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**TÍTULO:** Formas positivas y negativas de implementación de la responsabilidad legal.

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**RESUMEN:** El artículo traza un estudio lógico del concepto de responsabilidad legal como un fenómeno social complejo, que incluye no solo la obligación de ser castigado en caso de violación de las normas legales y las normas de conducta establecidas por el Estado en la sociedad sino también la necesidad educar y formar comportamientos legales en los ciudadanos con el objetivo de analizar las consecuencias de sus acciones potencialmente deseables en términos de aprobación o censura de naturaleza social y legal.

**PALABRAS CLAVES:** responsabilidad legal, responsabilidad legal positive y negativa, delito, coerción, castigo.

**TITLE:** Positive and negative forms of implementation of legal liability.

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**ABSTRACT:** The article traces a logical study of the concept of legal responsibility as a complex social phenomenon, which includes not only the obligation to undergo punishment in case of violation of the legal norms and rules of conduct established by the State in society, but also the need to educate and to form lawful behaviour in citizens, aimed at analysing the consequences of their potentially desirable actions in terms of approval or censure of a social and legal nature.

**KEY WORDS:** legal responsibility, positive and negative legal responsibility, crime, coercion, punishment.

### **INTRODUCTION.**

Until recently, the understanding of legal responsibility as a reaction of the state in response to a violation of the restrictions established by law, that is, measures of state coercion for a committed offense and the suppression of such acts in the future under pain of punishment, was widely spread in Russian legal science.

Legal liability as a measure of coercion on the part of the state was manifested in imposing on the offender unfavorable sanctions for him of various kinds - both property and non-property. The state, represented by the judiciary, not only punished the guilty, but also carried out a preventive function, showing negative consequences, acting on naughty citizens as a warning to the rest.

Along with this understanding of legal responsibility, an active study of legal responsibility begins to develop from a philosophical point of view, where the category of responsibility is analyzed not only as the implementation of the sanction of the norm, but also the conscious implementation of the established norms of the moral, social and legal environment in connection with the recognition of the need to comply with the rules of civil society in order to maintain general rule of law.

At the beginning of the 70s of the last century, Russian legal theorists paid more attention to the formation of the concept of positive legal responsibility, which affects the psychology and social morality of the offender, to form a common idea of legal responsibility as a conscious process of realization of honor and dignity [Samoshchenko I. S., Farukshin M. X. (1971), p. 56-58].

## **DEVELOPMENT.**

### **Research of methodology.**

In the process of cognition of state-legal phenomena, such as legal liability, based on the approach of S.A. Komarov, general scientific methods were used (formal-logical, sociological, systemic, structural-functional, concrete-historical, statistical, ascension from abstract to concrete, etc.); general logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); private scientific methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov S.A. (2019), p. 33].

### **Study results.**

“The tribal system grew out of a society that did not know any internal opposites, and was adapted only to it. He had no other means of coercion than public opinion” [F. Engels, p. 168].

The prototype of legal liability began to emerge along with the establishment of statehood and the development of legal norms. Since in primitive society there was no single apparatus of coercion and responsibility for violating the established social framework, the customs and taboos expressing the interests of most members of the clan were observed voluntarily, but under pain of death. Revealing its political potential, the state formed a special mechanism for strengthening power, based on the subordination of the will of citizens. The most effective measure to instill unquestioning obedience was intimidation - that is, the punishment for disobedience to established norms and rules of conduct.

One of the first Soviet scientists O.S. Joffe and M.D. Shargorodsky identified three key elements for identifying legal liability:

- ✓ This is a state coercive measure.
- ✓ Mandatory legal or public condemnation of unlawful human behavior.
- ✓ Mandatory application of various kinds of punishment to the offender - personal or property.

Putting together these elements of manifestation of legal responsibility, it can be described as follows - it is “a measure of state coercion, which is based on legal as well as public censure of the unlawful behavior of the offender, after which certain penalties are imposed in the form of personal or property restrictions” [Ioffe O. S., Shargorodsky M.D. (1961), p. 316].

In addition, from the works of O.S. Ioffe follows that the basis for all types of legal responsibility is the presence in it of a special and general warning and the protection of public order [Ioffe O.S. (1955), p. 11-15], after this there is a comparison by analogy that for the realization of legal liability the presence of the above characteristics is also necessary. Consequently, legal and legal liability can be recognized as equivalent concepts, but measures of legal responsibility should be distinguished from other legal measures.

In 1964, S.S. Alekseeva, which substantiated the point of view according to which the state has an objective need to apply measures of restraint and coercion to maintain balance and legality in the state, imposing new burdensome duties on the offender - that is, measures of legal liability [S. Alekseev (1964), p. 184-189].

