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Functions of legal responsibility in the theory of law and state (analysis and synthesis of theoretical studies)

The article reveals different approaches to defining the functions of legal responsibility, which are given by different authors. The functions of legal responsibility are considered as a category of theory and history of law, which are detailed in sectoral legislation and expressed in legislation in the form of punishments, penalties and other forms. Different approaches and views underline the dynamism of this phenomenon. The aim of the study is to identify the main features of the functions of legal responsibility and various types of functions as directions of the legal impact of legal responsibility on public relations. With the help of general and special research methods, the analysis and generalization of theoretical material, consideration of various types of functions of legal responsibility in order to identify the patterns of development of this theoretical category are carried out. As a result of the study, we presented our own approach to understanding the functions of legal responsibility, which, in addition to the sanctions of a legal norm, also includes psychological impact aimed at correcting the behavior of a person brought to legal responsibility. The functions of legal responsibility include upbringing and education as a necessary element of the process of correcting the offender in order to more effectively influence the mind of the offender. The article draws conclusions that reveal the concept and signs of functions of legal responsibility, which are in constant development, substantiates the provision that in the category of legal responsibility, in addition to punishment, other positive and negative measures of a coercive nature should be included, provided by the coercive force of the state, directed to correct the person who committed the offense.

Keywords: theory of law, functions, types, forms, legal responsibility, punishment, penalty, legal norms, legislation.

Introduction

In the modern theory of law, the definition of legal responsibility is an established category that summarizes the entire set of measures of coercive influence of the state on social relations. Basically, these are measures that are of an unfavorable nature, which in the legislation have the form of punishment, while the categories of punishment and legal liability are not identical, which is due to the goals, objectives of legal responsibility, which is reflected in the concept of the functions of legal responsibility. The problems of determining the functions of legal responsibility are quite relevant in modern legal science, since this is a legal impact on public relations in order to prevent and reduce the number of offenses. At the same time, the functions of legal responsibility are correlated with the goals, social values of a particular society, which expects effective influence on the prevention of offenses and bringing offenders to justice from the state. The allocation of the main types of legal liability, such as criminal, administrative, civil, disciplinary, involves the allocation of functions of legal responsibility in each form, while it should be noted that it is generally accepted to highlight the general functions of legal responsibility in the theory of law. The selection of this category is an important and necessary stage in the study of the functions of legal responsibility as a theoretical category that summarizes the entire set of signs of responsibility as a type of social responsibility clothed in a legal form.

In modern conditions more and more attention is paid to the issues of legal responsibility, since based on the modern approach to understanding the state-regulatory impact on public relations, namely through legal responsibility, the modern state assumes to implement its main functions. It should be noted that the question of the number and quality of the functions of legal responsibility remains open, since during the entire existence of the state as a politically organized society the issues of prosecution and the application of punishments are central, which is especially important in our time. In the twenty-first century, new approaches to understanding the functions of legal responsibility are required, which is due to the goals and

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objectives of a modern society, built on such principles as humanism, justice, protection and provision of human rights, non-discrimination on various (generally recognized) grounds, which also presupposes the formation of a new approach to understanding the functions of legal responsibility.

In the system of law of the Republic of Kazakhstan there are various branches and institutions of law, which is the result of the development, improvement, and complication of law as a political and legal phenomenon; accordingly, the functions of legal responsibility are being improved and complicated, which must meet the requirements of modern society. At the same time, legal responsibility is often attributed to functions unusual for it, forgetting that these functions are to a certain extent developed by legal science and it is also unproductive to take the position of legal idealism, as it is to deny the role and effectiveness of legal responsibility altogether. In this perspective, not only and not so much the punitive function of legal responsibility, but also the preventive and educational functions, the purpose of which is to prevent the commission of offenses, becomes of great importance. In this aspect legal education and legal training are becoming increasingly important as the most important components of legal culture, which should become the basis for the lawful behavior of all participants in legal relations, thereby excluding offenses. It is impossible to achieve this goal in the foreseeable future, however, it is possible to significantly reduce the number of offenses with the competent and consistent use of scientific recommendations aimed at the practical application of the results of scientific research in the field of legal responsibility.

