ФИНАНСОВОЕ И НАЛОГОВОЕ ПРАВО

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ON LEGAL NATURE OF RESPONSIBILITY IN LAW

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SUMMARY

The article examines the legal nature of responsibility in law through linguistic, philosophical, and specifically legal aspects of it. On author's opinion the latter implies its application in a retrospective sense. The analysis of scientific literature provides several approaches to understanding of the legal responsibility. All approaches can be divided into personal and authoritative approaches. According to the author, it is the category of "duty" that conveys the legal nature of responsibility in law most accurately. Therefore, the article focuses on the inherent qualities of it, and its correlation with the category "relationship". In addition, the author markes common features that embody the legal nature of responsibility in law, regardless of the approach to the definition.

Key words: legal responsibility, positive responsibility, retrospective responsibility, protective relationship, duty.

АННОТАЦИЯ

В статье исследуется правовая природа юридической ответственности через лингвистический, философский и специально-юридический аспекты. Последний, по мнению автора, предусматривает ее применение исключительно в ретроспективном смысле. Анализ научной литературы позволяет выделить несколько подходов к пониманию юридической ответственности, которые воплощают личностный и государственно-властный подходы. Как представляется автору, именно категория «обязанность» позволяет наиболее точно передать правовую природу юридической ответственности, в связи с чем внимание уделено присущим ей качествам, а также соотношению с определением через категорию «правоотношение». Кроме того, выделены универсальные признаки, которые воплощают правовую природу юридической ответственности, независимо от подхода к определению.

Ключевые слова: юридическая ответственность, позитивная ответственность, ретроспективная ответственность, охранительное правоотношение, обязанность.

Introduction. The question of the legal nature of responsibility in law is topical for both legal theory and specialized branches of law. Legal responsibility is a form of social responsibility. The latter is multifaceted term, that is why formation of a unified approach to its definition is controversial. Moreover, conception of legal responsibility, among other things, depends on the prevailing legal regime, legal understanding and other factors of legal reality in the state, therefore it can not be formulated "once and for all times". In this regard, we consider how the paradigm of legal responsibility understanding shifted from its identification with punishment (this approach focuses on state coercion applied to offender) to its association with the categories of "legal protective relationship" and "duty".

The **aim** of this article is to identify the legal nature of responsibility in law basing on an analysis of linguistic and philosophical sense, and also existing scientific approaches to its understanding in a specially-legal sense; to find out features that reflect its legal nature.

The methods and materials used. A detailed study of this institution starts with the period of Soviet science. Moreover, the authors started to refer to general issues of legal responsibility since the mid-50th of XX century. We should note that ideological context does not deprive their findings of theoretical value for modern science. In this regard, we turned to the works of S.S. Alekseev, B.T. Bazylyev, S.M. Bratus, O.S.Joffe,O.E.Leyst,M.S.Maleyin,N.I.Matuzov,P.E.Nedbaylo, I.S. Samoshchenko, M.S. Strogovich, M.H. Farukshyn, L.S. Yavych and others. However, changes in the legal system that followed the independence of former Soviet republics, made it necessary to rethink the approaches to understanding of the legal liability. The latter was provided by the following Ukrainian and foreign scientists: K.V. Basin, N.V. Vitruk, A.B. Vengerov, Z.I. Hovsepian, N.M. Onishchenko, D.A. Lipinski V.V. Seredyuk, M.D. Shyndyapyna, O.F. Cherdantsev, A.P. Chirkov.

First of all, it makes sense to find out the established understanding of the concept *"responsibility"* in the language. Due to the fact that some authors deny the need for linguistic research of legal terms, we should note that the lexical and semantic system of special language – legal language, is formed by the general language selection of national and international fund of categories, and by formation of its own means of expression of necessary meanings, categories and concepts. However, the latter is usually the image of existing notions and concepts [1, c. 44–45]. Thus, the mechanism of formation of a special term basing on literary language explains the need to recourse to dictionaries.

