

## On the Concept of Procedural Responsibility: General Theoretical Analysis

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### ***Abstract:***

*This article examines the concept of procedural responsibility. The position is defended according to which procedural responsibility is interpreted not as a type of legal responsibility, but as a complex legal institution consisting of the norms of both substantive and procedural law. In turn, procedural responsibility is divided into a number of sub-institutions, including criminal procedural responsibility, which is analyzed in more or less detail.*

### ***Keywords:***

*legal responsibility; types of legal responsibility; legal institution; substitutions of law*

## I. Introduction

Problems of legal liability are among the "eternal" ones and attract the attention of researchers both at the general theoretical and industry levels. This is due to the potential of legal liability, and its role in ensuring law and order and public safety. Among the wide range of problems of legal responsibility, including procedural, the volume and characteristics of its concept are important. Thus, Zhanna Iosifovna Hovsepyan, focusing on the role of legal responsibility in the legal system, wrote that "the institution of legal responsibility is the core of the corresponding (any) branch of law... is present in every institution and norm of the industry, represents the integrated basis of the entire system of the industry and the legal system ... in general"

## II. Research Method

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

### **General Philosophical**

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. Result and Discussion

### **3.1 The Concept of Legal Responsibility**

It seems that before analyzing the problem of procedural responsibility, it is necessary to first consider a number of other problems that have important methodological significance in relation to the first.

It is quite understandable that these problems first arise from the author's understanding of legal responsibility in general. Let us immediately make a reservation that further we will only talk about negative legal liability that occurs for committed unlawful acts that took place in the past. That is why it is sometimes called retrospective (from the Latin retro - back, facing the past). From the authors' position, positive legal responsibility, which has many ardent supporters, should generally be derived from the conceptual and categorical apparatus of the general theory of law.

Igor Aleksandrovich Kuzmin notes that "...the basis of the variety of approaches to understanding negative liability lies in the problem of its generic feature, which determines the essential side of retrospective legal liability"; "...a phenomenon that best characterizes it"[3]. It seems that, despite the pluralism of opinions on the concept of legal responsibility [4], all points of view come down to one of the following approaches.

### **3.2. Legal liability is a Measure of State Coercion**

One of the first, almost classical, points of view regarding the essence of legal responsibility defines the latter as one of the measures of state coercion. As Ivan Sergeevich Samoshchenko argued, "legal liability is a legal form of state coercion"[5]. Igor Aleksandrovich Kuzmin draws attention to the fact that legal liability measures are a type of extensive system of state coercive measures and the peculiarity of the former "lies in the nature of the sanctions, which always create or provide for additional negative deprivations for the offender"[3].

### **3.3 Legal Responsibility Is a Specific Duty of a Person**

According to this position "legal responsibility is the obligation of the subject in protective legal relations" [6]. An identical position on the issue under consideration is shared by a number of scientists who interpret legal responsibility as the obligation of a person to endure certain deprivations of a state-authoritative nature for an offense committed [7; 8; 9]. This position was at one time supported by a number of well-known legal theorists [10; eleven; 12]. Yulya Yuryevna Ustimenko believes that any responsibility, legal in particular, is inextricably linked with duty. It is itself a duty, but some other duty must certainly precede it. Without duty there cannot be a state of responsibility. At the same time, no legal obligation is possible without responsibility. Consequently, the author summarizes, legal responsibility is the need to answer for failure to fulfill a legal obligation that existed in the same legal relationship or outside it; a necessity that arises and ceases due to the occurrence of certain legal facts[13].

It should be borne in mind that not all legal theorists agree with this point of view. For example, the authors emphasize that "the real and full implementation of a legal norm (including sanctions providing for liability) occurs when subjective rights are fully realized and legal obligations are fulfilled as elements of a legal relationship, which is the final stage of the implementation of legal norms through the creation (change, termination) of legal relations [14]. Vitaly Viktorovich Sorokin is convinced that the complex and multidimensional content of legal liability cannot be revealed only with the help of the category "obligation", because "when an obligation exists only in the abstract, but it is not implemented, it is impossible to talk about the occurrence of legal liability"[15].

Criticizing this point of view, Oleg Ernestovich Leist wrote the following: "Perceived in the general context of the concepts and categories of the theory of state and law, where the concept of legal obligation has a very specific and precise meaning, the assumption of such obligations of the offender can direct the practice of applying the law to the wrong path." [16].