Methods and materials

During the research general and specific methods of scientific knowledge are used. Owing to analysis and generalization, legal sources, various approaches and definitions of individual scientists, individual opinions and provisions are considered that reveal the problems of implementing the functions of legal responsibility in the theory of law. The research is based on a dialectical approach that reflects the variability and dynamic development of the concept of functions of legal responsibility. At the same time, the general functions of law and legal values are considered as a metaphysical basis, which serve as the foundation of legal regulation in a specific historical period. The considered phenomenon is studied in the inextricable connection of social relations, general functions of law and legal regulation of social relations. Based on the method of comparison, analogy, by studying theoretical institutions in the theory of law, the definition and main features of the functions of legal responsibility as one of the main legal institutions of law are revealed. The comparative legal method allowed us to consider different approaches, theories, concepts and categories in a dialectical relationship that reveal the concept and main features of the functions of legal responsibility given by various authors, which made it possible to form our own approach to the phenomenon under study and formulate our own definition of the functions of legal responsibility.

Results

In the research, various viewpoints of the authors, who devoted their research to the category of legal responsibility, were observed. Throughout the study, we obtained the following results based on the analysis of scientific sources reflecting the modern understanding of the functions of legal responsibility. The authors analyze the functions of legal responsibility based on the understanding of the term “legal responsibility”, while referring to the etymology of the term “functions”, as well as in relation to the category of “functions of law”. Despite the fact that in the scientific and educational literature there are many definitions and opinions about what to mean by the category of “function of legal responsibility”, there is currently no single definition of it. Most of the authors still highlight the same characteristic features of the functions of legal responsibility. We are in solidarity with the opinion of the authoritative Russian scientist in the field of the theory of law B.T. Bazylev, who notes the need to disclose the concept of the function of legal responsibility as an important factor in modern legal science with the aim of a more detailed and deep penetration into the essence of this social phenomenon and legal institution. Ultimately, this is due to the need for more effective implementation of the use and further improvement of legal norms on legal responsibility [1; 47]. A.V. Katasonov notes the need to study the functions of legal responsibility based on the general functions of law, considering this ratio as general and particular. At the same time, he notes that the functions of legal responsibility are specific manifestations of the functions of law [2; 14, 15]. T.N. Radko notes that legal responsibility acts as a general form of implementation of the social functions of law [3; 10], while the main criterion will be the social purpose of law. The social purpose of law follows from the social nature of law as the main regulator of the most important social relations for society. It is this aspect that is decisive — the social orientation of the functions of law and the functions of legal responsibility. The Soviet legal theorist

M.S. Strogovych in one of his works noted that the correct understanding of responsibility is important in the political, social and legal sense, since it is important for the scientific development of the problem of individual rights and for increasing the responsibility of state bodies, public organizations, official persons [4; 76]. We must agree with the position that the legal institution of legal responsibility is one of the basic institutions for ensuring human rights and freedoms, as well as the interests of society and guaranteeing the rule of law and order [5; 13]. Legal responsibility's functions are determined as a connecting link, because of which the goals of legal responsibility turn into an objective reality, a specific result of legal impact on a certain public attitude [6; 387]. The functions of legal responsibility are determined by the historical development of law and society. Depending on the goals set for the society and its political institutions, the functions of legal responsibility also develop. These functions are due to the objective laws of the historical development of society and the state, as well as the tasks of legal regulation in a specific historical period [7; 169]. The fact that the functions of legal responsibility are determined by the laws of social development and follow from the goals, essence and social purpose of legal responsibility is noted by many authors [8; 128]. This emphasizes the dynamic nature of the category of "functions of legal responsibility", which is determined by the goals and objectives that society sets before the state — the imperious, political organization of this society. It seems important to timely identify the needs and interests of society, analyze these interests and develop recommendations for the formation of functions of legal responsibility that are adequate to the modern needs of society.

