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A.V. Turlayev[1], A.P.Volgina[1], N.V. Morozov[2]

[1]Karagandy university of the name of academician E.A.Buketov
[2]National research nuclear University MEPhI, Moscow, Russia
(E-mail: turlaev_a@mail.ru, volganna@mail.ru, nvmorozov@mephi.ru)

The legal responsibility genesis as an institution of the law theory (historical and theoretical analysis)

The article describes the conception process and legal responsibility development as a category of law theories, discusses the main features of this institution. Historical retrospective describes the variability and progressive development of the responsibility institution is revealed in the punishment concept as an integral part of legal responsibility. The purpose of study concludes in identifying the main signs of legal responsibility and the development stages of this institution in different historical eras. Using general and special research methods, the analysis and synthesis of historical material, the various types consideration of legal responsibility in order to identify the basic laws of this institution development are carried out. The study result is the implementation development of the legal responsibility institute, the axiological aspects considering legal responsibility and the main patterns identification institute under study development. Legal liability is considered as a legal category, which legal punishments and rewards determines certain types, relations principles between the parties in criminal, administrative civil and other legal relations. The article concludes that the legal responsibility institute is in constant development, substantiates the position that in the twentieth century the modern legal responsibility principles are formed, the axiological basis of which is determined by humanism.

Keywords: legal responsibility, punishment, legal norms, historical development of law, law theory.

Introduction

Modern legal institutions have their origins in the distant past, so their comprehensive research is connected with the study the history of law and the legal institutions development. The origin and law development is a dynamic process, it has been influenced by a number of factors such as: economic development of society, changes in public consciousness and the transformation of views about the person, his rights and freedoms, technological progress, globalization, the environmental situation in the world, etc. In the legal system of modern Kazakhstan today, the various branches presence and law institutions is the development result, improvement, and complication of law as a political and legal phenomenon that reflects the interests and specific historical society needs. Along with these changes, the origin process and the category "legal responsibility" development took place. Having emerged from the social responsibility depths, legal responsibility is a necessary law attribute in every country. Social relations that determine legal responsibility seem to us to be a dynamic process, but they were formed gradually, being influenced by a factors number, including ideas about morality, socio-economic relations, ideology and other factors. Legal responsibility was preceded by the social responsibility consolidation norms in society, in the customs, traditions, taboos, religious prohibitions form and other social regulations that contribute to the the genus survival, family group, societyin a certain historical period, a social responsibility institutions number are transformed into the legal institution "legal responsibility". The historical periods study and Institute of legal responsibility stages is designed to identify patterns of its development in historical retrospect and in the modern period. There is no

single formation and development periodization of the legal responsibility institution in the literature. In this article, we consider the legal responsibility Genesis within the already traditional periods in the history framework of state and law, using the ancient States, feudal, modern and modern States example as well as the understanding legal responsibility history in the law theory.

Methodsandmaterials

The research uses General and specific legal research methods. By means of analysis and generalization, legal sources, views and individual scientists theories are considered, individual opinions and provisions are considered, revealing the legal responsibility reflection problems in the history and law theory. The research is based on a dialectical approach that reflects the variability and dynamic legal norms and social relations development. At the same time, the legal principles and legal values that serve as the legal regulation Foundation in a specific historical period are considered as a metaphysical basis. This phenomenon is studied in the inextricable social relations connection, legal principles and social relations legal regulation. Based on the comparison method, analogy, by studying historical institutions that take place in the state and law history, the legal responsibility value as a basic legal institution is revealed. The concrete historical method allowed us to consider the legal responsibility category continuity in the dialectical relationship, which is one of the basic law phenomena, which allows us to effectively influence the law on public relations.

Results

In the course of the research, various points of view of the authors, who devoted their research to the category of legal responsibility, were considered. In the course of the study, we obtained the following results.