### 3.4 Legal Responsibility Is a Special Protective Legal Relationship

According to this concept, legal responsibility is identified with protective legal relations. For example, Ivan Nikolaevich Senyakin draws attention to the fact that “legal responsibility is a legal relationship arising from offenses between the state, represented by its special bodies, and the offender, who is entrusted with the obligation to suffer appropriate deprivations and adverse consequences for the offense committed, for violation of the requirements that contained in the rules of law”[17]. Boris Timofeevich Bazylev understands legal responsibility as “a legal relationship of a protective type that arose on the basis of an offense”[18].

Legal responsibility as a special legal relationship is also understood by other scientists[19; 20]. Valery Mikhailovich Lazarev and Vera Grigorievna Fedorova concluded that the view of legal responsibility as a legal relationship significantly enriched the methodology of its research: this "... expanded scientific ideas about its place and role in the system of legal regulation; "in its most meaningful form, this was expressed in the fact that legal responsibility began to be understood as an institution not only of protection, but also of regulation"[21].

These provisions are not recognized by all scientists, for which reason the need to distinguish between legal liability and the legal relationship of liability is often stipulated. According to some scientists, this position seems unacceptable from both general theoretical and sector-specific positions. Thus, Alexander Evgenievich Korobov believes that if we interpret legal responsibility as a legal relationship, then it becomes an extremely broad concept that includes all other legal categories [22]. Dmitry Anatolyevich Lipinsky rightly notes that the legal relationship of legal responsibility is not identical to legal responsibility itself, since the first is a more complex and voluminous phenomenon than legal responsibility[23]. From the position of Dmitry Anatolyevich Lipinsky and Rudolf Levonovich Khachaturov, it is necessary to take into account that “the authorized entity has the right and obligation to bring the offender to justice. He has the right to act only within the framework of his powers and cannot choose whether or not to bring the offender to justice. He is obliged to do this" [24]. Scientists argue that “legal relations are a form of implementation of responsibility, but not responsibility itself”[25].

### 3.5 Legal Responsibility

The use of government coercive measures. This approach to understanding legal obligation is based on the following provisions: 1) to achieve law and order, the state uses various forms of coercive influence; 2) the elements of the offense - a mandatory basis for the emergence of legal liability through the sanction of a violated norm; 3) legal liability consists of suffering adverse consequences [3].

Proponents of this position, which has received wide recognition in the literature, see the essence of legal responsibility solely in the process of applying measures of state coercion or implementing sanctions for a violated norm [26].

It seems that we should support the position according to which legal liability should be understood as follows: this is the application to the offender of state coercive measures provided for by a punitive (punitive) sanction of a legal norm, expressed in the form of deprivations of a personal, property or organizational nature.

Moreover, its characteristics are the following: 1) it has an inextricable connection with state-legal coercion; 2) combined with state condemnation and public censure of the offender's behavior; 3) it is associated with causing adverse consequences of a personal, property or organizational nature to the offender; 4) embodied in procedural form in the course of law

enforcement activities of the competent authorities of the state; 5) the establishment of the nature and scope is determined by the penal (punitive) sanction of the legal norm [27].

When characterizing legal liability, the authors quite rightly pay special attention to its feature, according to which it “involves negative consequences (deprivation of liberty, parental rights), the imposition of new additional responsibilities (payment of a certain amount, commission of any actions)”[28 ].

Many authors consider deprivation of a personal, property and organizational nature or, in other words, encumbrance, to be one of the signs of legal liability. For example, among the signs of legal responsibility, which distinguishes legal obligation from other types of social responsibility, Mikhail Iosifovich Baitin identified one according to which "in its content it represents the onset of undesirable consequences for the offender of a material, physical, mental nature, provided for by the sanction of a legal norm"[29]. Mikhail Evgenievich Roshchin argues that "legal responsibility lies in imposing on the offender certain negative (negative) consequences of his behavior"[30]. Scientists conclude that "legal liability is the result of an offense, the unity of three elements: illegality, public condemnation and the application of sanctions secured by state condemnation"[30].

Olympiad Solomonovich Ioffe at one time called legal responsibility an additional burden for the offender “according to... the characterization of responsibility as punishment for breaking the law”[31].

The position of Vitaly Viktorovich Sorokin is not without a certain degree of originality, arguing that “the deprivations and encumbrances associated with the onset of legal liability can be replaced by the term “retribution,” the preference of which is due to ... the breadth of the scope of this concept. Retribution is imposed on the guilty person as additional and negative consequences of the offense he committed”[15].

### **3.6 On the Relationship Between Branches of Law and Types of Legal Liability**

Differentiation of legal responsibility is important, because “it allows us to understand this phenomenon more deeply, adjust the vector of legal regulation, and coordinate law enforcement practice”[32].

