

The Concept, Features and Forms of Civil Legal Liability

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Abstract: *This scientific article discusses the concept of civil liability as a variety of legal liability, its features and forms of expression. At the same time, attention is focused on the fact that legal responsibility, including civil law, cannot be identified with protection measures.*

Keywords: *legal liability; civil liability; punitive (penalty) sanction; forfeit*

I. Introduction

The relevance of the presented article is due to the fact that scientists often misunderstand civil liability and its forms. It seems that this is the result of ignoring by them such an important legal science, which is methodological in nature, as the general theory of law, within which there is a differentiation between measures of legal responsibility and measures of protection (restorative measures).

II. Research Methods

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

General Philosophical

General philosophical (dialectical-materialistic), which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Results and Discussion

3.1 The Concept of Legal Responsibility

Given the fact that civil liability is a kind of legal liability, it should be determined in the concept of the latter. In the legal literature, there are a number of approaches to understanding legal liability: - legal responsibility - a measure (form) of state coercion; - legal responsibility - the use of measures of state coercion; - legal responsibility - specific responsibility of a person; - legal responsibility - a special legal relationship.

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

same time, its features are the following: 1) it has an inextricable link with state-legal coercion; 2) is combined with state condemnation and public censure of the behavior of the offender; 3) is associated with the infliction of adverse consequences of a personal, property or organizational nature to the offender; 4) is embodied in a procedural form in the course of law enforcement activities of the competent authorities of the state; 5) the establishment of the nature and scope is determined by the penal (punitive) sanction of the legal norm [1].

When characterizing legal liability, the authors justifiably draw special attention to such a sign of it, according to which it “entails negative consequences (deprivation of liberty, parental rights), imposing new additional obligations on him (payment of a certain amount, performance of any actions)”[2].

One of the signs of legal liability, many authors include deprivation of a personal, property and organizational nature, or, in other words, encumbrances. For example, among the signs of legal responsibility that distinguishes legal responsibility from other types of social responsibility, Mikhail Iosifovich Baitin singled out one according to which “in its content it represents an offensive for the offender of undesirable consequences of a material, physical, mental nature, provided for by the sanction of a legal norm” [3].

Mikhail Evgenievich Roshchin argues that "legal responsibility lies in imposing on the offender certain negative (negative) consequences of his behavior" [4]. The scientist concludes that "legal responsibility is the result of an offense, the unity of three elements: wrongfulness, public condemnation and the application of a sanction secured by state condemnation"[4].

Olympiad Solomonovich Ioffe at one time called legal responsibility an additional burden for the offender "accordingly ... to the characterization of responsibility as punishment for breaking the law"[5].

The position of Vitaly Viktorovich Sorokin is not devoid of originality to a certain extent, arguing that “the deprivations and encumbrances associated with the onset of legal liability can be replaced by the term“ retribution ”, the preference of which is due to ... the breadth of the scope of this concept ... Retribution is assigned to the guilty person as additional and the negative consequences of the offense committed by him” [6]. In the context of our study, we should especially emphasize the validity of the last of the approaches analyzed above to understanding legal liability, taking into account the signs of which is important for understanding such a variety of it as civil liability.

3.2 On the Concept of Civil Liability and Its Features

An analysis of the legal literature made it possible to state that there are those positions of scientists that most correctly define the concept of civil liability, paying attention to its features.

So, according to Mikhail Evgenyevich Roshchin, civil liability consists in the application by the court, at the initiative of the victim (creditor), of civil law sanctions, which entail adverse (negative) property consequences for the offender. From this definition it follows that liability in civil law is inherent in a property nature, which manifests itself in the fact that certain undesirable consequences of a material nature occur for the offender. For the victim, from the point of view of his private interests, the satisfaction of the offender, or the person responsible for his actions, of property requirements is of the greatest importance. As

a general rule, the application of sanctions to the offender depends on the initiative of the victim. This manifests the private law nature of civil legal relations [4].

