcement in response to the offence, stipulated by the sanction of the regulation violated, applied against the offender by a competent state body or an administrative official in a proper legal manner» [15; 522].

The definitions of legal responsibility different from each other are present in modern legal encyclopedias as well. Thuswise, the legal encyclopedia edited by M.Yu. Tikhomirov defines it as «state enforcement of fulfilling the demands of law, law relations, each side of which is obliged to be accountable for their actions as to the other sides, so to the state and community» [16; 503]. In Grand Dictionary of Law by V.N. Dodonov, V.D. Yermakov, M.A. Krylova, the notion is formulated as «the obligation of offending subject to suffer the negative consequences, substantiated by law regulations» [17; 721]. Grand Dictionary of Law by A.B. Barikhin defines legal responsibility as «the obligation of offending subject to suffer the negative consequences, substantiated by law regulations; the forced deprivation of certain amenities from the offender, stipulated by the law and used by the state bodies» [18; 947, 948].

As it can be seen, the «negativists» do not have a general picture, not to mention the absence of a generalized definition of legal responsibility. In some cases, it is identified as the sanction, applied against the offender, in some other cases, it is defined as a measure of state enforcement, expressed in certain negative consequences taking form of restrictions of private or proprietary nature. There is also a case in which it is considered to be the obligation of the offender to suffer specific negative consequences. In all the other cases, this peculiar legal relation between the state and the offender, against whom it is legal to apply the law stipulated enforcement measures in a procedural manner.

In general, the retrospective aspect of legal responsibility can be characterized by the following qualities: state enforcement, offence denouncement along with the subject of it, the presence of negative consequences, procedural manner of implementation [19].

Starting from 1960-s, there was the beginning of a concept of perspective (positive) responsibility, whilst the validity of its acknowledgment is substantiated by many works by law-scientists dedicated to it. All those authors base their statement on the generally accepted postulate, that legal responsibility is a form of social responsibility. The latter, representing a complex of obligations, appearing based on the demands, stipulated within social regulations, can be expressed in two aspects: positive (perspective) and negative (retrospective). Consequently, it is necessary to admit the existence of perspective aspect of legal responsibility.

Its supporters think that «positive responsibility emerges when one is initiating fulfillment of his/her duty, not only when it is not being done properly, or against the regulations» [20].

However, just like the followers of the retrospective approach to understanding legal responsibility, the understanding of legal responsibility by supporters of perspective concept is also debatable. According to the opinion of B.T. Bazylev, «the essence of positive legal responsibility is embodied within the obligation to follow legal regulations, which is supposed to be expressed in law-abiding behaviour» [21; 26]. Some particular scientists identify it as the use of positive reinforcement measures, consequently, B.T. Razgildiyev claims that «positive responsibility may be based on criminal law, if this is directly stipulated in criminal law regulations, providing citizens with the right to undertake strictly defined actions, aimed at fulfilling the duties related to secure social relations from criminal offence against them» [22; 152]. Others see the essence of positive responsibility not as «an obligation to follow the rules of law, not in the rights and obligations of citizens and state, but in their responsible behavior» [23; 19].

A number of authors identify positive responsibility as the element of personal legal status, naming it a status symbol. This is the point of view of E.V. Chernykh, according to him, «status responsibility is an objectively substantiated, state provided and secured necessity (obligation) of conscious and voluntarily fulfillment of law regulations by participants of a legal interaction. It has a constructive and regulative function, being the example (model) of an actual responsible and proper behaviour» [24]. N.I. Matuzov has a similar point of view: «status responsibility itself is positive responsibility, i.e. the responsibility for proper fulfillment of one's obligations, moral and legal duty» [25; 214].

