

Procedural Legal Responsibility: A New Reading

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Abstract:

Paying attention to various options for understanding legal liability, the position in which legal liability is interpreted as the application of measures of state coercion is recognized as more preferable. Among its features, special attention is paid to such a feature, according to which it entails negative consequences, the imposition of new additional obligations on offenders. This feature should be especially taken into account when differentiating measures of legal (criminal procedural) liability and protective measures (restorative criminal procedural measures). Procedural legal liability is considered as a complex (integrated) legal institution consisting of norms of both branches of procedural and substantive law. In turn, criminal procedural liability, using specific legal norms as an example, is analyzed as a sub-institute of procedural liability. The purpose of this study was to form the author's understanding of criminal procedural liability. The hypothesis is the statement of the fact that in most cases procedural liability is unreasonably understood as one of the types of legal liability.

Keywords:

legal liability, procedural liability, criminal procedural liability, criminal procedural code, civil code, code of administrative offenses.

I. Introduction

The problems of legal liability are among the "eternal" and attract the attention of researchers at both the general theoretical and industry levels. This is due to the potential of legal liability, its role in ensuring law and order and public safety. Among the wide range of problems of legal liability, including procedural liability, the scope and characteristics of its concept are of great importance. Thus, Zhanna Iosifovna Ovsepyan, focusing on the role of legal liability in the legal system, wrote that "the institution of legal liability is the core of the corresponding (any) branch of law ... is present in every institution and norm of the branch, represents an integrated basis for the entire system of the branch and the legal system ... as a whole" [1].

II. Research Methods

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

2.1 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 liability

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

It is quite understandable that these problems, first of all, are the author's understanding of legal liability in general. Let us immediately stipulate that further we will talk only about negative legal liability [2], which occurs for illegal acts committed that took place in the past. That is why it is sometimes called retrospective (from the Latin retro - back, turned to the past). From the author's position, positive legal liability, 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 diversity of approaches to understanding negative liability is the problem of its generic feature, which determines the essential side of retrospective legal liability"; "...the 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 boil down to one of the following approaches.

3.2 Legal liability is a measure of state coercion

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

3.3 Legal liability is a specific obligation of a person

According to this position, "legal liability is the obligation of a subject in protective legal relations" [6]. A number of scholars adhere to an identical position on the issue under consideration, interpreting legal liability as an obligation of a person to suffer certain deprivations of a state-authoritative nature for a committed offense [7, 8, 9]. Such a position was once present in the works of famous legal theorists [10, 11, 12].

Yulia Yuryevna Ustimenko believes that any liability, especially legal liability, is inextricably linked with an obligation. It itself is an obligation, but it must necessarily be preceded by some other obligation. Without an obligation, there can be no state of responsibility. At the same time, no legal obligation is possible without responsibility. Therefore, the author summarizes, legal liability is the need to answer for failure to fulfill a legal obligation that existed in the same legal relationship or outside of it; a need that arises and ceases as a result of 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, some authors emphasize that "the real and complete implementation of a legal norm (including a sanction 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 by creating (changing, terminating) legal relationships [14].

Vitaly Viktorovich Sorokin is convinced that the complex and multifaceted content of legal liability cannot be revealed only with the help of the category “obligation”, because “when an obligation exists only abstractly, but it is not realized, 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 is capable of directing the practice of applying the law on the wrong path” [16].

3.4 Legal liability is a special protective legal relationship

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

Other scientists also understand legal liability as a special legal relationship [19, 20]. Valery Mikhailovich Lazarev and Vera Grigoryevna Fedorova came to the conclusion that the view of legal liability as a legal relationship significantly enriched the methodology of its study: this “... expanded scientific understanding of its place and role in the system of legal regulation; in its most meaningful form, this was expressed in the fact that legal liability began to be understood as an institution not only of protection, but also of regulation” [21].

These provisions are not recognized by all scientists, which is why 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 narrow sectoral positions. Thus, Alexander Evgenievich Korobov believes that if legal liability is interpreted 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 former 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 subject has the right-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 so [24]. Scientists argue that “legal relations are a form of implementing responsibility, but not responsibility itself” [25].

3.5 Legal liability - application of state coercion measures

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

Supporters of this position, which has received wide recognition in the literature, see the essence of legal liability exclusively in the process of applying state coercion measures or implementing the sanction of the violated norm [26].

