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On the Concept of Civil Legal Liability in Russian Legal Science: A Critical Analysis

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Abstract:

This scientific article deals with the problem of the concept of civilliability. The latter is often misinterpreted by theoreticians and civilists. We believe that this is largely due to the unreasonable identification of legal liability measures and protection measures (restorative measures). The paper presents the author's view of this problem.

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Keywords:

legal responsibility of protection measures; their identification; penalty; compensation for harm

I. Introduction

It seems that the relevance of legal science, both the theory of law and civil law, is due to the fact that both the former and the latter incorrectly interpret the concept of civil liability. It seems that this is due to ignoring the general theoretical provisions, which clearly differentiate between measures of legal responsibility and measures of protection.

II. Research Methods

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

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. 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;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

Civil Liability: Analysis of Views on Its Understanding

An analysis of the legal literature shows that civil liability is often unreasonably interpreted, not distinguishing between the measure of civil legal liability and the measure of protection. Thus, the team of authors quite unreasonably calls it compensatory liability, "when one of the parties is compensated for the losses incurred by it"; restorative, through this type of liability, violated rights are often restored, the former legal status of subjects is restored (for example, recognizing a transaction as invalid returns the parties to their original financial [1].

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Equally, this applies to the position according to which civil liability is compensatory nature (forfeit, penalty interest, fine, cancellation of the transaction, public apology and refutation of slanderous information; compensation for lost profits, seizure of property that was unlawfully in possession; conversion to state revenue, etc.) [2]. Vasilievna Shagieva and Alexander Pavlovich Sevryukov, who argue that "civil offenses entail the application of such sanctions as compensation for harm, forced restoration of the violated right, as well as other other remedial sanctions"[3].

The Civil Code in chapter 25 Responsibility for violation of an obligation does not give a legal definition of the concept of responsibility. Until now, in the theory of civil law, the issue of civil liability is debatable. [4].

One of the common means of civil liability is the recovery of a penalty. According to paragraph 1 of Art. 330 of the Civil Code of the Russian Federation, "a penalty (fine, penalty fee) is a sum of money determined by law or contract, which the debtor is obliged to pay to the creditor in case of non-performance or improper performance of an obligation, in particular in case of delay in performance." The commentary to the Civil Code of the Russian Federation emphasizes that "... civil law provides for a penalty as a way of fulfilling obligations and a measure of property liability for their failure to fulfill or improper fulfillment ..." [5].

Scientists, arguing that the penalty is the most common measure of liability for offenses, scientists define the following features: the predetermination of the amount of liability, the possibility of recovering for the violation itself (without proof of harm), the possibility of providing a penalty at its discretion or increasing the size provided by law. [6]. Tariel Karapetovich Barseghyan, speaking about the forfeit, believes that "the prevalence of this sanction is explained by the fact that it is a convenient and easily applied measure of compensation for losses"[7].

It seems that another form of civil liability is compensation for losses (Articles 13, 16, etc. of the Civil Code of the Russian Federation). According to Part 1 of Art. 15 of the Civil Code of the Russian Federation, a person whose right has been violated may demand full compensation for the losses caused to him, unless the law or the contract provides for compensation for losses in a smaller amount.

Finally, compensation for non-pecuniary damage should be recognized as another form of civil liability, i.e. "moral or physical suffering caused by actions (inaction) that encroach on intangible benefits belonging to a citizen from birth or by virtue of law (life, health, personal dignity, business reputation, privacy, personal and family secrets, etc.) or violating his personal non-property rights (the right to use his name, the right of authorship and other non-property rights in accordance with laws on the protection of rights to the results of intellectual activity) or violating the property rights of a citizen"[8]. Moral harm, in particular, may consist in moral feelings in connection with the loss of relatives, the inability to continue an active social life, the loss of work, the disclosure of family, medical secrets, the dissemination of untrue information that discredits the honor, dignity or business reputation of a citizen, temporary restriction or deprivation of any right, physical pain associated with injury, other damage to health or in connection with a disease suffered as a result of moral suffering, etc. [9]. One of the recent examples of this form of civil liability: the five-time world chess champion Nona Gaprindavshvili sued the creators of the film "The Queen's Move", whose lawyers in a statement of claim demand that false information be removed from the series, apologize to their client, and also pay

her five million dollars as compensation for non-pecuniary damage[10]. In accordance with Part. 1. Art. 151 of the Civil Code of the Russian Federation, "if a citizen has suffered moral harm (physical or moral suffering) by actions that violate his personal non-property rights or encroach on other non-material rights belonging to the citizen, as well as in other cases provided for by law, the court may impose on the violator the obligation of monetary compensation for the specified harm.