The perception of legal responsibility has undergone significant evolution during this time. “From the institution of blood feud, responsibility has grown into punishment of a specific subject of the offense, the lexical component has been enriched and concretized; the fundamental principles of legal responsibility were formed”. However, there are still controversial issues devoted to the definition of legal responsibility as a single legal phenomenon, and, as a consequence, which follows from this, the question of the existence and generally expediency of introducing the concept of "positive legal responsibility" [1, 91]. Despite studies of the content of the concept of "legal responsibility" for a long period of time in the works of philosophers, sociologists, lawyers, despite the abundance of scientific publications of the past and present, the fundamental problems of legal responsibility do not lose their relevance. Most researchers are unanimous that "... despite a significant number of works devoted to the problems of responsibility, a common point of view on the concept of "responsibility" has not yet been found" [2]. Soviet legal theorist M.S. Strogovich noted in one of his works: “The correct understanding of responsibility is important both in the political, social and legal sense, it is of great importance for the scientific development of the problem of individual rights, for increasing the responsibility of state bodies, public organizations, officials for the entrusted case" [3,76]. It is legal responsibility that is one of the essential guarantors of human and civil rights and freedoms, public interests, law and order [4, 13]. The formation of legal responsibility took place in the most ancient states in the conditions of the formation of statehood and legal registration of generally binding rules of conduct. During this period, the law is in its infancy, it is still inseparable from custom, characterized by the fact that the laws were few and primitive, were oral, had features of casuistry, were characterized by a lack of systematization and a religious nature of norms and rules of behavior. Such a right in literature is designated as tribal, popular, customary, barbaric, primitive [5, 137]. In Ancient Egypt, the following types of punishment were provided for the commission of criminal offenses: a fine, imprisonment, surrender to slavery, self-harm, and the death penalty. The purpose of the above punishments was to intimidate society. An analysis of the legal norms of antiquity allows us to conclude that there is a rather severe criminal liability in the form of such punishments as the death penalty, self-harm, fines, compensation for damage caused, expulsion, and enslavement. There was no distinction between a civil misconduct and a criminal offense. The main principle was the principle of collective responsibility (the community had to compensate for the damage to the robbed on the territory of the community in a situation if the robber was not caught) [6, 44]. The principle of talion was widely used, for example, in Article 196 of the Laws of Hammurabi - it is said that "... if a person injures the eyes of any of the people, then his eyes must be damaged", i.e. This norm expresses the so-called talion principle inherent in the law of this period. There is an opinion that “the principle of talion should not be perceived overly simplistic - only as a legalization of blood feud. It is important to take into account its “equalizing” side, which is a component in the punishment system, which made it possible to prevent “buy-off” from responsibility, which guaranteed in a certain sense the inevitability of a just punishment corre-

sponding to the nature of the act, but also limiting the imposition of a “blood ransom” that was clearly unbearable for the guilty [7, 145]. In ancient China, the term "bao" was used to mean retribution for a crime. In the punishment system of Ancient China, branding, cutting off the nose, chopping off the legs, castration, the death penalty [8, 105]. As additional ones were used - beating, enslavement, fine. In some periods, there was a system of symbolic punishments "xiang", for example, cutting off a leg was replaced by painting the knee with ink, the death penalty - by wearing a canvas shirt [9]. The system of symbolic punishments made it possible, without the use of extremely cruel measures, up to the death penalty, to exert a very tangible influence on the offender through moral influence. The culprit was excommunicated from the collective, exposed to general condemnation and censure. Thus, one of the goals of punishment was realized - re-education [10, 45]. According to the ancient Indian laws of Manu, the king was ordered to "diligently curb the lawlessness by three measures: prison, imprisonment in shackles, various kinds of corporal punishment" [11, 22-25]. It is noteworthy that in the laws of Manu we meet the idea of justice in the imposition of punishment: “if punishment is imposed properly, after (due) consideration, it makes the people happy; but imposed without consideration, it destroys everything” [11, 22-25]. As for the theoretical understanding of legal responsibility, it should be noted that in the writings of thinkers for a long time it was identified with punishment, this is also typical for the period of antiquity. During this period, we can note the doctrine of Confucius ("Conversations and Judgments"), in which the central place is given to the concept of humanity (zhen), management with the help of humanity, and not violence is the political ideal of Confucius. Thanks to this teaching, during the reign of the Confucians, the idea that the severity of punishment should correspond to the strength of the violation of "li" prevailed, for any discrepancy violates harmony and breeds hatred. Confucians were also opposed to the imposition of heavy punishments for minor crimes. In contrast to this doctrine, the teachings of the Legists, namely Shang Yang (the ruler of the Shang region, whose reign was marked by a series of radical reforms, he is credited with the authorship of the "Book of the Governor of the Shang region") and his unshakable belief that government should be carried out on the basis of laws and severe punishments ... Shang Yang was an advocate of cruel punishments for petty misdeeds. The philosophy of early Buddhism is also permeated with ideas of humanism. The ancient Greek philosopher Plato sees the correction of the guilty as the goals of punishment, but if this cannot be achieved, then the guilty should be subjected to the death penalty. In ancient philosophy, the idea of just punishment is traced as the infliction of suffering, entailing the moral correction of the person who broke the law. Attempts are being made to determine the goals of punishment, views are formed about the inevitability of punishment and for what actions it should occur. Thus, in this period of time, in practical terms, legal responsibility was reduced to punishment, punishment of the perpetrator, and the purpose of punishment was intimidation. The nature of the responsibility is collective. Liability for someone else's fault, as well as objective imputation, is allowed. The widespread principle of talion is seen as the desire "to give equal for equal," in other words, how justice is interpreted during the specified period. Despite the fact that there is no sectoral distinction between offenses, in ancient sources we find certain elements of criminal, civil, family and disciplinary liability.