However, in the literature the question of the types of legal liability remains controversial. For example, Nikolai Vasilyevich Vitruk, focuses on the classification of types of legal liability according to industry, emphasizing that the difference in industry types of responsibility is due not only to the peculiarities of the subject and method of legal regulation, identified civil, material, disciplinary, administrative and criminal liability [33]. While noting the widespread use of industry criteria in classifying legal liability, it should be noted that this approach has become the object of criticism.

In the context of the identified problem of procedural responsibility, the problem of the relationship between branches of Russian law and types of legal obligation is fundamental. Only a few legal theorists have addressed this issue. Thus, highlighting only the criminal, administrative, disciplinary, civil and financial liability of employees, Valery Nikolaevich Protasov and Natalia Valerievna. Protasov, in particular, noted that "a) there are fewer types of legal liability than branches of law; b) for violation of the norms of various branches of law, legal liability of the same type may be applied; c) within one branch of law, there may be different types of legal liability (for example, disciplinary and material in labor law)"[19]. Other scientists

adhere to a similar position, criticizing the separation of types of legal liability by industry [34; 35].

Dmitry Anatolyevich Lipinsky and Alexandra Anatolyevna Musatkina, when classifying legal liability according to industry criteria, proposed using additional criteria: “the presence of a codified normative act providing for legal liability; features of procedural implementation; the presence of an independent offense (with its own nature of the object of the offense); the type of adverse consequences of the committed act established by the state, for example, criminal punishment is specific only to criminal liability”[36].

Without a doubt, these comments are very important, but at the same time they do not exclude the use of an industry criterion when classifying legal liability.

Note that there are not many supporters of procedural responsibility; on the contrary, the overwhelming majority of legal theorists deny the fact of its existence.

For example, in the Encyclopedic Legal Dictionary, depending on the sectoral affiliation, legal norms establishing such liability are distinguished: criminal, administrative, civil and disciplinary [37]. Leonid Pavlovich Rasskazov, highlighting criminal, civil, administrative, disciplinary and constitutional liability according to industry, notes that some authors, among independent ones, also identify other types of liability, such as procedural, material liability, financial liability, and believes that “ ...all of them are based on the main types of legal liability disclosed above”[38].

Soviet legal theorists Ivan Sergeevich Samoshchenko and Midhat Habibovich Farukshin, denying procedural responsibility as an autonomous type of legal responsibility, at one time wrote the following: “Procedural coercive measures are either preventive measures or measures of administrative liability (for violating the order of a court hearing, disobeying the orders of the presiding officer and etc.” [39].

Having analyzed the procedure for applying state coercive measures for violation of the process for administering civil and criminal proceedings, Pyotr Pavlovich Serkov concludes that "there are no legal prerequisites or objective necessity for the recognition of... procedural responsibility as a type of legal responsibility" [40]. Elena Gennadiyevna Lukyanova believes that "purely procedural" liability does not exist. Still, there is simple substantive liability for violation of procedural laws, similar to criminal liability, for example, for crimes against justice, which are associated with a gross deviation from the procedural law” [41].

In our opinion, the position of Nikolai Vladimirovich Makareyko seems illogical, who first believes it is necessary to “... determine the place of procedural responsibility in relation to other types of legal responsibility” [32] then, agreeing with the point of view of Svetlana Leonidovna Kondratyeva that “legal responsibility is always the institution of substantive law, implemented in the appropriate procedural form”[42], believes that “this indicates the complex nature of the normative legal regulation of legal responsibility...”[32].

Moreover, the author's statement that "the so-called procedural responsibility, in essence, is administrative and legal"[32] does not stand up to any criticism, rendering oblivion the division of the legal system into substantive and procedural as a set of branches of law that directly regulate social relations, determine the rights and obligations of participants in public relations (administrative law as a branch of substantive law) and a set of procedural norms located in the departments of both procedural and substantive law, firstly, regulating the procedure for

applying the norms of substantive law by the competent authorities of the state and their officials ; secondly, determining the legal status of citizens, legal entities, and other participants in relevant processes (procedural law) [43].

One should equally critically evaluate the reasoning of Vasily Vasilyevich Gushchin, who argues that, apart from civil, criminal, administrative and material, there are no other types of legal liability. In particular, according to the author, who unreasonably equates punishment and penalty, "...penalties applied in administrative, civil and arbitration legislation are not a special type of punishment for procedural liability, but a type of punishment for administrative liability, because from the point of view of the legal nature of a fine, everything -does carry public legal characteristics and is considered as a type of administrative responsibility"[44]

And even supporters of procedural responsibility often analyze it superficially and fragmentarily. Thus, Elena Leonidovna Kovaleva argues that in connection with significant changes in social relations and the development of legislation, there is currently a procedural responsibility assigned for violation of the passage of a legal case in a law enforcement agency, mainly for violation of the rules established by law for the administration of justice and, in particular, the conduct trial. From the author's point of view, the range of procedural sanctions is quite wide: from a warning to removal from the courtroom, from fines to forced arrest, etc.[45].