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

Moreover, its features are as follows: 1) it has an inextricable connection with state and legal coercion; 2) is combined with state condemnation and public censure of the offender's behavior; 3) is associated with causing the offender unfavorable consequences of a personal, property or organizational nature; 4) is embodied in procedural form in the course of law enforcement activities of the competent state bodies; 5) the establishment of the nature and scope is determined by the penalty (punitive) sanction of the legal norm [27].

When characterizing legal liability, the authors quite rightly pay special attention to such a feature, according to which it "entails negative consequences (deprivation of liberty, parental rights), the imposition of new additional obligations on him (payment of a certain amount, the commission of any actions)" [28].

Many authors attribute deprivations of a personal, property and organizational nature, or, in other words, encumbrances, to one of the features of legal liability. For example, among the signs of legal responsibility that distinguishes legal responsibility from other types of social responsibility, Mikhail Iosifovich Baitin singled out one according to which "in its content it represents the onset of undesirable consequences of a material, physical, or mental nature for the offender, provided for by the sanction of a legal norm" [29]. Mikhail Evgenievich Roshchin asserts that "legal responsibility consists in imposing certain negative (negative) consequences of his behavior on the offender" [30]. The scientist concludes that "legal responsibility is the result of an offense, the unity of three elements: illegality, public condemnation, and the application of a sanction secured by state condemnation" [30].

Olimpiad Solomonovich Ioffe at one time called legal responsibility an additional burden for the offender "in accordance with ... the characterization of responsibility as punishment for violating the law" [31]. The position of Vitaly Viktorovich Sorokin, who asserts that "deprivations and burdens associated with the onset of legal liability can be replaced by the term "retribution", the preference of which is due to the...broad scope of this concept, is not without a certain degree of originality. ...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 liability is important, because "it allows for a deeper understanding of this phenomenon, adjustment of the vector of normative legal regulation, coordination of law enforcement practice" [32].

At the same time, the issue of types of legal liability is still controversial in the literature. For example, Nikolai Vasilyevich Vitruk, focusing on the classification of types of legal liability by industry, emphasizing that the difference in industry types of liability is due not only to the specifics of the subject and method of legal regulation, distinguished civil, material, disciplinary, administrative and criminal liability [33]. Noting the widespread use of the industry criterion in the classification of legal liability, it should be noted that this approach has become the object of criticism.

In the context of the indicated problem of procedural liability, the problem of the relationship between branches of Russian law and types of legal liability is fundamental. Only a few legal theorists have addressed this issue. Thus, distinguishing only criminal, administrative, disciplinary, civil and material liability of employees, Valery Nikolaevich Protasov and Natalia Valerievna Protasova, in particular, noted that "a) there are fewer types of legal liability than branches of law; b) the same type of legal liability may be applied for violation of the norms of various branches of law; 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 allocation of types of legal liability by industry affiliation [34, 35]. Dmitry Anatolyevich Lipinsky and Alexandra Anatolyevna Musatkina proposed using additional features when classifying legal liability according to industry 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, the above-mentioned remarks are very important, but at the same time they do not exclude the use of an industry criterion in classifying legal liability.

3.7 Procedural liability as a type of legal liability.

We should immediately note that there are not many supporters of procedural liability; on the contrary, the overwhelming majority of legal theorists deny the fact of its existence. For example, in the Encyclopedic Law Dictionary, depending on the industry affiliation of legal norms that establish such liability, the following are distinguished: criminal, administrative, civil and disciplinary [37]. Leonid Pavlovich Rasskazov, distinguishing criminal, civil, administrative, disciplinary and constitutional liability by industry, notes that some authors, among others, independently distinguish other types of liability, such as procedural, material liability, financial liability, believing that "... they all proceed from the main types of legal liability disclosed above" [38]. Soviet legal theorists Ivan Sergeevich Samoshchenko and Mibhat Khabibovich Farukshin, denying procedural liability as an autonomous type of legal liability, at one time the following: "Procedural measures of coercion are either preventive measures or administrative liability measures (for violating the order of a court hearing, failure to obey the orders of the presiding judge, etc.)"[39].

Having analyzed the procedure for applying measures of state coercion for violating the order of civil and criminal proceedings, Petr Pavlovich Serkov comes to the conclusion that "there are no legal prerequisites or objective necessity for recognizing ... procedural liability as a type of legal liability"[40].