Feudal law in its development passes through a stages corresponding number to such time periods as the V – IX centuries. (early feudal monarchy), X–XIII centuries. (vassal-seigniorial monarchy), XIV–XV centuries. (class-representative monarchy), XVI–XVII centuries. (absolute monarchy). In the designated historical periods of time, a number of socio-economic and political changes occur that have caused changes in the social and state structure, as well as in the legal persons responsibility regulation who violate legal regulations. The law of States was heterogeneous and was significantly influenced by ecclesiastical norms, which themselves often served as a law source. This is how the so-called Canon law was formed, which regulated a significant civil and criminal legal relations part. In addition, the norms fixed the different class groups inequality, which was manifested in different individuals responsibilities. A well-known law source from the early feudal monarchy period, Stalichnaya Pravda, provided for such punishments types for criminal offenses: capital punishment, corporal punishment, self-harming punishments, and fines. The crime was understood as an offense inflicted on the victim, as harm to his person or property, and the punishment - as compensation for this offense and harm, as well as paying off the existing blood feud custom and a fine for order violation. Salic Truth knew intent and carelessness, and they were punished equally: "He who transgresses unknowingly pays knowingly" [12, 101]. In the medieval law of France during the IX–XI centuries, crimes were considered as actions affecting the individuals interests, and punishments were reduced to compensation for harm. Subsequently, crimes ceased to be a private matter, and were considered a "violation of the peace" [13, 261]. During the period of absolutism, the most serious crimes were those that encroached on the king or his family members, or conspiracy against the state. Punishments during this period were clearly in-

