

On Functional Purpose of Legal Liability

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Abstract

The general theoretical and sectoral aspects of the problem of the functions of legal responsibility are considered. The author proceeds from the fact that the main methodological mistake of supporters of the restorative function of legal responsibility is that they often identify measures of legal responsibility and protection measures.

Keywords

legal responsibility;
functions; purpose; essence;
protection measures;
restorative function



I. Introduction

We believe that the question of the functions of legal responsibility is of current importance, since the former express the essence and social purpose of the latter.

First of all, we note that the functions of legal responsibility are determined and directed by its goals. [1].

The functions of legal responsibility are the main directions of the impact of legal responsibility on social relations, people's behavior, legal consciousness, culture, in which its essence, social purpose is revealed, and through which the goals of legal responsibility are achieved [2].

II. Research Methods

When preparing a scientific article, the following methods were used:

General Philosophical (Dialectical-Materialistic)

General philosophical (dialectical-materialistic), which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

Positions on the Recognition (Non-Recognition) of the Restorative Function of Legal Responsibility

3.1. Supporters of the Legal Function

The first group is united by the points of view of those authors who categorically, without any reservations, recognize this function of legal responsibility. For example, Dmitry Anatolyevich Lipinsky does not doubt that legal responsibility performs regulatory, preventive, punitive, restorative and educational functions [3]. In another work, this author, although he makes an attempt to distinguish between protection measures and measures of legal responsibility, nevertheless admits the presence of legal responsibility of both restorative and punitive functions [4]. Natalya Leonidovna Solomenik believes that the restorative function of negative responsibility can be carried out by fixing in legal norms the offender's obligation to restore public relations, establishing in legal norms the rights and obligations of the competent authorities to compel the offender to restore public relations, real coercion of the offender to restore public relations [5]. Igor Aleksandrovich Kuzmin, proceeding from the nature of the impact and the methods of exercising legal responsibility, as the functions of the latter names punitive, preventive, educational, compensatory and legal restorative. With regard to the latter, the author believes that it is of a regenerative nature: if an unlawful act harms the rights and legitimate interests of the state, society, individual, then it is quite logical that the restoration of violated rights should be carried out by the offender [6]. It is interesting to note that further analysis of the classification legal responsibility by industry, proposed by the author, clearly shows that the restorative function is not typical for all of its types, but only for some, for example, constitutional (cancellation of the decision on admission to citizenship in the Russian Federation), civil (compensation for material damage), material (the employer's obligation to compensate for damage caused to the employee's property), international law (restitution - compensation for material damage in property form: money, goods, works, services) [6]. Viktor Lavrentievich Kulapov and Alexander Vasilyevich Malko, considering legal liability through the construction "the offender's duty to endure deprivation ...", name only three functions of legal liability: penalty (punitive), which, in our opinion, judging by the content, is unreasonably identified with the preventive function; educational and again restorative (restoration of the violated right, compensation for losses, etc.) [7]. It seems that the positions of these scientists are in conflict with their own statement that "legal responsibility is of a penalty nature, as it is expressed in the state - the authoritative establishment for the offender of a new, additional obligation associated with the need to endure the negative consequences of personal (imprisonment, awards, honorary titles, driving licenses, etc.), material (fine, confiscation, forfeit, etc.) or organizational (exemption from positions, closure of the enterprise, etc.) nature, which are fixed in the sanction of a legal norm [7].

In the issue we are analyzing, the position of Vladimir Ivanovich Shepelev is interesting, interpreting legal responsibility as arising from the fact of committing an offense, imposing on the offender a legitimate type and measure of imperiously - forcibly enduring hardships of a personal, property, organizational nature. The author does not indicate the functions of the former at all, however, they can be "isolated" from the content of civil liability proposed by the author: "the sanctions of this type of liability are reduced to compensation by the offender for property damage and restoration of the violated right. There is also provided for the legal possibility of collecting from the person who violated the contractual obligations, forfeit in the form of a fine or penalty "[8]. In our opinion,

here, perhaps indirectly, at least two functions of legal responsibility - law restorative and punitive (penalty) “appear”. It seems that there are sufficient grounds to critically evaluate the views of Stepan G. Drobyazko and Vasily Semenovich Kozlov, who, on the one hand, they pay attention to the fact that legal responsibility provides for certain hardships suffered by a person for a committed offense, that is, it bears (punishment) punishment, and, on the other hand, legal responsibility is associated with the voluntary fulfillment of obligations related to the restoration of the violated right (compensation for damage caused, etc.) [9]. Along the way, we note that not all offenses, but only crimes and administrative offenses, entail punishment.

