

ON THE FACTORS HINDERING THE DEVELOPMENT OF THE GENERAL LEGAL RESPONSIBILITY THEORY IN RUSSIAN SCIENCE

Damir Y. Shapsugov¹, Yuri N. Radachinsky², Andrey V. Kurochkin³

Abstract: The current methodology of the study of legal responsibility does not ensure the solution of important theoretical and practical problems regarding its nature. This article is devoted to the problems of the development of a general legal responsibility theory and draws attention to the trends of modern science, which hinder the identification and description of legal responsibility as a general legal phenomenon. Authors provided and analyzed a set of retrospective opinions on the formation and development of legal responsibility phenomenon. To overcome the adequacy of understanding the social and scientific grounds for the development of the general theory of legal responsibility the authors state that the legal responsibility phenomenon must be developed in the light of its possible integration into the theory of general social responsibility.

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Introduction

Despite the fact that in scientific literature considerable attention is paid to legal responsibility, its general theory is in a crisis state. There are several signs of this crisis.

The existing methodology of the study of legal responsibility does not ensure the solution of a number of important theoretical and practical problems. The retrospection of responsibility, firmly entrenched in legal doctrine and current legislation, reduces all scientific discussions and lawmaking processes only to discussing the size and nature of sanctions, and the need to introduce or exclude various types of offenses. As a rule, these debates are not scientifically grounded but are an expression of some political views on methods for preventing and combating offenses. The interconnection between the measures of legal responsibility (in their retrospective understanding) and the mechanisms for achieving its goals, the individual characteristics of the offender and the effectiveness of the activities to bring him to justice is also not scientifically proved.

The impossibility of providing clear answers to such questions to the society is a consequence of the doctrinal underdevelopment of the legal responsibility theory, which does not even include the essential concept of responsibility that can consolidate the efforts of scientists and determine the vector of scientific research.

The study is aimed at drawing the economists' attention to the methodological issues in the development of legal responsibility, leading to a plurality of contradictory definitions, and suggesting reference criteria for its functional study. Violation of logical norms for a functional approach application appears as the key factor hindering the development of common legal responsibility theory.

Results of the study

Modern jurisprudence offers the most diverse definitions of legal responsibility and statements regarding its essence and content. As a rule, it is explained by its multidimensionality (versatility) and a special purpose of the definitions. At the same time, under the slogan of "multifaceted nature of legal responsibility," a variety of legal phenomena, even mutually exclusive ones, are sometimes included in its content, the definitions of their content being presented as definitions of specific aspects of responsibility. The functional approach to the study of legal phenomena is quite common for scientific activity. However, it means taking into account a number of conditions. Firstly, the generic concept should be behind the variety of functional representations of legal responsibility. Secondly, the content of functional definitions, statements should not distort the understanding of the essence of legal responsibility. It should not be transferred to a qualitatively different state or be identified with other

¹ Russian Presidential Academy of National Economy and Public Administration (RANEPA), Rostov-on-Don, e-mail: 79282261671@ya.ru

² Russian Presidential Academy of National Economy and Public Administration (RANEPA), Rostov-on-Don, e-mail: radachinskiy@uriu.ranepa.ru

³ Russian Presidential Academy of National Economy and Public Administration (RANEPA), Rostov-on-Don, e-mail: zam.director@uriu.ranepa.ru

phenomena. Thirdly, any definition or statement must clearly express its functional character. It is necessary to indicate the purpose of creating a particular definition. Fourth, the definition should have its own place in the legal responsibility theory. It means that while creating the definition model only terms that correspond to the logical conceptual terminological series of the general legal responsibility theory are permitted to be used. Fifth, metaphorical definitions, the meaning of which comes to artistic or spiritual images and can be perceived exclusively intuitively, are to be excluded from the scientific creative effort. Sixth, the terms that define the object of cognition must be clearly understood. In the case of ambiguity of the term, it should be clarified with reference to the solution of research problems. Systemic implementation of these requirements is possible while creating a deductive theory, which is based on a certain primary concept, from which the conclusions are derived logically. It is the absence of the primary concept of legal responsibility that causes systemic problems of its general theory. Responsibility, like most legal phenomena, is a kind of legal construct created at a doctrinal level and enshrined in legislation. Therefore, it is possible to solve the problem of a primary assertion about the essence of legal responsibility by forming the most effective measure of responsibility useful for the legal regulation of its model, rather than finding its truth.

Criticism of legal responsibility definitions in Russian science

The definitions offered today of legal responsibility do not stand up to the criticism of opponents. Moreover, criticism in most cases is based on demonstrating the practical inconsistency of the concepts of responsibility, and the inability to use them in legal regulation.