According to Alena Aleksandrovna Vetrova, civil liability consists in the application by the court to the offender in favor of the victim of property sanctions. We believe that attention should be focused on some features of civil liability. Firstly, it consists in its property character, since the application of civil liability (or rather, the application of sanctions - the Author) is always associated with compensation for losses, recovery of damage caused, payment of a penalty. Secondly, in the amount of compensation for harm, i.e., the amount of compensation should be equal to the amount of harm caused [7].

Igor Alexandrovich Kuzmin, defining civil liability as “measures of state coercion enshrined in the sanctions of civil law in the form of deprivation of a property nature, which can be applied to a person for a committed illegal act and the specification of which is possible in civil law contracts,” believes. that its specificity lies in the fact that it is divided into two types: contractual and non-contractual (tort)[8].

Explaining his point of view, the scientist emphasizes that contractual civil liability has, as its factual basis, an unlawful act in the form of non-fulfillment or improper fulfillment of an obligation arising from the contract (contractual obligation). Moreover, the measures of contractual civil liability and the actual grounds for such liability can be specified in a civil law contract. General provisions on this type of responsibility are set out in Sec. 25 of the Civil Code of the Russian Federation. contractual Non-contractual (tort) liability arises in connection with the fact of causing harm (tort) on the basis of the norms of Ch. 59 of the Civil Code of the Russian Federation [8].

3.3 Forms of Civil Liability

We believe that one of the most common forms of civil liability is the recovery of a penalty (fine, penalty). According to paragraph 1 of Art. 330 of the Civil Code of the Russian Federation, “a forfeit (fine, penalty interest) 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 ...”[9].

Ilya Yuryevich Sofonov rightly notes that “the legislator directly emphasizes the main goal in collecting any penalty - to apply a fixed measure of civil liability to the debtor for failure to fulfill the contract” [10]. Recognizing that a penalty is the most common measure of liability for offenses, scientists define its 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 one’s discretion or increasing the size provided by law [11].

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” [12]. It is not difficult to understand that the author unreasonably identifies a penalty and compensation for damages.

Yuri Alexandrovich Svirin, in this regard, drew attention to the fact that “since the recovery of a penalty is an independent way to protect the right, unlike the recovery of losses, its size should not be tied to and correlated with the creditor’s losses” [13].

We believe that, if we talk about the differences attributed to fines and penalties for the purpose of distinguishing between them, it should be borne in mind that the features of the fine are as follows: set in a fixed amount; aims to ensure not the main, but some kind of additional obligation (for example, the timely conclusion of a local agreement, the submission of monthly requests for the supply of goods, the timely export of goods, the return of packaging, etc.), in connection with which the probability of absence in case of non-fulfillment such liability for damages; provides a one-time payment. The main differences between the penalty are recognized: the frequency of its occurrence.

The penalty is not a lump sum, but an amount, the amount of which depends on a fixed period (day, week, month, year); accrual until the moment the obligation is fulfilled: up to or within a certain period (for example, within 6 months) or a certain amount (for example, not more than 50% of the freight charge); a fine is provided for in the event of such a violation as a delay in fulfilling an obligation [14]. 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." The current Civil Code of the Russian Federation understands losses as expenses that a person whose right has been violated has made or will have to make to restore the violated right, loss or damage to his property (actual damage), as well as lost income that this person would have received under normal conditions of civil circulation if his right had not been violated (lost profit). Thus, losses represent real expenses and non-receipt of income.

It is interesting to note that even the Roman jurists composed the concept of harm from two elements: a) *dammum emergens*, positive losses, i.e. the deprivation of what was already part of the property of this person, and b) *lucrum cessans*, lost profits, i.e. the non-receipt in the property of this person of those values that should have come in the normal course of circumstances (i.e., if there were no circumstances, which serves as the basis for compensation) [15]. Ksenia Alexandrovna Usacheva believes that through civil liability, law seeks to a greater extent to provide compensation to individuals for their own losses in order to return the state of affairs to its original state, to restore the balance that was disturbed between the members of the group. The sanction here is restorative and compensatory, but not repressive. However, this does not exclude the possibility that in some cases civil liability assumes other functions, to a lesser extent purely civilistic ones. So, for example, sometimes judges seek to punish the responsible as much as to compensate the victim, and civil liability always claims the role of regulating and preventing antisocial behavior, especially, in particular, through the proclaimed awards [16].