According to Part 2 of Art. 1099, "moral damage caused by actions (inaction) that violate the property rights of a citizen are subject to compensation provided for by law, and "compensation for moral damage is carried out regardless of the property damage subject to compensation. (part 3 of the same article). In part 2 of Art. The Code of Criminal Procedure of the Russian Federation stipulates that claims for compensation for moral damage in monetary terms are presented in civil proceedings.

By the way, our position is in full agreement with the point of view of Vladimir Saurseevich Em, who believes that only compensation for losses, recovery of a penalty and compensation for moral damage can be recognized as measures of civil liability; all others are protective measures [11].

We believe that the ignorance of both some theorists of law and civilists of general theoretical provisions of a methodological nature leads to the fact that they unreasonably either identify measures of civil liability and measures of protection, or the latter are considered as a component of legal liability. There are many such examples. For example, Ivan Nkolaevich Senyakin believed that civil liability is provided for violation of contractual obligations or for causing non-contractual property damage. The most characteristic sanctions here are reduced to compensation by the offender for property damage and restoration of the violated right [12]. The team of authors of the textbook on civil law, interpreting civil liability more broadly, namely: "these are coercive measures established by law or contract, which represent property deprivation for the offender and compensation for losses for the person who has suffered from the offense", categorically assert that it An important feature is that this measure is of a compensatory nature", "measures of civil liability are at the same time measures to protect violated subjective rights" [13].

Irina Mikhailovna Musaeva argues that in the norms of Russian law, civil liability is defined as follows: these are the consequences that arise on the basis of an offense. The purpose of the application of responsibility is to restore the disturbed state of the injured party at the expense of the offender [14].

Alexander Anatolyevich Lukyantsev, defining civil liability as a legal relationship that arises in connection with an offense and is expressed in adverse property consequences for the offender in connection with the application of sanctions against him, however, he also names compensation for losses as forms of the first (Articles 15, 16 , 393-396 of the Civil Code of the Russian Federation), and the recovery of a penalty (Articles 330-333, 394 of the Civil Code of the Russian Federation), and the collection of interest for the use of other people funds (Articles 395, 486, 866 of the Civil Code of the Russian Federation), and compensation for property damage (§§ 1.3 Chapter 59 of the Civil Code), and compensation for harm caused to the life or health of a citizen (par. 1, 2 Chapter 59 Chapter RF), etc. [15].

Meanwhile, we acknowledge the opinion of Galina Vasilievna Khokhlova that such a legislative method of protecting civil rights as "compensation for harm in kind" by providing a

thing of the same kind and quality, repairing a damaged thing, etc. should not be attributed to measures of civil liability. (Article 1082 of the Civil Code of the Russian Federation). Such a measure of protection should be regarded as a kind of award to the performance of a duty in kind. Arguing about the award and compulsion to fulfill the obligation in kind, the author comes to the conclusion that ... forcing the debtor to fulfill the obligation to pay a sum of money is almost always real and final, as well as the application of liability measures. From the position of Galina Vasilievna Khokhlova, "in reality, the situation is that the authorized body is always ready to take a certain amount of money from the debtor in favor of the creditor (to put pressure on the debtor's property), and this measure of responsibility is compensation for losses, and not the fulfillment of the obligation in kind [16].

The Big Encyclopedic Dictionary states that "civil liability consists in applying to the offender (debtor) in the interests of another person (creditor) or the state the measures established by law or contract, entailing negative, economically disadvantageous consequences of a property nature - compensation for losses, payment of a penalty (fine, penalties), compensation for harm"[17]. This interpretation is also supported by Vladimir Zakharovich Gushchin [18].

Vasily Vladimirovich Vitryansky believed that "in civil law relations… the mere fact of a breach by the debtor of obligations does not mean that the creditor has the right to demand compensation for the losses caused by this or the application of other measures of responsibility to the debtor"[19].

Defining liability for violation of obligations as "the imposition of deprivations provided for by law on a person who has not fulfilled an obligation or has performed it improperly, secured by state coercion," Bronislav Michislavovich Gongalo argues that liability measures are mainly characterized by a compensatory (restorative) function, i.e. on primarily aimed at compensating the costs (losses) of the victim. Speaking about the forms of civil liability, the scientist names the imposition of duties, deprivation of rights, compensation for losses, payment of a penalty, loss of the deposit amount, payment of interest for the use of other people funds, etc. [20].

A similar position is the point of view, according to which civil liability is understood as adverse property consequences for a person who has committed a civil offense, expressed in the loss of a part of property by such a person. It is argued that the first is always of a property nature and can act in the form of compensation for losses (harm, including moral), payment of a penalty, loss of a deposit [21].