A great influence on the formation and consolidation of the functions of law in legal sources is played by the essence of law, that is, its social purpose, which in general predetermines the main functions of legal responsibility [9; 155]. It is the social expectations from legal regulation that are embodied in the category of "legal responsibility" since it is the proper behavior of the subjects of legal relations that is formed through this institution. We must agree with the provisions of the author, who notes that the functions of legal responsibility are the main directions of the impact of legal norms on social relations, through which the goals of legal regulation of social relations are achieved [10; 7]. Indeed, from the point of view of the theory of law, any legal norm must be provided with a sanction as a necessary element of a typical rule of law. Without such a guarantee of obligation, a legal norm can be regarded as a recommendatory wish of the state, which in general can be equated with other wishes and commands of social power. This allows us to consider such norms as social norms enshrined in a legal form, but in the absence of a sanction for execution or nonfulfillment, such a norm does not acquire its legal quality — an obligation secured by the coercive force of the state. Nevertheless, any regulation of social relations presupposes the establishment of certain boundaries of behavior, through which it is prohibited to transgress. The functions of legal responsibility are the establishment of special legal boundaries in public relations regulated by legal norms. At the same time, legal responsibility is the reaction of state authorities to the violation of boundaries outlined by legal norms. Accordingly, one should take into account the opinion of the authors who note that the functions of legal responsibility are the main directions of regulatory impact on social relations which are expressed in the establishment of special legal boundaries and measures of state and power influence [11; 54]. This is carried out in order to regulate specific social relations, through stimulation or coercion in order to implement legal norms, which is due to the systemic legal purpose of responsibility as a social institution.

The functions of legal responsibility are determined by the general functions of law, among which the main ones are the regulatory function, the protective function, the evaluative function, and also the educational function. This is the most common approach to understanding the functions of law, which determines the main directions of the impact of law on public relations. It is generally accepted to understand functions as a social purpose of law in its regulatory essence. Based on the axiological approach to understanding the functions of law, in this study the understanding of the functions of legal responsibility follows from the generally recognized functions of law, being their theoretical continuation. Based on this, the functions of legal responsibility should be defined as the main directions of the influence of state authorities on public relations in order to punish the offender, prevent an offense, restore violated rights, and foster lawful behavior. These functions are in constant development due to the constantly changing needs and interests of modern society.

Discussion

The discussion about the functions of legal responsibility and their classification is carried out throughout the entire existence of law as a social phenomenon. Throughout the history of human development, the issues of punishment, education and proper behavior were very important and required their solution. This is

always due to the needs and interests of a concrete historical society. For example, historical development has resulted in a more humane understanding of legal responsibility. Currently, such important changes are taking place as the gradual receding into the past of mass intimidation by the severity of punishment; consolidation of the principle of individual responsibility; refraining from corporal punishment; the circle of crimes for which the death penalty is assigned has been narrowed; the main type of punishment becomes a fine, not imprisonment. On the whole, this is evidence of the humanization of punishments. Measures of influence on the offender began to bear a humanistic character and instead of the punitive function, the preventive, restorative and educational functions of legal responsibility gradually come out. Accordingly, the effectiveness of legal responsibility currently depends on the adequacy of the reflection in the legislation of the functions of legal responsibility.