tended to intimidate. In criminal law, such a specifically medieval feature as a clear discrepancy between the severity of the punishment and the crime nature was clearly manifested [13, 262]. The punishments types were divided into severe punishments (death penalty various types, eternal exile, life hard labor), self-harming and corporal punishments (cutting off the tongue, ears, nose, whipping), imprisonment and urgent hard labor, disgraceful punishments (for example, a fine with exposure at the pillory). The death penalty was applied in various forms: tearing apart by horses, quartering, burning, etc. Incarceration was also widely used, which in an earlier period was mainly used by ecclesiastical courts. As the main and additional punishment, confiscation of property was also used, which was beneficial to the Royal Treasury when it came to the large fortunes of the bourgeois [13, 262]. In medieval Germany, when assigning punishment, the creators of Carolina tried to carry out the proportionality principle between the severity of the crime and the punishment severity. The relevant articles analysis of the Carolinas shows that the main sentencing purpose was retribution and intimidation. Based on Protestant ethics, when sentencing in the Carolinas, the rule was to punish the criminal as if God himself had punished him [14, 66]. Most criminal acts were punishable by a qualified death penalty. Along with the death penalty, the main punishments types also included corporal punishment (for example, in the whipping form), self-harming punishments (cutting off the tongue, fingers and hands, blinding, etc.), imprisonment, exile from the country, and a fine. There were no upper and lower punishments limits, and indefinite imprisonment was allowed. The Talion principle was maintained, in particular, if someone was sentenced to death in court as a false accusation result, the guilty person was punished with the same torment as the one who had suffered an undeserved punishment. The responsibility specifics of this period is expressed in the blood feud replacement with a fine. The punishment purposes are intimidation, retribution, and infliction of suffering on the perpetrator. The criminal punishment purpose was to atone for sin, causing suffering to the criminal, the sight of which warns others from committing such an act, so the painful death penalty types (quartering, burning, drowning), corporal and shameful punishments were widely used. The sentence was carried out in public, with a mass people gathering. The judge was not bound by the law and could impose punishments at his discretion. In this historical time period, the medieval Christian religion was the worldview core. Thomas Aquinas believed that discipline was necessary to govern people through positive legislation. There are people who should be forced by force and fear of punishment. This became the basis for the legal responsibility development on the Modern States example. The bourgeois revolutions led to the formation of a new, bourgeois law, based on such principles as the unity of the law, legal equality, legality and freedom. After gaining power, the European bourgeoisie replaced Catholicism with a completely different ideology – liberalism, which radically changed the idea of the place of man in the world, the state and law purpose. Based on the natural law theory, the nascent bourgeoisie ideologists argued that every person is endowed from birth with fundamental and inalienable rights: the right to life, liberty, property, dignity, which no one can alienate. Human rights, based on formal equality, have become the main value social development point, which has had a great impact on the state character, limiting its omnipotence, contributing to the democratic interaction establishment between the state and the individual. The law formation in the Modern period would have been impossible without the human rights establishment in the public consciousness and political practice, which also had an impact on the legal responsibility transformation. A significant event was the legal equality recognition of personally free people and universal legal capacity, since in the previous period, legal capacity was determined by the person class affiliation. In the law of England in 1810, the most common punishment types were chariotting, quartering, extracting entrails from a living body, etc., and until 1873, the death penalty was applied to anyone who was seen in the company of Gypsies for a month. In 1830-1880, the death penalty was abolished for minor crimes, as well as self-harming and defamatory punishments. In 1907 in English criminal law, the probation concept is introduced. In contrast to continental laws, it is not the court sentence execution that is deferred, but the sentence imposition or even a conviction. At the same time, preventive detention was introduced [9, 263]. The Declaration of human and civil rights of 1789 contained such important provisions as: the Law has the right to prohibit only actions harmful to society, everything that is not prohibited by law is allowed. The law is an expression of the General will. It should be the same for everyone, both when it provides protection and when it punishes. The legality principles, equality of all before the criminal law, punishments proportionality to committed crimes, and the reverse inadmissibility the law action were established. All this was reflected in the French penal code of 1810. In accordance with the French criminal code of 1810, painful and shameful punishments were death, hard labor for life and urgent work, deportation (expulsion from the Empire), and a restraint house. In some cases, branding was allowed simultaneously with the application these punishments. Disgraceful punishments included being pilloried in a collar, banishment, and civil degradation (disenfran-

chisement and prohibition from holding public office). The Code borrowed such measures as branding and pillorying from feudal criminal law, which made it archaic in the punishments field. Among the correctional punishments, the Code names imprisonment for a term in a correctional institution, temporary political deprivation, civil and family rights, and a fine. The French Code provides for a significant number of fairly severe punishments. Under the influence the old feudal law, the punishments execution is described in detail. Severe punishments are carried out in public, which leads to the conclusion that their purpose remains to intimidate. The civil law of bourgeois Germany established torts as the basis for obligations, providing for the rule that responsibility is borne by the person responsible for causing harm. Property compensation for non-property damage is not provided, unless it is expressly established by law [9, 280]. The German criminal code contained such punishments as: death penalty, imprisonment in a workhouse, imprisonment, placement in a fortress, arrest, restriction of rights, fine. The punitive system was built taking into account the identity of the criminal and the crime committed by him. Thus, those who committed state crimes, against religion, and against property were severely punished. Intimidation is still the main purpose of punishment. Thus, in this historical period in the legal liability understanding, the following changes occur: mass intimidation is gradually disappearing, establishes the individual responsibility principle, corporal punishment is practically never used, narrows the offences range for which the death penalty is assigned, the main form of punishment is liberty deprivation that, in General, is evidence of the punishment humanization. The influence Measures on the offender have become humanistic in nature and very different. The offense consequence was not only punishment, but also censure without punishment.