Various versions of retrospective views on legal responsibility are not able to disclose the content of the responsibility of the Russian people "for their Motherland before the present and future generations", proclaimed in the preamble of the Constitution of the Russian Federation. They do not agree with the understanding of the responsibility of parents for the upbringing and development of their children, which is defined in Art. 63 of RF Family Code as an obligation to care for the health, physical, mental, spiritual and moral development of their children. The responsibility of the state to the society and the individual also is not reduced to sanctions of legal norms, or to unfavorable consequences stipulated by the sanction of the legal norm, or to the obligations carried out by virtue of state coercion.

The understanding of legal responsibility as a necessity to answer for one's behavior causes more questions than answers. What is the content of this responsibility? What is the measure of legal responsibility? What is the exoneration from responsibility? How does the need to report correlate with punishment? Is it possible to make the subject to report? To understand the legal responsibility through the reporting category, it is necessary to have a clear idea of the content of the report itself, and it is not available today. If the term "report" is excluded from the definition of legal responsibility, the concept becomes vague. Therefore, it is not possible to develop a theory of legal responsibility on the basis of such an understanding of its essence.

The understanding of legal responsibility's essence as a legal relationship is criticized for various reasons. In addition to the uncertainty of the sector profile of such legal relationship (for example the one of criminal law, criminal procedure or criminal executive, or maybe multi-sectoral?), this approach identifies legal activity on bringing the subject to justice with the legal responsibility itself.

Representatives of the positive concept of legal responsibility are accused of the practical uselessness of their arguments about the nature and essence of this phenomenon, as well as logical inconsistency.

For example, Vitruk (2009) derives the essence of responsibility from social relations. This is their qualitative aspect, which characterizes the individual's reaction to social demands and the social reaction (both positive and negative) on the behavior of the individual. The author formulates the following definition of social responsibility: "Thus, the relationship between the subjects of social relations and the society from the point of view of the conscious implementation of the mutual claims set out through social norms are expressed by the category of social responsibility". This definition contains the primary concept of responsibility, which is generic in relation to the notion of legal responsibility. It reflects philosophical and sociological notions of responsibility. Since the subject can consciously meet the requirements of legal norms both voluntarily and by virtue of state coercion, social responsibility according to author's understanding has both positive and negative sides: "First of all, it means the subject's comprehension of the need to fulfill the requirements of legal norms, as well

as negative consequences for their non-fulfillment ". At the same time, the author pays much attention to the positive aspects of responsibility, citing fairly convincing arguments based both on the current legislation and the practice of the Constitutional Court of the Russian Federation. Considering legal responsibility as a part of social responsibility, it is reasonable to assume that its conceptual and terminological systems should express the essential characteristics of social responsibility, taking into account the specific nature of legal responsibility. But we do not observe this in the author's works. At the moment when he completes the philosophical and legal study of the essence of legal responsibility and proceeds to applied developments, the content of the conceptual system of the legal responsibility theory immediately changes: "The grounds and measures of legal responsibility, the procedure for their application are regulated by legal acts usually in the form of laws. This is due to the fact that legal responsibility is a measure of state coercion, the application of which requires special guarantees of observance of rights and freedoms of individual entities, and other subjects of public relations". It is not difficult to see that such statements do not have even a hint of a positive nature of the legal responsibility or quality of the subject, ensuring the consistency of its behavior with the requirements of legal norms.

Creating his definition of constitutional responsibility N.V. Vitruk recognizes that its source is not the free will and the need for the relevant subjects, not their quality, but the legal norms of the Constitution of the Russian Federation, the constitutions and charters of the constituent entities of the Russian Federation interpreted by constitutional control bodies: "The constitutional (constitutional and statutory) responsibility can be considered only that stipulated by the Constitution of the Russian Federation , constitutions (charters) of the constituent entities of the Russian Federation and interpreted by judicial bodies of constitutional control at federal and regional levels in the context of the generally recognized principles and norms of international law. The constitutional (constitutional and statutory) responsibility, in this case, is a sectoral one, has a special nature and character ".

N.V. Vitruk recognizes offense as a basis of legal responsibility. This statement in no way corresponds with the notions of its general social essence. The author defines administrative responsibility as follows: "As a result, one should come to the conclusion that administrative responsibility according to its social nature and purpose is a state legal conviction (blame) and fair punishment for a special kind of socially dangerous (harmful) unlawful conduct (action or omission), qualified by law (federal or regional) as an administrative offense, appointed by the court, competent authorities and officials in the framework of a special administrative and jurisdictional procedure, and expressed in such a case when an offender factually endures restrictions (deprivation) on his personal, property and other rights and freedoms ". Thus, we must note a violation of the logical series of concepts. Specific definitions of responsibility do not correspond to its generic definition.