In the theory of law, the issue of identifying and classifying the functions of legal responsibility is controversial, since there are different points of view, as well as different expectations of society from the role of state bodies in preventing offenses and bringing offenders to legal responsibility. For example, J.Yu. Yuzefovich proposes to consider the goals of legal responsibility as the main criterion for classifying the functions of legal responsibility. This makes it possible to single out such functions as punitive, penal, preventive, compensatory, educational [11; 66–68]. M.P. Trofimova suggests highlighting the following types of functions of legal responsibility: regulatory, preventive, restorative, punitive, educational functions [10; 6]. P.V. Gagolev considers the following functions of legal responsibility: punitive, restorative, regulatory, preventive and educational, proposing to consider them as factors that have a legal impact on the implementation of legal responsibility systematically, in aggregate, ensuring the implementation of the general legal goal — effective and correct regulation of public relations. The functions of legal responsibility are of a systemic nature, they are closely interrelated and interact with each other. Acting systematically, each function of legal responsibility becomes the owner of a new quality, which does not have a separate function of legal responsibility [12; 13–14]. Considering the issues of classification of functions of legal responsibility, it is necessary to proceed from the objectives of the study, while it is necessary to consider it expedient and justified to single out such functions of legal responsibility as punitive, organizing, preventive, restorative and educational [13; 12], which generally reflects the needs and interests modern society in the field of legal regulation.

It should be noted that, despite the progressive development of social relations, the scientific literature notes that the primary function of legal responsibility is punishment, that is, a punitive (penalty) direction. Despite the social, humanitarian development in modern society, a large number of people still understand legal responsibility as punishment for a wrongful act. People expect the same from the state (from state bodies), which, in the opinion of a part of modern society, should first of all punish, and only then educate. This is noted by many researchers who write that the main and most important area of legal liability is a penalty, punitive appointment. The legislation emphasizes that punishment is not an end in itself, but a means of re-educating the offender, while, along with punishment, legal responsibility is designed to fulfill a legal function (that is, to help restore violated rights through legal and other measures) [14; 487]. This feature is also emphasized by P.A. Kabanov, who notes the punitive function of legal responsibility as the main direction of legal impact on social relations, behavior and consciousness of the offender. This is due to the laws of social development, which determines the priority of the punitive function, along with the prevention, restoration of violated rights and education [15; 6]. In general, since the creation of the state, a person's responsibility to the state has been formed, mainly in the form of punishment, as a rule, this punishment was applied in various historical periods on grounds that are often not related to responsibility in the modern sense. The creation of a modern state formalized punishment, forming the concept of legal responsibility. However, the theoretical understanding of responsibility, appeared in the period of modern times. During the period of enlightenment, Voltaire advocated proportionality between crime and punishment, between the severity of crime and punishment, and was also opposed to the death penalty. G. Grotius defined punishment as a retribution for a crime, the transfer of the evil caused by the crime to the culprit. It pursues a threefold goal: the benefit of the perpetrator of the criminal act, the benefit of the victim, or the benefit of all. Montesquieu sees the reasons for all licentiousness in the impunity of crimes, and not in the weakness of punishments. The punishment must be consistent with the nature of the crime. I. Kant defined punishment as causing suffering for a crime committed [16]. Currently, the humanization of all spheres of social life leads to changes in legislation, such as the transformation of punitive legal responsibility into milder forms of punishment. This is the expansion of legal liability in the form of fines, as well as the introduction of new approaches to the implementation of legal liability of a punitive nature: a) optimization of criminal penalties; c) refusal of capital punishment; c)

widespread use of conditional sentences. The most significant changes in the practical implementation of legal responsibility in recent times are the establishment of norms on the responsibility of the state before citizens, recognition of the right of citizens to the possibility of judicial protection of violated rights, to compensation for moral harm, and the humanization of criminal responsibility. The emergence of a variety of relatively new functions of legal responsibility.

Compared with the punitive function of legal responsibility, new functions of legal responsibility which are currently developing should include the preventive function of legal responsibility, the essence of which is the prevention of new offenses. The preventive function of legal responsibility is the legal impact of norms containing legal responsibility on the behavior of subjects of public relations. The main purpose of the function is to prevent offenses and displace antisocial behavior, as well as to reduce the actual and legal possibility of committing a new offense. In his research, A.V. Katasonov argues that the preventive function is aimed at achieving the goals of general and private prevention. Along with this, an important aspect is the displacement from the consciousness of the individual of antisocial attitudes, legal nihilism and the formation of attitudes of obligatory lawful behavior, respect for the law in general and the rights of others [2; 8]. Some authors, along with the preventive function of legal responsibility, highlight the educational function of legal responsibility as a directed legal impact of the norms of legal responsibility on individual and public consciousness, which consists in the formation of legal awareness, legal culture [17; 7]. It seems that the preventive and educational functions pursue one goal — the prevention of offenses. It seems more correct to consider the preventive function of legal responsibility in the form of legal education, legal education and in other forms of impact on individual and public consciousness.