Critically assessing the stated position, it should be noted that, firstly, the author's scope of procedural responsibility needs to be narrowed only by the administration of justice; secondly, it is very problematic to consider forced delivery as a procedural sanction.

Nikolai Andreevich Pyanov and other scientists, highlighting such types of liability as constitutional, financial, family, environmental and others, including procedural, believe that the question of the types of legal liability identified in accordance with the types of offenses remains open and needs further discussion [46]. Oleg Yurievich Vinnichenko and Vladimir Ivanovich Popov state that "... we can talk about an independent type of responsibility only when it has all the independent features (grounds, type, procedure for application, law enforcement body and the corresponding act) that are different from other types"[28] .

Nikolai Ignatovich Matuzov and Alexander Vasilievich Malko, among other types of legal liability (criminal, civil, administrative, disciplinary, material), also name procedural disadvantage, emphasizing that "all of these types of liability are traditional and well-known..."[47].

The team of authors - Timofey Nikolaevich Radko, Valery Vasilyevich Lazarev and Lyudmila Aleksandrovna Morozova - draws attention to the factual basis for the onset of procedural responsibility - procedural violations, interpreting them as follows: "this is a failure to comply with the procedural requirements for the procedure for considering a case, the procedure for making a decision in order to ensure its validity, legality, objectivity, fairness"; "This is a violation of the established legal procedure in which the constitutional, administrative, judicial process must take place. This is a violation of the procedure for administering justice, the rules for passing a legal case in any other law enforcement agency, a violation of the adopted regulations"[48]. It is interesting to note that the authors further consider only criminal, administrative, disciplinary and civil liability, ignoring procedural [48]

Viktor Aleksandrovich Terekhin, highlighting procedural responsibility as an independent type, emphasizes that "procedural legislation establishes the possibility of applying a number of sanctions for certain offenses (for example, for violation of order in a court hearing -

Article 159 of the Code of Civil Procedure of the Russian Federation, Article 258 of the Code of Criminal Procedure of the Russian Federation)” [ 49].

Generally speaking, supporters of procedural responsibility, who, as a rule, focus on considering procedural responsibility as a type of legal responsibility (hereinafter highlighted by us - Vladimir Valentinovich Kozhevnikov), believe that today, due to significant changes in social relations and the development of legislation, it is quite possible and we need to talk about the emergence of new types of legal liability, including procedural [36]. In particular, Alla Aleksandrovna Pavlushina argues that any violation of the established procedure for administering the process, which is not classified as a substantive norm of civil, criminal, administrative law, entails adverse consequences for the person in his procedural status, and it should be considered as procedural liability [50] .

### **3.7 Procedural Responsibility as an Institution of Law**

It should be noted that there are scientists who, being supporters of procedural responsibility, justify their position one way or another. Thus, Viktor Mikhailovich Gorshenev believes that the institution of procedural responsibility has an absolute right to exist, since the structure and content of procedural legal relations will be incomplete if such a component as legal obligation is excluded." After all, the starting point for the onset of procedural liability is "the culpable failure of a participant in the process to fulfill the duties assigned to him by procedural law"[51].

From the position of Igor Aleksandrovich Kuzmin, procedural legal responsibility is a measure of state coercion provided for by the sanctions of procedural norms in the form of personal deprivations (for example, a warning to a person presiding at a court session who violates the order of the court session in criminal procedural relations) or property (for example, monetary penalty in illegal procedural legal relations) of a nature that can be applied to a person for committing a procedural offense, i.e. "...a guilty act committed by a tortious individual or organization (authority, official), which violates the legal procedure established by law or creates obstacles to its proper implementation" [3].

When clarifying the proposed concept of procedural responsibility, it is necessary to pay attention to at least the following statements of scientists dealing with this problem.

Thus, Olga Sergeevna Skachkova, highlights in the system of measures legal measures of responsibility, which by their nature (character) are "purely" procedural, measures of responsibility, which are only substantive and legal, and measures with a pronounced dual core, located on the "border" of division material and procedural in law (the author calls them "borderline" measures. -Vladimir Valentinovich Kozhevnikov), believes that "... responsibility for procedural offenses is complex, where procedural responsibility is only part of it, the rest is represented by "borderline" measures" [ 52].