Both existing concepts (positive and negative) find support within the scientific community, there are many notorious law scientists among the advocates of both concepts, involved in the arguments between two sides. The results of this controversy is expressed in the existence of undoubted retrospective aspect of legal responsibility, to the point of dogmatic assertion by certain authors about its exceptional nature, for example, I.S. Samoshchenko and M.Kh. Farukshin state that «legal responsibility from the day of its genesis has always been the responsibility for the past, for the offence already committed» [9; 43], as well as the existence of still controversial positive aspect of legal responsibility, allowing to evaluate individual's behavior, primarily, from the perspective of being obliged to act legally valid, not out of fear of retribution.

However, as the time goes, there is more and more acknowledgement towards the rational, from our point of view, postulate that responsibility in law is supposed to have multiple interpretation, both retrospective and perspective. From the middle of 1980-s and the beginning of 1990-s, there was a beginning of the concept uniting positive and negative in legal category of responsibility, which is substantiated by the idea of legal responsibility to be viewed as a complex integrated phenomenon, possessing two forms of realization: voluntary (positive) and state enforced (negative).

This position of defining the essence of legal responsibility is supported by many scientists. According to the point of view of V.N. Kudryavtsev, «legal responsibility is a specific institute of social control, stipulating individual's rights and obligations regarding the activities delegated, and legal or moral – positive and negative consequences in case of their fulfillment or failure» [26; 297]. D.A. Lipnitsky gives a definition of legal responsibility as «the legal obligation of following and carrying out the demands, stipulated by law regulations, realized in law-abiding behavior, approved or encouraged by state, and, if violated, the obligation of the offender to be a subject to judgement, restriction of material, legal or private rights and their realization» [27; 65]. R.L. Khachaturov considers that «positive and retrospective responsibility are the voluntary and forced forms of realization of legal responsibility, which purpose is to reflect the correlation between the disposition and sanction of the law regulation, positive legal obligation and measure of state enforcement, since they are supposed to provide responsible behavior of law subjects» [28].

Certain authors propose to abnegate the terms «negative» and «positive» legal responsibility, because they consider those names unsuitable and unacceptable. D.I. Bernshtein points out that those terms «accentuate the attention on the opposition of the aspects of responsibility, neglecting their unity, incorrectly reflecting the orientation and role of responsibility for legal offence» [29; 49]. V.V. Pokhmelkin writes: «further preservation and use of the terms specified will create the impression of two types of responsibility existing independently within the law. Legal responsibility is unitary, just like any other type of social responsibility» [30; 26, 27].

In native literature, the understanding of legal responsibility is also ambivalent. The analysis of scientific works by Kazakhstani authors in theory of state and law, and the works, directly related to the problem of legal responsibility, indicates the predominance of retrospective approach in this matter. A.S. Ibrayeva, for example, states that «legal responsibility is one's necessity to undergo measures of state enforcement in case

of committing offence» [31; 91]. D.A. Bulgakova identifies legal responsibility as «the application of legislation stipulated state enforcement measures to the offender, in a set procedural manner» [32; 90]. According to the point of view of M.Sh. Kakimova, «legal responsibility is a form of legal enforcement, representing a special law condition residing within one's obligation to suffer certain adversities as the result of the offence committed» [33; 135]. M.G. Shaigaliyev defines legal responsibility as «a special legal relation, appearing on the basis of the offence committed, between competent state bodies, on one side, and the offender on the other side, which results in certain negative consequences for the latter» [34; 11].

There are also supporters of our point of view, which is the unity of legal responsibility. R.R. Nugmanov in his thesis work concludes that «concept of positive criminal (legal, in general) responsibility appears to be rather promising. This approach to the problem of criminal responsibility suggests filling it with its «own» contents, widening the range of criminal responsibility, allowing to step aside from traditional view of criminal responsibility, which is represented as solely oppressive phenomenon, contributing to the enhancement of the role of positive behavior. And, what is crucial in this situation, as the legal system in general, so the separate branches of it, become unitary and complete» [35; 13].