An important function of legal responsibility is the restorative function, as one of the areas of legal impact on disturbed public relations, while the goal is to restore public relations and their ordering [17; 6]. Even so, the restorative function can be carried out in the form of restoration of violated rights, payment of compensation and other forms of redressing harm and other material and non-material consequences and results of illegal behavior.

As a separate function of legal responsibility, some authors highlight the organizing function of legal responsibility, which consists in regulating public relations by establishing certain prohibitions, restrictions, obligations, as well as establishing specific rights of subjects in the implementation of legal responsibility [13; 13]. Currently, new approaches to understanding the functions of legal responsibility are being developed, while new functions are being identified that are designed to reflect the needs of society in modern conditions.

Conclusions

The functions of legal responsibility are the main directions of the impact of legal responsibility on public relations. When carrying out scientific research it is necessary to determine the criteria for the classification of functions, as well as to separate the types of functions and forms in which the functions are implemented. Accordingly, the criteria for distinguishing the functions of legal responsibility should be determined by social purpose (essential criterion): punitive, preventive, legal. In addition, it is necessary to highlight the forms in which the functions of legal responsibility can be realized: the punitive function is implemented in the form of criminal punishments, administrative and disciplinary sanctions. The preventive function of legal responsibility is implemented in the form of legal education and legal education. The restorative function of legal responsibility is implemented in the form of regulation of public relations with the aim of restoring the legal status of subjects of law and restoring the procedure for regulating public relations that existed before the offense. Based on this understanding of legal responsibility and its functions, various types of legal responsibility can be distinguished. In addition to the traditional types of legal responsibility, in which there is a punitive function, other types of legal responsibility can be distinguished in which there is no punitive function, but there are preventive and legal restorative functions. These types of legal responsibility can include constitutional, financial, family, environmental responsibility. The functions of these types of legal responsibility will consist of a preventive function and a law restorative function. Based on the definition of legal responsibility, which enshrines the obligation of state coercion, the preventive function and the law restorative function must be provided with measures of state coercion.

In the theory of law legal responsibility is considered as the application of measures of state coercion against a person who committed an offense, however, legal responsibility in a broad sense can also be considered as an obligation to comply with legal norms. This approach is reflected in the concept of division of legal responsibility into prospective and retrospective responsibility, which emphasizes that this division is

carried out according to the following criterion: the time of implementation of responsibility. Accordingly, the function of prospective legal responsibility, as a responsibility directed to the future, is a preventive function, which is designed to prevent the commission of new offenses. This function can be implemented in the following forms: legal education, legal training, legal education (informing on legal issues in necessary cases), treatment in cases specified by law. In our opinion, prospective legal responsibility from a person's obligation to comply with the law is distinguished by the provision of coercive power of the state, while obligations in the legal sphere, as a rule, are implemented by the subjects voluntarily, based on the obligation based on social norms. At the same time, at present, prospective legal responsibility is not developed and cannot realize its preventive function due to the fact that this direction is not fully developed in the theory of law. It should be noted that the preventive function of prospective legal responsibility is implemented by bringing persons with deviant behavior to prospective legal responsibility. It seems important to carry out a more detailed development and regulation of the preventive function of legal responsibility in the theory of law and consolidate this function in the legislation of the Republic of Kazakhstan.