Ukrainian dictionaries contain almost the same definition of *"responsibility"*, namely "assigned to someone or taken by oneself the duty to be responsible for a certain area of work, actions, deeds, words" [2, c. 620]. The Merriam-Webster dictionary provides the following definition: "the state of being the person who caused something to happen; a duty or task that you are required or expected to do; something that you should do because it is morally right, legally required" [3].

It is also advisable to trace the etymological origin of the word *"responsibility"*. Thus, the meaning of that term in many languages is the same and comes from the word "answer" "respond": for example *"responsibility"* in English, and *"responsibilite"* in French comes from the Latin "responsus", which means "to respond".

Thus, from a linguistic point of view "responsibility" can be interpreted as "a duty to respond" "to report", "be held accountable". Certainly, this linguistic research is not enough for such a complex structure as "legal responsibility". Deeper interpretation is offered by the philosophy of law, which learns social responsibility.

From a philosophical point of view, responsibility is an attitude of individuals towards society and the state from the standpoint of fulfillment of certain requirements; their awareness and proper understanding of national responsibilities to society, state and others individuals [4, c. 291], and understanding of the meaning and significance of their actions in light of this [5, c. 6]. Ukrainian scientist U.S. Osokina defines social responsibility in a philosophical sense, as an ability of social subject to coordinate own actions with the actions of others in the process of joint activity, to realize and properly adjust the consequences of his activities and to be ready to acknowledge accountability for his actions in front of himself, fellow citizens and future generations [6, c. 8–9].

Understanding of the legal responsibility shifted in the process of development of science and changes of socio-political conditions. As noted by Polish researchers, legal responsibility is historically formed type of institutional relations within a particular historical and legal culture [7, c. 10]. A clear indication of this is the appearance and spread of so-called "positive responsibility" in Soviet science in 60's XX century. Thus, among other arguments scientists claimed that the formation of new social relations under socialism caused the necessity of study of positive responsibility, and a whole priority of this type of responsibility under the new socio-economic conditions. One of the first scientists involved in this issue was P.E. Nedbaylo, who argued that social meaning of such type of responsibility lies in the activity that meet the objective requirements of a given situation, and objectively caused ideals of a given time. The content of positive responsibility contains independent and initiative activity within the law and those ideals to achieve which the norms were issued [8].

In view of this, there are different directions of research of legal responsibility: 1) this institution is seen as a dialectical unity of its negative and positive aspects (Z.A. Astemirov, D.A. Lipinski, M.I. Matuzov, P.E. Nedbaylo, M.S. Strogovich, V.A. Tarkhov and others); 2) an emphasis is made exclusively on the retrospective nature of responsibility (S.N. Bratus, M.V. Vitruk, Y.O. Joffe, O.E. Leyst, M.S. Maleyin, P.M. Rabinovich, I.S. Samoshchenko, M.H. Farukshyn and others).

In our view, the first interpretation of legal responsibility leads to a diminution of the legal meaning of responsibility, and therefore it underestimates its role and importance. We should agree that the term "responsibility" is not purely legal. As already noted, the legal responsibility is a form of broader social responsibility. However, the division of social responsibility on the species within different areas of public life implies the acquisition of different content according to the objective requirements of reality. It was rightly noted by I.S. Samoshchenko and M.H. Farukshyn that despite the existence of an active (positive) responsibility within the general social understanding of responsibility, the legal one should not be interpreted in such sense [5, c. 6–8, 43]. In addition, it is inappropriate and unacceptable to include an honest man conscious attitude to duty and wrongful conduct of the offender into one definition [9, c. 666].

On the other hand, we agree with a proposition to develop a new concept to denote positive form of legal responsibility because, as S.N. Kozhevnikov notes, "any legal phenomenon should have a conceptual identity" [10, c. 460]. Positive responsibility should be viewed as is a separate legal phenomenon, avoiding mixing it into one "broad" concept including retrospective responsibility.

There is no one unified approach to the definition of legal responsibility in literature. Legal Encyclopedia defines this concept as a form of social responsibility, the essence of which is to apply to offenders sanctions which are provided by law and enforced by state [11, c. 437].