A clear confusion of legal responsibility and protection measures can be traced in the works of other scientists. Thus, the team of authors categorically argue that one of the signs of legal responsibility is the use of state coercion, i.e., punitive measures (the use of criminal penalties (for example, imprisonment), an administrative fine, disciplinary sanction) or of a remedial nature (compulsory recovery of damages, payment of a penalty, imposition of the obligation to restore violated rights of others) [10]. Robert Vachagovich Yengibaryan and Yuri Konstantinovich Krasnov, showing inconsistency, highlight, along with punitive, preventive, educational and compensatory function, emphasizing that “measures of legal responsibility are aimed at restoring social relations violated by illegal behavior ... “[11], although earlier they indicated that legal liability” ... entails negative consequences for the offender: infringement of his rights, imposition of new additional duties ” [eleven]. This applies equally to the concept of legal responsibility proposed by Ivan Vladimirovich Timoshenko, who defines it “as the use of measures of state coercion against offenders to restore violated law and order and (or) punish the person who committed the offense” [12]. Roman Mikhailovich Romanov explicitly states, that “the role of legal responsibility in restoring violated rights and freedoms is significant, in compensation for property and moral damage caused by unlawful behavior” [13]. Magomed Imranovich Abdulaev and Sergei Aleksandrovich Komarov, understanding legal responsibility as a legal relationship between the state represented by its certain bodies and subjects of law, who are responsible to society and the state for the exact and conscientious implementation of the law contained in the norms and the corresponding requirements, instructions, etc. ., believe that the responsibility of the offender lies in the performance of two types of duties: a) restore, as far as possible, the state of public life that was before the commission of the offense (for example, to fulfill the unfulfilled duty, return the illegally acquired, otherwise eliminate the harm caused, which caused the offense); b) incur punishment for the offense (for example, pay a fine, serve the appointed term of imprisonment, etc.). Scientists are confident that these two groups of responsibilities constitute the single content of any legal responsibility [14]. It is easy to understand that the above provisions implicitly refer to the restorative and punitive functions of legal responsibility. However, it is problematic to imagine the implementation of the restorative function of legal responsibility, for example, in case of murder. In addition, it should be noted that legal responsibility should not be identified either with a legal relationship or with a special legal obligation. Indeed, in cases where an offense is not noticed by the state or the offender is not identified (not found), the latter does not bear any hardships and does not undergo anything, but, on the contrary, he can enjoy the benefits of the offense. Therefore, it is more accurate to believe that legal responsibility is not the obligation itself (encumbrance), but the process of its implementation in protective legal relations [15]. In principle, agreeing with the above provision expressed by Valery Nikolaevich Protasov and Natalia Valerievna. Protasova, it is difficult to recognize their position on the separation of two functions of legal responsibility - penal (punitive) and legal, especially in

the context of the above reasoning about the appointment of protection measures - to restore the previous normal legal position by forcing the subject to perform a previously imposed, but not fulfilled legal obligation [fifteen].

Some scholars distinguish between two types of legal responsibility, each of which corresponds to the nature of the offense and the content of the sanctions for its commission - punitive (penalty) and legal [16; 17; 18].

3.2. Intermediate Position on the Recognition of the Legal Function

The second group is united by the scientific positions of those authors who, while recognizing the restorative function of legal responsibility, nevertheless make reservations at the same time, and, in our opinion, they are significant and of a fundamental nature.