Discussion

Discussion and discussion about the concept of legal responsibility has been carried out all the time since the state creation, which formalized public relations part, and primarily legal responsibility. At the same time, the theoretical responsibility understanding, which is important for the modern this phenomenon understanding, is important in the modern period. During the enlightenment, Voltaire advocated proportionality between crime and punishment, between the crime and punishment severity, and was also an the death penalty opponent. Grotius defined punishment as the retribution for a crime, the transfer of the evil caused by the crime to the perpetrator. It pursued a threefold goal: use has committed a criminal act, the victim or the all benefit. Montesquieu sees the all licentiousness causes in the crimes impunity, and not in the punishments weakness. The punishment must correspond to the crime nature. In the" metaphysics of morals" by I. Kant, the punishment formulation is as the suffering infliction for a crime committed by a person, a misdemeanor [15]. In recent times, there are changes in legislation such as legal liability becomes punitive: a) optimization of criminal penalties; b) the capital punishment rejection; c) widespread probation use. The most significant changes in the practical legal responsibility implementation in recent times is the rules of state establishment responsibility before the citizens, the recognition the citizens right to judicial protection violated rights, compensation for moral damage, criminal responsibility humanization. The emergence various responsibility types.

Theoretical legal responsibility justification in the state and law theory at the beginning of the XX century, mainly individual practical issues were studied. In Soviet legal thought, the works of S.S. Alekseev, B.T. Bazylev, D.N. Bahrakh, S.N. Bratus, I.A. Galagan, V.M. Gorshenev, Yu.A. Denisov, V.N. Kudryavtsev, O.E. Leist, V.O. Luchin, N.S. Malein, V.M. Manokhin, N.I. Matuzov, P.E. Nedbaylo, I.S. Samoshchenko, V. A. Tarkhov, M. H. Farukshin, M. D. Shargorodsky and many other legal scholars. The main ideas and provisions of the authors workswho studied the legal liability problem before the 90s of the twentieth century have not lost their significance at the present time. Since the mid-50s, experts in the field of legal theory have been gradually forming the legal responsibility concept, touching on the psychological and social offense aspects, and returning the human dignity and honor concept. In 1979, Bazylev B. T. one of the first in Soviet jurisprudence justified the positive legal responsibility aspect: "in its content, positive legal responsibility is a relationship in which the state, acting on society behalf, formulates an abstract obligation of all subjects to perform specific legal duties, and itself acts as a subject that has the right to demand the performance of this duty" [16, 42]. During this period, there are a number of supporters of positive legal liability, however, to date, there is no consensus on this responsibility recognition. In the 90th and subsequent years, the development of General theoretical problems of legal responsibility is devoted to the work of V.M. Baranov, A.L. Burakovsky, V.V. Vedeneyev, N.V. Vitruk, E.V. Gryzunov, A.I. Ivanov, V.A. Kislukhin, O.A. Kozhevnikov, S.L. Kondratiev, M.A. Krasnov, D.A. Lipinsky, Zh.I. Ovsepyan, V.M. Skachkov, A.P. Syrykh. Chirkov and others. Among Kazakhstani scientists, the problems of legal responsibility were studied in the works of Yu.G. Basin, A.G. Didenko, E.B. Osipov, M.K. Suleimenov, S.K. Amandykova and others.