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Құқық және мемлекет теориясындағы құқықтық жауапкершіліктің функциялары (теориялық зерттеулерді талдау және жалпылау)

Мақалада құқықтық жауапкершіліктің функцияларының анықтамасын ашуға бағытталған әртүрлі авторлармен берілген көзқарастардың мазмұны ашылған. Құқықтық жауапкершіліктің функциялары салалық заңнамада егжей-тегжейлі көрсетілген және заңдарда жаза және басқа нысандарда көрсетілген теория мен құқық тарихының категориясы ретінде қарастырылды. Әртүрлі көзқарастар бұл құбылыстың динамизмін айғақтайды. Зерттеудің мақсаты — құқықтық жауапкершілік функцияларының негізгі ерекшеліктерін және қоғамдық жауапкершілікке құқықтық жауапкершіліктің құқықтық әсер ету бағыттары ретінде әртүрлі функцияларды анықтау. Жалпы және арнайы зерттеу әдістерінің көмегімен теориялық деректерді талдау және жинақтау; осы теориялық категорияның даму заңдылықтарын анықтау мақсатында құқықтық жауапкершіліктің әртүрлі функцияларын қарастыру жүзеге асырылады. Зерттеу нәтижесі ретінде құқықтық жауапкершіліктің функцияларын түсінуге өзіндік көзқарасымыз ұсынылды, ол құқықтық норманың санкцияларынан басқа, құқықтық жауапкершілікке тартылған адамның мінез-құлқын түзетуге бағытталған психологиялық әсерді де қамтиды. Құқықтық жауапкершіліктің функцияларына қылмыскердің ақыл-ойына тиімді әсер ету мақсатында қылмыскерді түзету процесінің қажетті элементі ретінде тәрбиелеу мен оқыту кіреді. Мақалада үнемі даму үстіндегі құқықтық жауапкершілік функцияларының түсінігі мен ерекшеліктерін ашатын қорытындылар жасалған, құқықтық жауапкершілік санатына жазадан басқа, құқық бұзушылық жасаған адамды түзеуге бағытталған мемлекеттің мәжбүрлеу күшімен қамтамасыз етілген мәжбүрлеу сипатындағы басқа да негативті және позитивті шаралар кіруі керек деген ереже негізделеді.

Кілт сөздер: құқық теориясы, функциялар, құқықтық жауапкершілік түрлері мен нысандары, құқықтық жауапкершілік, жаза, құқықтық нормалар, заңнама.

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Функции юридической ответственности в теории права и государства (анализ и обобщение теоретических исследований)

В статье раскрыты разные подходы к определению функций юридической ответственности, которые даны разными авторами. Функции юридической ответственности рассмотрены как категории теории и истории права, которые детализируются в отраслевом законодательстве и выражаются в законодательстве в форме наказаний, взысканий и других формах. Разные подходы и точки зрения подчеркивают динамизм этого явления. Целью исследования является выявление основных признаков функций юридической ответственности и различные виды функций как направлений правового воздействия юридической ответственности на общественные отношения. При помощи общих и специальных методов исследования осуществлены анализ и обобщение теоретического материала, рассмотрение различных видов функций юридической ответственности с целью выявления закономерностей развития этой теоретической категории. В качестве результата проведенного исследования представлен собственный подход к пониманию функций юридической ответственности, в которую включается, помимо санкций правовой нормы, еще и психологическое воздействие, направленное на исправление поведения лица, привлеченного к юридической ответственности. В функции юридической ответственности включаются воспитание и образование как необходимые элементы процесса исправления правонарушителя, с целью более эффективного воздействия на сознание правонарушителя. В статье сделаны выводы, раскрывающие понятие и признаки функций юридической ответственности, которые находятся в постоянном развитии, обосновывается положение о том, что в категорию юридической ответственности, помимо наказания, должны быть включены и другие позитивные и негативные меры принудительного характера, обеспеченные принудительной силой государства, направленные на исправление лица, совершившего правонарушение.

Ключевые слова: теория права, функции, виды, формы, юридическая ответственность, наказание, взыскание, правовые нормы, законодательство.

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