So, Maria Pavlovna Trofimova, interpreting the restorative function of legal responsibility unjustifiably broadly, believes that the result of the impact of this function can be divided into two types: special (legal) and social. The author refers to the first type of restoration of law and order, legality, legal relations, subjective rights, legal obligations of lawful behavior, and to the second, the restoration of social relations not directly regulated by law; psychological calmness of society, social justice, meeting the needs of society, restoring the value orientations of the offender [19]. And although it is further argued that all types of legal responsibility have a restorative function, the author simultaneously draws attention to the fact that "the restorative possibilities of legal responsibility should not be absolutized, for" only those social relations are restored in which elements that can be really restored are "damaged" ". According to the author, "in some cases, compensation for harm does not indicate the restoration of social relations, if, for example, the object of public relations is irretrievably lost or the subject is criminally destroyed" [19].

Very often, supporters of the restorative function of legal responsibility argue their position on the recognition of the restorative function of legal responsibility with the proviso that it is more inherent in civil liability. Thus, Nikolai Mikhailovich Chistyakov and other authors, interpreting legal responsibility as the violation by the offender of various deprivations associated with state coercion, applied for the committed offense, believe, showing illegality, that "the main functions of legal responsibility are the protection of law and order and the upbringing of people", and then unexpectedly declares that these include the functions of retribution, punishment for the offense; special and general prevention, educational and legal, aimed at restoring the violated right, to compensate for the damage caused [20; 21]. With regard to the latter function of legal responsibility, like many other authors, the scientist refers to the content of civil liability, believing that it "... includes measures to compensate for harm caused by violation of property and personal rights of a person and citizen. This is a fine, compensation for damages, payment of a forfeit, return of a thing, compensation for moral damage, refutation of defamatory information, restoration of a good name, apology, etc. " [twenty]. Leonid Pavlovich Rasskazov, understanding legal responsibility as the duty of the person who committed the offense, to undergo measures of state coercion on the basis of the relevant regulatory legal prescriptions, in principle also calling the same functions as the first, clarifies that the function "restorative (compensatory) is manifested in the compensation of the property rights of the victim sides. This function aims to compensate for the material or moral damage caused, to restore property in its previous state, the rights of citizens "[22] Unfortunately, speaking of that. that this function "is most clearly manifested in civil law" [22], the author does not disclose the content of the latter.

It seems that on the problem under consideration, the position of Nikolai Andreevich Pyanov is of certain interest, who, highlighting the compensatory and legal restorative functions, also emphasizes that the latter is most characteristic of civil liability [23]. The author argues that the restorative function of legal responsibility manifests itself in the fact that it contributes to the restoration of the subjective rights of the victims violated by the unlawful act, and the compensatory function is associated with compensation for material or moral damage caused by the unlawful act. The author believes that these are two different functions of legal responsibility, despite the fact that they are often combined. At the same time, such a combination does not always take place and the restoration of violated rights can be carried out without compensation (for example, when restoring a good name, business reputation, etc.) [23]. It is interesting to note that the above reasoning about the legal restorative and compensatory functions of legal liability unfolds against the background of such previously stated copyright provisions that protection measures (remedial measures) are aimed at protecting violated subjective rights and these include forced debt collection, forced recovery of maintenance alimony children, reinstatement of an unlawfully dismissed employee to work, etc. [23].

It seems that, even recognizing such an intermediate position on the issue of the restorative function of legal responsibility, it is not difficult to challenge it using the following arguments concerning the ratio of general (in this case, functions of legal responsibility in general) and special (functions of certain types of legal responsibility, in particular, civil -legal). At the same time, an individual in law should be understood as a single legal phenomenon, the set of properties of which determines its specificity and thereby distinguishes it from all other phenomena, and a common one is the unity of all legal phenomena, expressed in the similarity or commonality of their properties, connections and relations [1]. And if the common in law accumulates similar features of its constituent parts, then the presence of some specific feature of the special in law cannot be mechanically extended to the characteristics of everything common. Similar to this reasoning, we believe that it is unreasonable, as is the case in the legal literature, to extend such a sign of a crime as a public danger to the characterization of an offense in general, highlighting such an amorphous criterion as “the degree of public danger” in its classification [1].