Consequently, having taken an attempt to generally indicate the problems of understanding legal responsibility in modern law science, we come to the following conclusion. Legal responsibility is a complex and multi-aspect phenomenon, legal nature and contents of which, in our opinion, does not allow to give it any approximately complete definition. As we can see, there is no concordance in understanding legal responsibility even within the framework of separate concepts, furthermore, agreeing with the point of unity of legal responsibility, when only the forms of its realization are differentiated: voluntary (positive) and state enforced (negative), formulating the definition, containing all the characteristics of legal responsibility is nearly impossible, for the definition will become immensely «heavy» in terminological sense, overloaded and long.

However, resting upon the most attractive viewpoint to us, the representative of «Scientific School of Tolyatti», D.A. Lipnitsky, we shall take an attempt to define legal responsibility, not having any claims to its validity and omnitude. Then, from our viewpoint, legal responsibility is a complex of obligations, appearing for legal subjects, expressed in voluntary submission to the demands of law regulations (positive aspect), and in case of offence – the obligation to undergo judgment, expressed in application of state enforcement measures (negative aspect), if needed.

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Қазіргі заң ғылымында заңдық жауапкершілікті түсіну мәселелері

Мақалада құқық теориясының теориялық тұжырымдамасы бойынша заңдық жауапкершілікті түсінудің өзекті қырлары қарастырылды. Авторлармен осы құқық категориясын анықтауда ретроспективтік (жағымсыз) және перспективті (оң) көзқарастағы «заңдық жауапкершілік» терминінің мазмұны зерттелді. Заңдық жауапкершілікті позитивті және негативті қырлар бойынша күрделі құбылыс ретінде өз еркімен (позитивті) және мемлекеттік-мәжбүрлік (негативті) деген екі түрлі нысанда ашып көрсететін көзқарас негізделді. Қазақстандық ғалымдардың заңды жауапкершілікті түсіну бойынша көзқарастарын ашып көрсететін отандық әдебиетті зерделеуге аса назар аударылған. Зерттеліп жатқан құқықтық құбылыстың барлық белгілерінен тұратын анықтамасын беруге ортақ бір көзқарастың болмауы мүмкіндік бермей отырғаны жөнінде қорытынды жасалды. Алайда авторлар осындай анықтаманы құрастыруға талпыныс жасаған.

Кілт сөздер: әлеуметтік жауапкершілік, құқықтық жауапкершілік, құқықтық жауапкершіліктің ретроспективті (теріс) аспектісі, құқықтық жауапкершіліктің перспективті (оң) аспектісі, заңды жауапкершілікті жүзеге асыру формалары, құқықтық міндет, құқық бұзушылықты соттау, мемлекеттік мәжбүрлеу шарасы, ықпал ету шарасы, құқықтық мінез-құлық, марапаттау шарасы, құқықтық жауапкершіліктің бірыңғай тұжырымдамасы.

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Проблемы понимания юридической ответственности в современной юридической науке

В данной статье рассматриваются проблемные аспекты понимания юридической ответственности в свете существующих теоретических концепций в теории права. Исследуется содержание термина «юридическая ответственность» с точек зрения ретроспективного (негативного) и перспективного (позитивного) подходов к определению этой правовой категории. Обосновывается позиция, раскрывающая юридическую ответственность в единстве позитивного и негативного аспектов, как сложное явление, имеющее две формы реализации: добровольную (позитивную) и государственно-принудительную (негативную). Отдельное внимание уделено изучению отечественной научной литературы, раскрывающей позиции казахстанских ученых по вопросу понимания юридической ответственности. Резюмируется вывод о том, что отсутствие единства мнений практически не позволяет сформулировать определение, содержащее в себе все признаки исследуемого правового феномена. Однако авторами все же предпринимается попытка конструирования подобного определения.

Ключевые слова: социальная ответственность, юридическая ответственность, ретроспективный (негативный) аспект юридической ответственности, перспективный (позитивный) аспект юридической ответственности, формы реализации юридической ответственности, юридическая обязанность, осуждение правонарушения, мера государственного принуждения, мера воздействия, правомерное поведение, мера поощрения, концепция единства юридической ответственности.

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