In the face of such contradictions, the statement by M.I. Baitin is recalled: "It is no accident that supporters of recognition of both retrospective and positive legal responsibility, when they move from general arguments about the importance of active, prospective responsibility to consideration of specific issues of legal responsibility (grounds, signs, types, with respect to various branches of law, consequences, etc.), they only consider them on the basis of a retrospective understanding of legal responsibility ".

There is no reason to set forth a critique of all the legal definitions presented in scientific literature. They are well-known and reprinted from article to article, from thesis to thesis. It should only be noted that the needs of legal regulation issues that cannot be satisfied with the general legal responsibility theory cause the development of its special sectoral, institutional, narrowly thematic definitions, without regard for their place in the general theory of legal responsibility. It hinders the development of the latter, of course.

Attempts to combine positive and negative ideas about legal responsibility can hardly be considered successful. The scientific and practical weakness of this approach is also seen in the works by N.V. Vitruk and in the studies of other scientists.

Justifying the merits of the integration concept of legal responsibility, A.P. Chirkov does not describe a logical series of concepts of the theory of legal responsibility. Perhaps, therefore, his works contain some contradictions. His characterization of social responsibility is reduced to the following

statement: "Consequently, responsibility is nothing more than the fulfillment of regulatory requirements, and normativity itself is an inherent attribute of responsibility".

As it seems to us, the author understands the essence of responsibility as a behavior of the subject meeting regulatory requirements. This conclusion is confirmed by further arguments. In A.P. Chirkov's opinion, the structure of social responsibility includes such elements as objective and subjective aspects, the subject and the object. Consequently, the same elements are to be the components of legal responsibility. In such case, the structural elements of legal responsibility coincide with the structural elements of legal behavior. Since legal responsibility recognizes the unity of positive and negative aspects, various types of lawful behavior fall under its attributes, including the implementation of compulsory duties in connection with the prior committed offense. Attention should be paid to the fact that according to Chirkov the content of the objective aspect of legal responsibility includes the demand for necessary behavior in terms of social norms: "The objective aspect of responsibility acts as a set of requirements that the society presents to its members or collectives in the form of principles and norms expressing social needs". But social requirements to the demanded behavior of certain participants in public relations are the basis of the behavior itself. They can also be a criterion for assessing the responsibility of the subject and its degree. It seems erroneous to including them in the structure of behavior (the objective aspect).

Further study of the ideas of A.P. Chirkov on legal responsibility leads to its blurred characteristics. If the characterization of the legal responsibility structure is perceived as a legal behavior, then the analysis of its external manifestation indicates that legal behavior is a form of legal responsibility: "Taking into account what has been said, it is reasonable to consider the positive responsibility from two points: moderate, when responsibility manifests through a normal legitimate behavior (performance), and the active one, when it is expressed through socially active activities (exemplary, ideal)". Then it is the legitimate behavior that determines the moment when legal liability and its basis arises: "From the moment the legitimate behavior (normal or exemplary) appears, a state of positive legal responsibility starts. Consequently, lawful behavior is also its basis". The responsibility itself is defined as a certain state. At the same time, the author does not indicate whether this is a state of the subject or social relations.

Revealing the state's positive responsibility, A.P. Chirkov defines it as a quality (nature of behavior): "Thus, the analysis of relations that develop both within the state and in the international sphere, indicates that positive responsibility, understood as the quality (or nature) of normal or socially active behavior of the subject, is an undoubted social value and, therefore, necessary for practice". The same idea is developed in comparing the degree of responsibility of a person who behaves lawfully by virtue of persuasion and coercion: "... legal responsibility is a quality, an attribute or a certain nature of legitimate behavior. Therefore, the difference between the responsibility of an honest person and an offender is very significant, since the latter acts responsibly only under duress, with all the negative consequences".

According to Chirkov (1996), negative or punitive responsibility is an integral part of the general concept of responsibility. The author defines it as follows: "Summarizing what was said above about compulsory legal responsibility, the latter can be defined as a state of coercion to legitimate and, consequently, responsible behavior, achieved through adverse consequences, the application of which is related to the convicted, guilty and wrongful (irresponsible) behavior of certain persons having such an ultimate goal as: the education of offenders in the spirit of compliance with Russian laws, as well as the prevention of committing new wrongful acts by them and other people.

If positive and punitive responsibilities are initially related and make up a single entity, then they must have a common essence. A.P. Chirkov understands positive legal responsibility as "a quality (or nature) of the normal or socially active behavior of the subject," and punitive one as "a state of coercion to legitimate, and therefore responsible behavior." Legitimate behavior, human quality, and the state of coercion - all these concepts have different content. The description of them through the term of legal responsibility contradicts the requirements of logical ordering of the conceptual and terminological instruments of the scientific theory since the definitions of these concepts change the essence of the object under study. Perhaps this circumstance did not allow the author to develop a holistic definition of legal responsibility, logically regulating its positive and retrospective aspects and corresponding to the general social essence of responsibility.