Evaluating the positions of supporters of the restorative function of legal responsibility, one should pay attention to the fact that they groundlessly identify measures of legal responsibility and measures of protection, ignore the fundamental provision according to which measures of protection are measures of state coercion in order to restore and protect violated rights (for example, compulsory recovery of alimony, seizure from the debtor and transfer of certain items to the recoverer, etc.). In this case, the violator does not experience hardships, as in the exercise of legal responsibility, since here the purpose of coercion is not to punish the offender, but to compel him to fulfill a legal obligation, through which the subjective right of the entitled party is ensured [24]. It is interesting to note that while agreeing with this well-reasoned conclusion, Viktor Dmitrievich Perevalov nevertheless insists on the allocation of the remedial (compensatory) function of legal responsibility, which restores the violated right, compensates for the material and moral damage caused by the offender [25].

We believe that Valery Vasilyevich Lazarev clearly distinguishes between measures of legal responsibility and measures of protection (restorative measures) used to restore the normal state of legal relations by encouraging the subjects of law to perform their duties. The author refers to the measures of protection as the recognition of the transaction as invalid with the return of the parties to their original property position, debt collection,

compensation for damage incurred in saving the property of public and state organizations, recovery of alimony, reinstatement of persons dismissed illegally, withholding of amounts mistakenly paid to the employee, collection of taxes, cancellation of an illegal regulatory legal act or law enforcement act. The scientist draws attention to the fact that protection measures are applied for offenses with a minimum degree of public danger, as well as in individual cases and in the absence of illegal acts (for example, compensation for damage incurred while saving property of state and property organizations) [26].

I would like to immediately understand what the author means by the expression "offenses with a minimum degree of public danger"? If we are talking about crimes, then there is no such category in the Criminal Code of the Russian Federation. If we are talking about other offenses, then the question arises whether they are socially dangerous. In any case, when defining such an offense as an administrative offense, which in a number of cases most of all "adjoins" crimes, the legislator does not indicate a sign of public danger (Article 2.1 of the Administrative Code). This is, first of all. Secondly, thinking that we are still talking about misconduct, although not only they, but also some crimes may be grounds for the application of protection measures.

In particular, we are talking about a civil suit in criminal proceedings, the features of which, according to Vyacheslav Petrovich Bozhiev, are to a certain extent due to the dependence on the nature of the crime committed. The scientist draws attention to the fact that, on the one hand, "the connection between the claim and the crime predetermines the limitation of the composition of the parties to the dispute on civil law by their attitude to the crime committed and its consequences," and, on the other hand, "... a claim in a criminal case with a crime, in which a person is accused, lead to attempts to expand the range of subjects of the criminal process involved in the sphere of criminal procedural relations in connection with the claim "[27] Compensation of harm to the victim is not only and not so much a purely private matter as public, since through the restoration of the rights of the victim, the right of the whole society violated by the committed crime is restored [28].

Currently, domestic courts, resolving civil claims in criminal proceedings, choose the only way to restore the material law violated by the crime - recovery of damages in monetary form. The activities of the accused to compensate the victim for damage caused in kind, usually carried out in practice during the preliminary investigation, remains outside the boundaries of criminal procedural regulation, as not provided for by law. This provision, which determines the "monetary" way of protecting the rights and legitimate interests of citizens, organizations and the state, is unlikely to help restore the violated rights of victims. Alexander Petrovich Ryzhakov, examining the legal status of a civil plaintiff in criminal proceedings, argues that the requirement for a monetary equivalent is not always rational for a civil plaintiff. According to the author, "the civil plaintiff has the right to present a claim for any other form of compensation for property damage caused to him directly by the crime ... not in money, but in a similar thing. This method of compensation for damage protects the civil plaintiff from the unpleasant consequences of inflation, deficit, etc. "[29]. Olga Valentinovna Gritsai agrees with this position [30].