This concept was supported by many scientists [3, 4, 8, 10], in particular, S.N. Kozhevnikov also identified the goal of legal liability in the form of conviction and correction of the offender, as well as the prevention of such offenses in the future, and the purpose of the protective measures is the purely right to restore and restore public order, which are in no way connected with the guilt or innocence of a particular person [Kozhevnikov S.N. (1968), p. 5, 12, 16, 18].

From all of the above, it follows that protective measures will affect the restoration of violated rights of citizens even if there is no fault of the subject who violated any rights. If we talk about legal liability, then one of its mandatory features is the presence of the guilty offender [Ardashkin V. D. (1968), p. 6-9].

Along with this, individual scholars urge to take legal responsibility solely from the point of view of its mechanical implementation - conviction for a committed offense. However, even with this approach, it is impossible to exclude the disciplining effect on the citizen's mind of the potential punishment in case of committing illegal acts, which forces one to make a choice in their actions in favor of legal actions [Lazarev V.V. (2000), p. 291; Kutafin O.E. (2002), p. 53].

In the same period, it begins to form a different view on the content of legal liability. So, O.E. Leist, taking into account the connection between legal duty and liability, concluded that legal liability should not necessarily consist only in negative consequences or factors for the offender. Such a reflection is based on the philosophy that the educational function of the right to sanction legal responsibility is to ensure the implementation of lawful behavior without applying this very sanction.

In his opinion, the assertion about the nature of liability as adverse consequences for the offender is erroneous. The judgment that beyond the borders of responsibility, there are only measures of direct state enforcement to fulfill the obligation will lead to the absence of a single general concept of responsibility for administrative, criminal and civil law [Leist O.E. (1962)].

This point of view was supported and developed in the works of I.S. Samoshchenko and M.Kh. Farukshina, according to whom this content of legal responsibility is not universal for all types of liability, and therefore the punitive function of legal responsibility in these circumstances will not be deprivation, but restriction of a certain amount of rights, as well as the provision of certain duties on the offender [I. Samoshchenko, Farukshin M. X. (1971), p. 56-58].

In the 70s of the last centuries, ideas of positive legal responsibility began to appear in legal literature. Such a concept, on the one hand, led to a “split” of general legal responsibility into two parts — positive and negative, and on the other hand, led to a more conscious, deep understanding of responsibility, not only from the perspective of violence, but also from the point of view of the conscious formation of lawful the behavior of citizens to which the developed rule of law should strive.

This concept led to a shift in emphasis from the sanction of a legal norm to its disposition, hence the legal responsibility began to be understood as, first of all, the obligation to act lawfully [P. Nedbaylo (1971), p. 50; Noskova E.A. (2004), p. 46]. “When public relations are carried out normally, responsibility exists, but does not apply. If the rules of conduct are violated, duties are not fulfilled, then there is a need for an authoritarian call to responsibility” [Tarkhov V.A. (1973), p. 4-5].

B.I. Puginsky points out that legal responsibility is not just a legal obligation, it certainly involves the undergoing of any deprivation [B. Puginsky (1997), p. 123]. Retrospective legal responsibility is the execution by the offender of duties based on state coercion, a legal relationship arising between the state and the person who is responsible for undergoing adverse consequences and deprivation for the offense committed [Komarov, S. A. (2019), p. 444].

According to P.E. Nedbylo the positive form of legal responsibility should be considered the main form of legal responsibility, because it is in it that the social meaning of its activity lies, which corresponds to the objective requirements of this situation and objectively determined ideals of the time. The content of “positive” responsibility includes independent and initiative activity “within the framework of legal norms and those ideals for the achievement of which the norms have been published” [Nedbaylo P. E. (1971), p. 51].

Scientists started talking about the positive form of legal responsibility of scientists back in the mid 60s of the XX century, when V.G. Smirnov was the first to point out that legal responsibility should be taken not only from the perspective of deterrence by punishment, but also appeal to civic duty and morality [Smirnov V.G. (1963), p. 9]. He was supported by a large number of scientists, since the fact that its social component cannot be excluded from legal responsibility cannot be denied, since its purpose is to regulate social relations [26, p. 29].

This understanding of the essence of legal responsibility has received wide support and is currently generally recognized, since responsibility, as a legal category of social reality cannot be considered only from the standpoint of its certain manifestations; for example, D.A. Lipinsky and R.L. Khachaturov noted that legal responsibility is a holistic phenomenon, although it has two forms of implementation (positive and negative). This is characteristic of social responsibility as a single complex phenomenon [Lipinsky D.A. (2000), p. 58].

So, the generic concept of legal responsibility consists of two components that are implemented in the position of the positive and negative areas of its implementation. However, the remark of A.S. Shaburov, who indicates that the content of understanding the positive form of legal responsibility goes beyond jurisprudence and touches on the psychological aspect of the individual, forcing lawyers to delve into the state of human will and consciousness [Shaburov A.S. (1992), p. 9].