Elena Gennadyevna Lukyanova believes that "purely procedural" liability does not exist, but there is simple substantive liability for violating 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 Makareiko seems illogical, who first believes it necessary to "...define the place of procedural liability in relation to other types of legal liability"[32], then, agreeing with the point of view of Svetlana Leonidovna Kondratieva that "legal liability is always an institution of substantive law, realized in the appropriate procedural form"[42], believes that "this speaks of the complex nature of the normative legal regulation of legal liability..."[32]. Moreover, the author's assertion that "the so-called procedural

liability is, in essence, administrative-legal”[32] does not stand up to criticism, forgetting the division of the legal system into substantive and procedural as a set of branches of law that directly regulate public relations, determine the rights and obligations of participants in public relations (administrative law as a branch of substantive law) and a set of procedural rules found in the branches of both procedural and substantive law, firstly, regulating the procedure for applying substantive law by competent authorities states, their officials; secondly, determining the legal status of citizens, legal entities, and other participants in the relevant processes (procedural law) [43].

Equally critical should be the assessment of the reasoning of V.V. Gushchin, who asserts that, in addition to civil, criminal, administrative, and material, there are no other types of legal liability. In particular, according to the author, who unreasonably identifies punishment and collection, “... fines applied in administrative, civil, and arbitration legislation are not a special type of punishment of procedural liability, but a type of punishment of administrative liability, since from the point of view of the legal nature, a fine still has public-law characteristics and is considered a type of administrative liability” [44].

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

Critically assessing the stated position, it should be noted that, firstly, the author has narrowed the scope of procedural responsibility to only 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 allocated in accordance with the types of offenses remains open and requires further discussion [46]. Oleg Yuryevich Vinnichenko and Vladimir Ivanovich Popov state that “... it is possible to talk about an independent type of liability only when it has all the independent features (basis, type, procedure for application, law enforcement agency and the relevant act), different from other types” [28].

Nikolai Ignatyevich Matuzov and Alexander Vasilyevich Malko, among other types of legal liability (criminal, civil, administrative, disciplinary, material), also name procedural liability, emphasizing that “all the named types of liability are traditional and well known...” [47]. The group of authors - Timofey Nikolaevich Radko, Valery Vasilyevich Lazarev and Lyudmila Aleksandrovna Morozova, draw attention to the factual basis for the onset of procedural liability - procedural violations, interpreting them as follows: "this is a failure to comply with procedural requirements imposed on 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 the administration of justice, the rules for conducting 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 liability as an independent type, emphasizes that “procedural legislation establishes the possibility of applying a number of sanctions for individual offenses (for example, for violating order in a court session - Art. 159 of the Civil Procedure Code of the Russian Federation, Art. 258 of the Criminal Procedure Code of the Russian Federation)” [49].

Speaking in general, supporters of procedural liability, who, as a rule, focus on considering procedural liability as a type of legal liability, believe that today, in view of significant changes in social relations and the development of legislation, it is entirely possible and necessary to talk about the emergence of new types of legal liability, including procedural liability [36].

In particular, Alla Aleksandrovna Pavlushina asserts that any violation of the established procedure for administering the process, which is not attributed to the substantive legal norm of civil, criminal, or administrative law, entails unfavorable consequences for a person in his procedural status, and it should be considered as procedural liability [50].

3.8 Procedural liability as an institution of law

It should be noted that there are scientists who, being supporters of procedural liability, substantiate their position in one way or another. Thus, Viktor Mikhailovich Gorshenev believes that the institution of procedural liability has an absolute right to exist, since the structure and content of procedural legal relations will be incomplete if we exclude such a component as legal liability. 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 imposed on him by the procedural law” [51]. From the position of Igor Aleksandrovich Kuzmin, procedural and legal liability is a measure of state coercion provided for by sanctions of procedural norms in the form of deprivations of a personal (for example, a warning from the presiding judge in a court session to a person who violates the order of the court session in criminal procedural relations) or property (for example, a monetary penalty in criminal procedural legal relations) nature, which can be applied to a person for committing a procedural offense, i.e. “... a guilty act committed by a legally capable individual or organization (authority, official), which violates the legal procedure established by law or creates obstacles to its proper implementation” [3].