Prospects for the formation of a general legal responsibility theoretical concept

The prospects for the development of a general theoretical concept of legal responsibility are challenged by many scientists. So, Bobrova and Zrazhevskaya (1985), considering responsibility in the system of constitutional norms guarantees, are skeptical about the possibility of developing a general concept of legal responsibility and its importance for science. In their monograph they point out: "It is no less difficult to define the legal responsibility taking into account all its varieties and aspects, rather than determine the initial category of science, for example, a point in mathematics or law in jurisprudence. In any case, the general theoretical definition of legal responsibility will be only the first step to this complex phenomenon, i.e., a definition as a conditional name of the phenomenon, according to Hegel". Ovsepyan (2005) excluding the possibility of a single understanding of legal responsibility, justifies the expediency of the multiplicity of its concepts depending on the subjects of coercion: "We would question the possibility and usefulness of creating a combined general theoretical concept of legal responsibility equally applicable to such different coercive subjects in terms of legal liability measures, as a person (citizen), the institution of civil society, on the one hand, and an authority (a state, central bodies, a state or local official) - on the other one".

Such a situation leads to the separate development of legal responsibility branch theories with various content that prevent its general theoretical generalization. Under such conditions, the scientific and practical significance of the general legal responsibility theory is minimized. In fact, the polysemantic nature of legal responsibility causes the development of a primary concept of legal responsibility for students studying the basics of law theory and to providing a basic definition for relevant scientific research, which is likely to change significantly in future. The conceptual and terminological means of legal responsibility theory are over numbered and complicated so that it is impossible to create clear logical connections between all this diversity of mutually exclusive terms, categories, and definitions. As a result, some authors, highlighting certain patterns and systemic links between legal phenomena, independently from those models of legal responsibility that they need for their own research. There are situations when researchers of sectoral legal responsibility types try to integrate all available experience, while not even understanding the complexities of its general theory.

Thus, investigating responsibility issues in labor law and citing its complexity and multidimensionality, Gusov and Poletayev (2008) give the following definitions of legal responsibility: «The urgency for a person to be subjected to state coercion for a committed offense. In our opinion, today such an interpretation of legal responsibility determines its concept, meaning and essence sufficiently complete»; "Thus, legal responsibility means those negative legal consequences that effect a person who does not properly perform his duties, which are due to him by virtue of the law"; "In the field of labor law, legal responsibility is primarily in its general, positive meaning - as a responsible attitude of a person to his duties assigned to him by law, proper, conscientious, successful and effective duties fulfillment, effective state and public control over it; "So, all common features together, disciplinary responsibility is one of the forms of state coercion (disciplinary coercion, applied by officials to employees, who committed offenses, with adverse consequences for them). It is always connected with the official negative evaluation and conviction of the guilty person's behavior". It is obvious that authors introduce the different content of legal responsibility for various purposes of their research. And at the same time, they find a certain basis for this or that understanding of its essence in the scientific literature. It allows N.K. Gusov and Y.N. Poletayev to solve local problems but, does not allow us to get a holistic view on legal responsibility. Consequently, it hinders the development of a single theory of legal responsibility. The totality of concepts used by the authors is not systematized. The generic concept reflecting the essence of responsibility is not defined. Their functional purpose and place in the theory of legal responsibility are not obvious.

This example shows that attempts to use different ideas about the essence of legal responsibility in applied sectoral studies at the same time can destroy the holistic view of responsibility itself. And the inclusion in the essence of legal responsibility of mutually exclusive characteristics, hiding behind its complexity and multidimensionality, entails destructive consequences.

Conclusion

Overcoming the scientific tendencies described above depends on the adequacy of understanding the social and scientific grounds for the development of the general theory of legal responsibility. At the same time, understanding of social bases is impossible without the application of the civilizational

approach. Expectations of the society associated with the development and implementation of responsibility in general and legal one, in particular, are always based on the system of dominating collective values. They that can answer the basic questions of the general theory of legal responsibility. Social grounds are a system-forming factor for all types of responsibility. Recognition of this fact entails the need to develop the theory of legal responsibility in unity with theories of economic, political, moral and other kinds of responsibility. In such conditions, we must recognize the inconsistency of the thesis that legal responsibility is so specific that it has its own content, which has nothing to do with moral and other types of social responsibility, and its theory can be formed separately only through legal methodology. It is unacceptable that a model of legal responsibility that is inconsistent with the requirements for the responsible behavior of counterparties is imposed upon the participants of economic relations.

The theory of legal responsibility must be developed in the light of its possible integration into the theory of general social responsibility, the definition of its social functions, including ideological ones.

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