Taking this judgment into account, it should be noted that a person is social in his biological essence, and therefore will always be limited in society by the scope of interests of other representatives of society. From birth, so-called “standards of decency” are laid in a person, which form morality, morality and culture in him. All these aspects deprive him of permissiveness and direct his thoughts of the subconscious to the direction necessary for society; therefore, in addition to legal, in society there are religious, moral, subordinate deprivations and many other characters.

Opponents of the concept of positive legal responsibility are A.F. Galuzin and S.N. Revin, who indicate that “it is impossible to recognize the conscientious fulfillment of legal duties, that is, exemplary behavior, legal liability. So, it follows that an essential condition for the onset of the latter is the fact of a perfect offense. In addition, moral responsibility cannot be equated with legal ... what is the basis of positive legal responsibility?” [Galuzin A.F., Revina S.N. (2008), p. 39]. However, one of the elements of the offense is such characteristics as will, motive and other psychological components that form the motivation to commit a crime. Then, why cannot we take into account the psychological aspect of legitimate, conscious behavior, which is identified with responsibility for their actions?

Each committed offense affects the external and internal sides of the personality - this is a direct psychological relation to what is happening and an objectively physical one. In any offense there is a psychological background, because it is an indicator of the well-being of the development of the individual and society as a whole. Psychological comfort determines the level of well-being of society, its moral and cultural preferences. So, all the unrest and discontent occurring within the society are immediately manifested in a surge of various kinds of offenses, which is a signal of appropriate action; for example, if fights are propagated from TV screens, this will instantly affect society. Steps should be taken to limit the number of violence scenes in the media.

Significant arguments in favor of the concept of positive legal responsibility are presented by V.N. Kudryavtsev, which reveals the essence of retrospective responsibility as a specific method of ensuring positive (prospective) responsibility [Kudryavtsev V.N. (1978), p. 110]. In addition, the statement is true that “Denial of a positive form of realization of legal responsibility impoverishes the actual content of legal responsibility, which creates the limitations of many scientific studies and cannot but affect the quality of law and order, the development of mechanisms of lawful behavior” [26, p. 29].



According to R.L. Khachaturova and R.G. Yagutyan, both types of responsibility have a close relationship, and the higher the level of responsibility in the active sense (responsibility in a positive sense), the more social norms are observed, the less often there is responsibility in a retrospective sense (passive, negative responsibility) [Khachaturov R.L., Yagutyan R.G. (1995), p. 11]. In this aspect, it is possible to determine the pattern according to which the growth of responsibility is positive, inversely proportional to the growth of responsibility retrospective.

A.S. Sirotin emphasizes that positive legal responsibility is facing the present and the future and it is manifested in the voluntary coordination by people of their behavior with the rule of law, that is, it prevents offenses [Sirotin A.S. (1999), p. 33], which, undoubtedly, from an economic point of view, is more profitable and economical than keeping and protecting prisoners.

I.A. made a significant contribution to the generalization and consideration of the concept of interest to us. Alekseev: "The modern traditionally formed idea of legal responsibility involves the consideration of the latter as liability-punishment, sanction. However, although the retrospective responsibility is concentrated in legal responsibility, the latter is not limited to it, just as the "commonly used" understanding of responsibility extends not only to social responsibility itself, but also to legal responsibility" [I. Alekseev (2009), p. 83-87].

The science of the theory of law does not stand still, and there is nothing negative in the fact that, developing, the concept of "legal responsibility" is enriched by its new understanding. Proponents of the positive concept of legal liability do not deny the presence of a negative aspect, but only talk about the duality of the nature of legal liability as a whole legal phenomenon.

Today, there is no doubt that the positive form of legal liability is viable, as well as the fact that the study of only the negative form of legal liability will inevitably lead to a dead end a very complex and multifaceted category of "legal liability". Given the positive responsibility, legal liability also

covers the subjective rights of persons consisting in their lawful behavior, but at the same time obliging them not to abuse the right.

## **CONCLUSIONS.**

Summarizing the study of the concept and philosophy of legal responsibility in the Soviet and subsequent periods of the existence of Russian statehood, it can be argued that comprehensive and substantial developments were made, thanks to which the theory of legal responsibility gained integrity from the theoretical side, and more pronounced clarity from practical. A review of the points of view of various jurists made it possible to group the complex phenomenon of legal responsibility as a competent combination of legal sanctions and state coercion, the offense of which is the basis for the offense.

Despite the fact that the problem of legal liability in Soviet legal theory was complicated by the philosophy of the formation of the psychological factor of legitimate human behavior, nevertheless, clarity and agreement were reached on the single goal of legal responsibility - ensuring the fulfillment of obligations.

So, we can conclude that legal liability is a complex complex phenomenon that is revealed both from the standpoint of awareness of the need to form and comply with lawful behavior, and the need to undergo certain types of punishment in case of violation of statutory norms and rules of conduct.

## **Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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