It seems that not all forms (for example, compensation for causing harm) should be attributed to civil liability. Here it is necessary to take into account the fundamental position, according to which "the functions of the means of protecting civil rights are the directions of legal influence on civil legal relations, the behavior of subjects, revealing their essence, role and social purpose and pursuing the achievement of certain positive legal goals - the elimination of obstacles in the exercise of subjective civil rights, suppression of violations of these rights, restoration of violated rights and compensation for all losses caused by the violation"[22].

Critically evaluating the above positions on the concept of civil liability, the above can, in our opinion, give examples of the most adequate understanding of the latter.

Thus, a number of authors identify civil liability with a sanction for an offense (or rather, with the application of a sanction - Vladimir Valentinovich Kozhevnikov), provided with the

possibility of state coercion and causing negative consequences for the violator in the form of deprivation of subjective civil rights or the imposition of new or additional civil law responsibilities"[23]. Aleksey Nikolaevich Guev gives the following definition of civil liability: this is a set of adverse legal consequences, expressed either in imposing the terms of the contract (requirements of laws, other legal acts, and in their absence, business customs) measures of property impact, or in depriving him of certain civil rights, or in compulsion to perform certain actions" [24].

Nikolai Dmitrievich Egorov notes that not all measures of a property nature provided for by civil law in the event of an offense are civil liability. Yes, Art. 398 of the Civil Code establishes the consequences of failure to fulfill the obligation to transfer an individually defined thing, which occur in the form of a forced seizure from the debtor and its transfer to the creditor. Such a measure of a property nature cannot be regarded as civil liability, since in this case the debtor is deprived of the property that he himself was obliged to transfer to the creditor, regardless of the offense by virtue of the obligation assumed. In the above example, we can speak of civil liability when the debtor for the untimely transfer of an individually defined thing will be deprived of his property in the form of compensation for losses or non-payment of a penalty to the creditor, which would be excluded in case of proper performance of obligations. The foregoing allowed the scientist to quite reasonably state that "only such measures taken against the offender as a result of which he suffered property deprivation that would not have occurred if the offender had not committed the offense can be attributed to civil liability" [25].

It seems that it is necessary to support the positions of those civil scientists who distinguish between protection measures and protection measures, while isolating various criteria for separating the phenomena under consideration. So, Alexander Petrovich Sergeev emphasizes that the measures of protection and measures of responsibility "differ among themselves according to the grounds for application, social purpose and functions performed, principles of implementation and some other points"[26]. Denis Nikolaevich Karkhalev notes that "the universal criterion for distinguishing between protection measures and liability measures is the presence of non-equivalent property deprivations characteristic of civil liability" [27].

A supporter of the distinction between these methods of protection of subjective civil rights, Alexander Aleksandrovich Kravchenko reasonably notes that the restrictive approach is "convenient" for the purposes of law enforcement practice. For example, if the plaintiff requires damages, then the court proceeds from the fact that this is a measure of responsibility, so the plaintiff must prove the existence of the full corpus delicti. After all, the amount of reimbursement to the creditor of expenses is determined by the property losses of the latter, and not by the punishment of the debtor or his additional burdens [28].

We believe that the point of view of some scientists is not without meaning, according to which one should not absolutize the differences between the measure of protection and the measure of responsibility, because "the complete delimitation of measures of protection from liability is unlawful, otherwise real problems are possible in the process of law enforcement. This fact is especially obvious when analyzing the grounds and conditions for bringing to responsibility and using protection measures, since their rigid differentiation can give rise (and already gives rise to) cases of arbitrary interpretation by courts and other law enforcement agencies of the norms of the law providing for the use of coercive measures [29]. Alexander Alexandrovich Kravchenko, focusing on the distinction between liability and protection measures in terms of the grounds for application, "for the application of liability measures, an offense is necessary, including the full composition of its elements and guilt as a prerequisite; for

the application of protection measures, it is sufficient to commit an unlawful action or inaction", while ignoring such a complex criminal procedural legal institution as a civil claim in criminal proceedings (Article 44 of the Code of Criminal Procedure of the Russian Federation), is also a supporter of the conventionality of distinguishing between the analyzed measures of state-legal coercion, citing these are specific examples. For example, referring to Art. 1100 of the Civil Code of the Russian Federation, which stipulates that "compensation for moral harm is carried out regardless of the fault of the tortfeasor in cases where the harm is caused by a source of increased danger…", the author argues that in this case compensation for moral harm is a measure of protection [28].

IV. Conclusion

In this part of the work, it must be emphasized that the forms of civil liability include a forfeit (fine, penalties), compensation for losses and compensation for moral damage. All other forms of it are related to measures of civil protection.

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