Conclusions

At the early historical development stages, legal responsibility was considered as a punishment, a punishment for an illegal act committed. In establishing possible punishments optionsin the law sources, there is a desire to protect society from socially harmful acts. Gradually improving, law, as well as legal responsibility, is in constant development and the main development of this institution principle is humanism. Recently, there are new options for legal liability. In the course of the considered evolutionary development, the legal responsibility signs are formed and constantly change. It is in the twentieth century that the legal responsibility principles that remain relevant today are being consolidated. In the legal responsibility understanding in modern times, legal science has adopted the accumulated historical experience. A great role in this was played by the thinkers of the past ideas about expediency, legality, inevitability, justice responsibility, and legal equality. In the modern sense, legal responsibility is no longer associated exclusively with punishment. To date, a scientific papers huge number have been devoted to the understanding problems and developing the legal responsibilityInstitute at the same time, there are many problems in its implementation, which is the result of constant theoretical latter understanding. These are problems related to the ambiguous attitude to positive legal responsibility in the law theory, the new types allocation responsibility as independent (environmental, family, etc.).

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А.В. Турлаев, А.П. Волгина, Н.В. Морозов

Құқық теориясының институты ретіндегі құқықтық жауапкершіліктің генезисі (тарихи-теориялық талдау)

Мақалада құқық теориясының санаты ретіндегі құқықтық жауапкершіліктің пайда болуы мен даму үдерісі ашылған, осы институттың негізгі ерекшеліктері қарастырылған. Тарихи ретроспективада

жазаны заңды жауапкершіліктің құрамдас бөлігі ретінде түсіну контексінде жауапкершілік институтының өзгеруге бейімділігі мен прогрессивті дамуы ашылады. Зерттеудің мақсаты ретінде әртүрлі тарихи дәуірдегі құқықтық жауапкершіліктің негізгі белгілерін және осы институттың даму кезеңдерін анықтау. Зерттеудің жалпы және арнайы әдістерінің көмегімен, тарихи материалды талдау және қорыту, осы институттың дамуының негізгі заңдылықтарын анықтау мақсатында заңдық жауапкершіліктің әртүрлі түрлерін қарау жүзеге асырылады. Жүргізілген зерттеудің нәтижесі ретінде құқықтық жауапкершілік институтының дамуын кезеңдендіруді жүзеге асыру, заң жауапкершілігінің аксиологиялық аспектілерін қарастыру және зерттелетін институттың дамуының негізгі заңдылықтарын анықтау болып табылады. Құқықтық жауапкершілік құқықтық санат ретінде қаралады, ол қылмыстық, әкімшілік, азаматтық және өзге де құқықтық қатынастардағы тараптардың өзара қарым-қатынастары принциптерін, заңдық жаза мен көтермелеудің белгілі бір түрлерін негіздейді. Мақалада құқықтық жауапкершілік институты тұрақты дамуда деген тұжырым жасалған, XX ғасырда гуманизм анықтайтын аксиологиялық база ретінде құқықтық жауапкершіліктің заманауи принциптері қалыптасады деген ереже негізделген.

Кілт сөздер: құқықтық жауапкершілік, жаза, құқықтық нормалар, құқықтың тарихи дамуы, құқық теориясы.

А.В. Турлаев, А.П. Волгина, Н.В. Морозов

Генезис юридической ответственности как института теории права (историко-теоретический анализ)

В статье раскрыт процесс зарождения и развития юридической ответственности как категории теории права, рассмотрены основные особенности этого института. В исторической ретроспективе раскрыты изменчивость и прогрессивное развитие института ответственности в контексте понимания наказания как составной части юридической ответственности. В качестве цели исследования выступает выявление основных признаков юридической ответственности и этапов развития этого института в разные исторические эпохи. При помощи общих и специальных методов исследования осуществлены анализ и обобщение исторического материала, изучение различных видов юридической ответственности с целью выявления основных закономерностей развития этого института. В качестве результата проведенного исследования являются реализация периодизации развития института юридической ответственности, рассмотрение аксиологических аспектов юридической ответственности и выявление основных закономерностей развития исследуемого института. Юридическая ответственность рассмотрена как правовая категория, которая обусловливает определенные виды юридических наказаний и поощрений, принципов взаимоотношений сторон в уголовных, административных гражданских и иных правоотношениях. В статье сделаны выводы о том, что институт юридической ответственности находится в постоянном развитии, обосновано положение о том, что в XX веке формируются современные принципы юридической ответственности, в качестве аксиологической базы которой определяется гуманизм.

Ключевые слова: юридическая ответственность, наказание, правовые нормы, историческое развитие права, теория права.

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