Emphasizes the absence of a single legal act containing the rules of procedural responsibility [53], which are formulated in the Civil Procedure Code of the Russian Federation, the Code of Criminal Procedure of the Russian Federation, i.e. in procedural normative legal acts; noting that a number of norms of procedural responsibility are contained in normative legal actions with a mixed material and procedural nature (the Code of Administrative Offenses of the Russian Federation, the Federal Law on the Constitutional Court of the Russian Federation and some others), and certain norms for the most socially dangerous violations of the process are contained in the Criminal Code of the Russian Federation, Elena Valerievna Chuklova concluded

that procedural responsibility is "... a complex, integrated interdisciplinary institution of law, possessing genetic, coordination and subordination connections and consisting of a number of sub-institutions"[54].

### **3.8 Criminal Procedural Liability**

Indeed, liability, for example, for criminal procedural offenses [55] is provided for by the norms and the Code of Criminal Procedure of the Russian Federation (for example, in accordance with Part 9 of Article 106 of the Code of Criminal Procedure "in the event of a violation by the suspect or accused of the obligations associated with the posted bail, the bail is turned into income state by a court decision made in accordance with Article 118 of this Code; in accordance with Part 1 of Article 116, "the preventive measure... changes to a more severe one... when the grounds for choosing a preventive measure, provided for in Articles 97 and 99 of this Code, change "; Article 117 of the Code of Criminal Procedure of the Russian Federation states that "in cases of failure by participants in criminal proceedings to fulfill the procedural duties provided for by this Code, as well as their violation of order at a court hearing, a monetary penalty may be imposed on them..., in the manner established by Article 118 of this Code" ), and the Criminal Code of the Russian Federation (for example, in Part 8 of Art. 56 states that "for giving knowingly false testimony or refusing to give testimony, a witness is liable in accordance with Art. 307 and 308 of the Criminal Code of the Russian Federation," and in part 9 of the same article, for the disclosure of preliminary investigation data, he is also responsible in accordance with Art. 310 of the Criminal Code of the Russian Federation), and the Civil Code of the Russian Federation (Article 135 "Compensation for property damage." Commentators of this article believe that compensation for property damage should be interpreted from the perspective of civil law (Part 2 of Article 15, Article 1083 of the Civil Code)[56]. Part 2 of Article 136 of the Code of Criminal Procedure of the Russian Federation "Compensation for moral damage" stipulates that "claims for compensation for moral damage caused in monetary terms are brought in civil proceedings."

We believe that the norms of criminal procedural responsibility provide for the legal responsibility of law enforcement entities, for example, according to paragraph 6.part 1 of Art. 39 of the Code of Criminal Procedure of the Russian Federation, the head of the investigative body is authorized to "remove the investigator from further investigation if he has violated the requirements of this Code." There are grounds to include in the sub-institute of criminal procedural responsibility and the rules of law regulating the so-called special disciplinary responsibility, which will apply to certain categories of subjects, including employees of the FSB, customs service, judges, prosecutors, investigators and some other employees who are not subject to or subject to not fully subject to labor legislation [57].

Thus, in relation to the investigator of the Investigative Committee in accordance with Federal Law No. 03-FZ dated December 28, 2010 "On the Investigative Committee of the Russian Federation"[58] for failure to perform or improper performance of their duties and committing offenses discrediting the honor of an employee of the Investigative Committee , the following disciplinary sanctions are applied to him: - reprimand; - reprimand; - severe reprimand; - demotion in a special rank; - deprivation of medals of the Investigative Committee; - deprivation of the badge "Honorary Employee of the Investigative Committee; - warning of incomplete official compliance; - dismissal from the Investigative Committee on appropriate grounds. Thus, Federal Law No. 403 establishes special disciplinary measures for investigators of the Investigative Committee, in comparison with the Labor Code of the Russian Federation, which provides for disciplinary sanctions in the form of a reprimand, reprimand and dismissal on appropriate grounds [59].

## IV. Conclusion

The foregoing allows us to conclude that procedural responsibility must be considered not as a type of legal responsibility, which is often oriented towards both opponents and supporters of the first, but as a complex (integrated) legal institution, consisting of norms of both procedural and material branches, the application [60] of punitive (penalty) sanctions which provide for adverse consequences of a personal or material nature for violators - participants in the process of the corresponding procedure for passing a legal case. From these positions, we criticize the point of view of Vadim Aleksandrovich Melikhov, according to whom “procedural responsibility is a special form of state coercion, which is expressed in the implementation of legally established sanctions of legal norms to the subjects of procedural relations in the event of failure or improper performance by them of their procedural duties, powers, as well as for their abuse of procedural rights (powers)[61].

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