The most common scientific approaches to definition of legal responsibility are its consideration through the next concepts: a measure (means) of a state coercion; sanction or its implementation if an offense occurs; a punishment; an ability of subject that is recognized by the state, to account for his illegal act; condemnation, negative assessment of the behavior of the offender; a special legal status; legal relationships arising out of an offense; a duty fulfillment by state coercion; a duty of an offender to experience the negative consequences of his violation.

These approaches emphasize on certain significant feature of responsibility, thus contributing to identify concepts and correlation of legal responsibility with such categories as "state coercion", "penalty", "sanction", "condemnation", "relationship", "duty". It is also necessary to pay attention to the placement of emphasis in these approaches. Given the fact that the legal responsibility is a system of bilateral relations between state and person, it's personal and public aspects can be defined. Given this, we believe that there is a reason to argue that one group of the above mentioned approaches is more closed to personal aspect and other group is more closed to authoritative aspect of legal responsibility. Thus, I.S. Samoshchenko and M.H. Farukshyn noted the possibility of considering legal responsibility from the perspective of the person who is responsible and from the point of view of empowered state bodies [5, c. 54]. In our opinion, the preference should be given to the first approach. Concept of legal responsibility should be disclosed as a phenomenon of subjective law through the legal status of an individual. It is embodied most closely in the consideration of legal responsibility through the category of duty.

Recently, in the Ukrainian science definition of legal responsibility through the category of "relationship" has become particularly prevalent. Other definitions deal with a "static", unlike it the concept "legal responsibility – relationship" implies dynamic legal relationship between the offender (or the person who is accused of an offense) and public authorities [12, c. 8–9]. This approach emphasizes that the negative consequences for the offender are an external reaction to an offense, so at least two sides present. Any legal relationship is characterized by a special content – a set of subjective rights and obligations of the participants. So, under this approach special attention should be given to the consideration of mutual rights and obligations of those who participate. Actually, this fact implies scientific and practical value of this approach.

However, legal relationship is precisely the form of the substantive rules of responsibility, so this approach emphasizes the procedural aspect of legal responsibility. Instead, legal responsibility is an institution of substantive law. In this regard, we think that application of category "duty" is more appropriate. It is an element of protective legal relations of responsibility. We should note that the latter approach does not reject the existence of reciprocal rights and duties of the offender and empowered body. Conception of duty presupposes the existence of two sides. It is only one element of legal relations between the parties. However, duty to be subjected to means of responsibility is the primary duty of the offender. Existing of other rights and duties is conditioned by the emergence of this subjective duty of offender because of his illegal behavior. Thus, a supporter of this approach – S.S. Alekseyev, while agreeing that the responsibility is implemented within the protective legal relationship, at the same time believes that the most decisive and specific feature of responsibility is

duty of the offender to experience state-compulsory means of influence, that is duty to response for tort [13, c. 279].

The following features of duty that arises within the legal liability can be distinguished: 1) it possesses an additional negative character with respect to the duties which had been given to the offender before committing illegal act; 2) it is embodied in a sanction of legal norm; it is also an element of law enforcement relationship content, unlike the duties that existed before the violation, and which are determined by the disposition of legal norm, and which are part of regulatory relations; 3) it plays role of "guard" with respect to the duties that existed before the offense.

There are three approaches to determination of the starting point of legal responsibility: 1) from the moment of offense; 2) from the moment of application of procedural law (bringing individuals to justice); 3) from the moment when the law enforcement act comes into force, which is a tool of recognition of the fact of committing an offence by specific person. On the basis of the above-mentioned position, it can be argued that the responsibility as a subjective duty of specified person arises from the moment of offense. But ignorance of the state as the other party of such relationship, can not affect the appearance of such duty.

It is supposed that the most successful way of defining the essence of legal responsibility is the allocation of its essential features. It also the way of "reconciliation" of different approaches. Without taken into consideration terminological differences, the following characteristics can be included: a state-coercive character of content and form; involves negative impact on the offender in a form of certain restrictions (deprivation) of personal or material nature; offense is the actual basis of responsibility; state and public condemnation of the behavior of the offender.

On the basis of mentioned features legal responsibility can be defined as a legally defined duty to suffer the negative consequences of the offense, stipulated by sanctions in a form of deprivation of individual's rights or other external expression of public condemnation of such behavior.