Dmitry Aleksandrovich Praskovin, believing that a civil suit in a criminal proceeding is a claim of an interested person for compensation (compensation) for harm caused by a crime, subject to consideration and resolution in criminal proceedings, considers it necessary to highlight both substantive and criminal procedural grounds, in the presence of which there may be criminal - procedural relations associated with the production of a civil claim. The author considers the first to be a crime, about which a criminal case is being initiated and criminal proceedings are being conducted. The second category

includes criminal procedural acts entailing the emergence, change or termination of these legal relations at the pre-trial stages: initiation of a criminal case, recognition as a civilian, involvement as a civilian, the imposition of the arrest of property by the investigating authorities in securing a civil claim, etc. [31]. In our opinion, the positions expressed by Nikolai Nikolaevich Senin are of interest, asserting that “the main feature that determines the nature of a civil claim in a criminal case is the combination of public and private principles in it ... A civil suit in criminal proceedings is only one of the ways protection of violated rights along with criminal procedural restitution and voluntary compensation for harm ”[32].

In addition to a civil claim, there are other methods of compensation for property and moral damage in criminal proceedings. We are talking about the actual return of property (material evidence) to its rightful owner (criminal procedural restitution) and the active actions of the suspect, accused to compensate or make amends for the harm caused as a result of the crime [33].

Attention is drawn to the fact that other scientists are trying to show the differences that exist between the measures of legal responsibility and measures of protection, to one degree or another making their contribution to the development of this general theoretical problem. So, Vladimir Ivanovich Chervonyuk believes that protection measures differ from legal liability in that they occur for an offense that often has a minimum degree of public danger, or an act that is a "legal anomaly" that does not acquire the nature of an offense. The author refers to the measures of protection: recognition of the transaction as invalid with the return of the parties to their original property position, transfer of the faulty payer to prepayment of bills, actual fulfillment of contractual obligations (additional delivery, replenishment of products) and others in civil law; removal of children without deprivation of parental rights, recovery of alimony - in family law; compulsory treatment, collection of monetary amounts (taxes) and others - in administrative law; reinstatement of illegally dismissed workers - in labor law, etc. [34] It seems that in the above provisions the author unjustifiably identifies protective measures and compulsory measures of a medical nature. Valery Nikolaevich Protasov and Natalya Valerievna Protasova, clearly narrowing the grounds for protection measures, believe that such are objectively illegal (not guilty) and damaging acts. It also clarifies that “... those measures that in the theory of civil law are called“ innocent ”legal responsibility are precisely civil legal measures of protection... for without guilt, legal responsibility cannot and should not exist. An example of civil protection measures, as they believe, is the compulsory confiscation of a thing on the basis of a vindication claim from a bona fide purchaser. ”[15] , if the main function of legal responsibility is penalty, then the function of protection measures is reduced to restorative tasks, however, on the other hand, the position of the scientist is questionable, according to which “... for measures of legal responsibility the basis is an offense, and for measures of protection - objectively unlawful behavior, which can be called a "legal anomaly" "[27]. In this regard, a more convincing point of view of Dmitry Anatolyevich Lipinsky, who believes that protection measures are applied "... both in the event of an offense, and in the absence of such" ("other legal facts") [3]. From the point of view of Vladimir Mikhailovich Vedyakhin, a characteristic feature of legal liability should be recognized the use of penalties, which are different in each industry, and, above all, on this basis, liability should be distinguished from protection measures [35].