In clarifying the proposed concept of procedural liability, it is necessary to pay attention, at least, to the following statements of scientists studying this problem. Thus, Olga Sergeevna Skachkova, distinguishing in the system of legal measures the measures of responsibility that by their nature (character) are “purely” procedural, measures of responsibility that are only substantive and measures that have a clearly expressed dual nature, located on the “border” of the division of the substantive 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 a part of it, while the rest is represented by “borderline” measures” [52]. Emphasizing the absence of a single normative legal act containing the norms of procedural responsibility [53], which are formulated in the Civil Procedure Code of the Russian Federation, the Criminal Procedure Code of the Russian Federation, i.e. in procedural normative legal acts; Noting that a number of norms of procedural liability are contained in regulatory legal acts with a mixed substantive-procedural nature (the Code of Administrative Offences of the Russian Federation, the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” and some others), and that individual norms for the most socially dangerous violations of the process are contained in the Criminal Code of the Russian Federation, Elena Valerievna Chuklova came to the conclusion that procedural liability is “...a complex, comprehensive inter-branch legal institution with genetic, coordination and subordination links and consisting of a number of sub-institutions”[54].

3.9 Criminal procedural liability

Indeed, liability, for example, for criminal procedural offenses [55] is provided for by the norms of both the Criminal Procedure Code of the Russian Federation (for example, in accordance with Part 9 of Article 106 of the Criminal Procedure Code, “in the event of a violation by the suspect or accused of the obligations related to the posted bail, the bail is transferred to the state by a court decision issued in accordance with Article 118 of this Code; in accordance with Part 1 of Article 116, “the preventive measure... is changed to a stricter one... when the grounds for choosing a preventive measure provided for in Articles 97 and 99 of this Code change”; Article 117 of the Criminal Procedure Code of the Russian Federation states that “in cases of failure by participants in criminal proceedings to fulfill the procedural obligations provided for by this Code, as well as their violation of the order in the court session, 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, Part 8 of Article 56 establishes, that “for giving knowingly false testimony or refusing to give testimony, a witness is liable in accordance with Articles 307 and 308 of the Criminal Code of the Russian Federation”, and in Part 9 of the same article, for disclosing preliminary investigation data, he is also liable in accordance with Article 310 of the Criminal Code of the Russian Federation), and the Civil Code of the Russian Federation (Article 135 “Compensation for property damage”. Commentators on this article believe that compensation for property damage should be interpreted from the standpoint of civil law (Part 2 of Article 15, Article 1083 of the Civil Code) [56]. Part 2 of Article 136 of the Criminal Procedure Code of the Russian Federation “Compensation for moral damage” stipulates that “claims for compensation for moral damage in monetary terms are filed in accordance with civil proceedings”. We believe that the rules of criminal procedural liability provide for legal liability of law enforcement entities, for example, in accordance with paragraph 6. Part 1 of Article 39 of the Criminal Procedure Code 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 liability and the rules of law regulating the so-called special disciplinary liability, which applies to certain categories of subjects, including employees of the FSB, customs service, judges, prosecutors, investigators and some other employees who are not subject or not fully subject to labor legislation [57]. Thus, with regard to an investigator of the Investigative Committee, in accordance with Federal Law No. 03-FZ of 28. 12. 2010 "On the Investigative Committee of the Russian Federation" [58], for failure to perform or improper performance of their duties and committing offenses that discredit the honor of an employee of the Investigative Committee, the following disciplinary sanctions are applied to him: - a reprimand; - a reprimand; - a severe reprimand; - demotion in 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 the 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 the appropriate grounds [59].

IV. Conclusion

The above allows us to conclude that procedural liability should be considered not as a type of legal liability, which is often the focus of both opponents and supporters of the former, but as a complex (integrated) legal institution consisting of norms of both procedural and substantive branches, the application of punitive (fines) sanctions of which provides for unfavorable consequences of a personal or material nature for violators - participants in the

process of the relevant procedure for passing a legal case. From this position, we criticize the point of view of Vadim Aleksandrovich Melikhov, according to whom "procedural liability is a special form of state coercion, which is expressed in the implementation of legislatively enshrined sanctions of legal norms against subjects of procedural relations in the event of failure to fulfill or improper fulfillment of their procedural duties, powers, as well as for abuse of their procedural rights (powers) [60].

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