In our opinion, such an approach reflects the nature and value of legal responsibility as well as etymology of the word, and the way of its application in legislation and legal practice language. This approach allows us to answer questions about the content of offender's duty, the moment of inception of responsibility, participants of relationship within which this duty is implemented etc.

Conclusions. So we paid attention to the linguistic, philosophical and specifically legal aspects of the understanding of responsibility in law. When determining the latter, one should distinguish between its legal sense and the concepts used in the social, philosophical literature. This implies its understanding in the retrospective aspect.

We have identified the most common approaches to the understanding of legal responsibility. It should be noted that according to the rules of formal logic, any definition is able to fully display the object, while it takes into account only the essential features of the subject and, accordingly, does not include number of other features that he is endowed with. So the above mentioned researchers built their definitions based on significant, in their view, features. Therefore, each of these definitions is so-called "right". It is fair, that the theory of law is developing in the process of comparison of different points of view.

In our view, an essential feature which reflects the legal nature of responsibility in law is duty. This feature is already reflected in the word "responsibility", which means "answer", "response", because of the etymology of the word. This approach is most appropriate to the application of the term in legislation and practice, and also generally accepted theory of law provisions. In addition, one can note the closeness of one group of the above mentioned approaches to personal aspect, and other – to state-powerful aspect of legal responsibility. We believe that the preference should be given to the first.

Understanding of the legal nature of responsibility in law is the foundation for further studies of its functions, means and scope to achieve effective impact on the offender, the concept of mutual responsibility of the state and persons etc.

References:

1. Юкало В. Структура спеціальної мови і професійного спілкування / В. Юкало // Дивослово. – 2005. – № 12. – С. 43–48.

2. Словник української мови : в 11 т. / АН УРСР. Інститут мовознавства ; за ред. І.К. Білодіда. – К. : Наукова думка, 1970–1980. – Т. 1. – 1970.

3. Merriam-Webster Dictionary. Online edition [Электронный ресурс]. – Режим доступа : http://www.merriam-webster.com/dictionary/responsibility.

4. Общая теория права и государства : [учебник] / под ред. В.В. Лазарева. – 3-е изд., перераб. и доп. – М. : Юристъ, 2002. – 520 с.

5. Самощенко И.С. Ответственность по советскому законодательству / И.С. Самощенко, М.Х. Фарукшин. – М. : Юридическая литература, 1971. – 240 с.

6. Осокіна Ю.С. Відповідальність соціального суб'єкта: філософський аналіз : автореф. дис. ... канд. філософ. наук : спец. 09.00.03 / Ю.С. Осокіна ; М-во освіти і науки України, Київ. нац. ун-т ім. Т. Шевченка. – К., 2007. – 17 с.

7. Середюк В.В. Юридична відповідальність в правовій науці України та Польщі : автореф. дис. … канд. юрид. наук : спец. 12.00.01 / В.В. Середюк ; М-во освіти і науки України, Київ. нац. ун-т ім. Т. Шевченка. – К., 2013. – 19 с.

8. Недбайло П.Е. Система юридических гарантий применения советских правовых норм / П.Е. Недбайло // Правоведение. – 1971. – № 3.

9. Общая теория государства и права. Академический курс : в 3 т. / отв. ред. М.Н. Марченко. – 3-е изд., перераб. и доп. – М. : Норма, 2007.

10. Общая теория права / под ред. В.К. Бабаева. – Нижний Новгород, 1993. – 538 с.

11. Юридична енциклопедія : в 6 т. / ред. кол.: Ю.С. Шемшученко (голова ред. кол.) та ін. – К. : Українська енциклопедія, 1998–2004. – 672 с. – Т. 1. – 1998.

12. Осауленко А.О. Нормативна конструкція ретроспективної юридичної відповідальності в публічному праві сучасної України : автореф. дис. … канд. юрид. наук : спец. 12.00.01 / А.О. Осауленко ; Київ. нац. ун-т внутр. справ. – К., 2007. – 18 с.

13. Алексеев С.С. Общая теория права : в 2 т. / С.С. Алексеев. – М. : Юридическая литература, 1981. – 360 с.