As previously emphasized, a number of authors, when distinguishing between measures of protection and measures of legal responsibility, refer to the characteristics of civil law and, accordingly, to civil liability, which, according to many scientists, is most inherent in the restorative function. It seems that one should agree with the opinion of

Denis Nikolayevich Karkhalev, who wrote that in civil law, as a universal criterion for distinguishing between measures of protection and measures of responsibility, is the presence of non-equivalent property deprivations inherent only to measures of responsibility. As for the protection measures, their application is accompanied only by the implementation of the obligation from the existing legal relationship between the parties [36]. Valery Vasilyevich Lazarev quite reasonably points out that the measures of protection consist in the fact that a person is forced to fulfill the obligation that lies with him, which he had to fulfill earlier, but did not fulfill. In this case, additional hardships, in addition to the fulfillment of the obligation, do not occur for the person (for example, when collecting alimony, the amount that the person should have paid voluntarily is withheld), and legal liability is associated with imposing on the offender an obligation that did not exist before the offense. The author also draws attention to the fact that, in their main focus, the measures of legal responsibility are addressed, first of all, to the offender, their main function is punitive. Protection measures are aimed not so much at the offender, but at ensuring, restoring the interests of the entitled person, their main function is to protect the corresponding subjective rights [26]. However, when setting out in general, sufficiently reasoned provisions, the author, in addition to punitive (penalty), educational and preventive, highlights the legal function of legal responsibility, while emphasizing that it is inherent, first of all, property responsibility, is designed to compensate for the loss of the injured party, to restore her rights [26]. In addition, it seems that here we should speak not about the functions of the so-called "property responsibility", but about the functions of legal responsibility in general, as one of the basic concepts of the general theory of law. It is interesting to note that in another work the scientist does not name this function of legal responsibility, however, instead of it he proposes a different function - compensatory, aimed, first of all, at compensation for the damage caused by the offender. The scientist explains, saying that it aims to make amends for the harm caused by the offender (return of the stolen thing or compensation for its value, compensation for losses from the wrongful action of the other party, compensation for lost profits, etc.) so that the injured party can continue to act in the same conditions, as before the offense [37].

3.3. Opponents of the Recognition of the Law-Stopping Function

The third group unites the positions of a few authors who generally do not recognize the existence of a restorative function of legal responsibility. We believe that this point of view is more correct, adequately reflecting the legal reality. Thus, Tatyana Borisovna Shubina categorically asserts, referring to criminal law, that "punishment does not compensate for anything, does not have this goal and by its nature cannot compensate for anything. The damage caused to law and order cannot be eliminated at all ... The restorative function of responsibility is absent in other branches of law as well. The restorative character is inherent primarily in the measures of protection provided for by the norms of various branches of law "[38]. Opponents' objections that refer to such a goal of criminal responsibility as the restoration of social justice, which is normatively enshrined in the Criminal Code of the Russian Federation (part 2 of Article 43 of the Criminal Code of the Russian Federation) [18], in our opinion, are untenable, because the authors refer to a rule of law that has high character of declarativeness.

As the general theoretical provisions underlying our position, perhaps repeating to some extent, we can name the following. The social and legal purpose of remedial measures is to compensate for the damage caused by the violation (other actions) to the legitimate interests and rights of the individual. The so-called legal sanctions, with the help of which the state protects the normal development of social relations in society, by means

of: legislative definition of the obligation to compensate for property damage, damage; cancellation of illegal acts and transactions; indications of coercive measures taken by the competent authorities for the implementation of unfulfilled obligations, etc. The main purpose of this type of sanctions is to protect the right belonging to the authorized person, to restore his property and other interests. The main thing in legal responsibility is a penal, punitive effect, which is deprived of legal measures aimed at restoring the legal status, ensuring the fulfillment of legal obligations, protecting the rights and legitimate interests of the individual; therefore, in the application of these measures, it is not the offender who is brought to the fore, but the entitled person.

Agreeing with these provisions Valentina Vasilievna Seregina, one should pay attention to the fact that the author reasonably emphasizes that the legal form of coercion is characteristic almost for all branches of law, only in some branches it is expressed more clearly than in others. Citing examples of the application of legal sanctions in state, labor and family law, the author correctly writes that the predominant significance of these sanctions is for civil law, because here they are most adapted for the effective protection of property relations, since the main function of civil legal regulation is compensatory, compensatory or remedial function [39].

IV. Conclusion

In conclusion, we note that, in our opinion, legal responsibility implements punitive (penalty), preventive and educational functions; at the same time, we do not recognize the restorative function characteristic only of protective measures.

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