Basically agreeing with the author, one should hardly equate restorative and compensatory sanctions.

It seems that a number of important and fundamental provisions regarding the recovery of damages were expressed by Svetlana Eduardovna Libanova, who believes that claims for the recovery of damages are rarely brought to court, even fewer such claims are satisfied. The author draws attention to the fact that arbitration practice has developed in such

a way that the creditor, who is assumed to be in good faith in civil law and whose rights are to be protected, has an additional difficult duty to convince the court not only that his counterparty is dishonest, but also to prove the amount incurred them losses.

As a result, even in cases of recognition of the creditor's objective losses, arbitration courts often refuse to satisfy the claim on the grounds of unproved losses. This is especially true for lost profits [17].

Finally, compensation for non-pecuniary damage should be recognized as another form of civil liability. The legislator in Article 151 of the Civil Code of the Russian Federation defines moral harm as physical and moral suffering caused to a citizen by actions that violate his personal non-property rights or encroach on other non-material benefits belonging to him.

The Plenum of the Supreme Court of the Russian Federation in its resolution "Some questions of the application of legislation on compensation for moral damage" dated 20.12.1994 No. 10 somewhat expanded the scope of moral harm, indicating that moral harm is understood as "moral or physical suffering caused by actions (inaction) that encroach on intangible benefits belonging to a citizen from birth or by virtue of the law (life, health, dignity of the individual, business reputation, privacy, personal and family secrets, etc.) or violate 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. 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 discrediting 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." [18].

Vitaly Valentinovich Mukovnin, commenting on this decision, draws attention to the following circumstances. Firstly, although the Supreme Court did not give a general definition of suffering, it follows from the above text of the decision that the court tried to reveal the content of one of the signs of moral harm - moral suffering. From the position of the author, "moral suffering refers to experiences" [19]. Secondly, physical suffering is the feelings associated with physical pain and, as a rule, arising from harm to health.

However, Vitaly Valentinovich Mukovnin emphasizes that the concept of "physical suffering" does not coincide in its content with the concepts of "physical harm" and "harm caused to health". Physical suffering is one of the types of moral harm in its form, as defined in Art. 151 of the Civil Code of the Russian Federation, while physical harm is any negative changes in the human body that impede its successful biological functioning [19].

Yury Nikolaevich Andreev, at first, saying that "compensation is making amends for non-property damage that is incapable of recovery in kind, replacing it with a monetary reward (a sum of money)", then unreasonably, contradicting himself, believes that "the payment of a compensation amount of money can to some extent compensate (reimburse) the property damage caused and operates in civil law along with compensation for losses or exclusively without it" [20].

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 [21].

Or another, somewhat humorous example. A court in Yaroslavl fined an elderly woman and a man for using swear words in the presence of their teenage grandson. According to media reports, a sixteen-year-old boy complained to his father about elderly relatives: they allegedly do not comply with the norms of the Russian language and very often swear even when addressing their grandson. As proof, the teenager recorded a dialogue with his grandparents on a dictaphone, after which he gave the recording to his father to listen to. The man considered that such an attitude degrades the dignity of the child and injures the psyche, and decided to go to court. After reviewing the materials of the case, the court considered that foul language contributes to the improper upbringing of a teenager. An elderly couple must pay 500 rubles each as compensation. At the same time, the court took into account that the boy himself was rude when communicating with elderly relatives, which provoked such a reaction [22].

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."

It seems that the arguments of Viktor Pavlovich Mozolin are not without meaning, drawing attention to the fact that, in relation to liability for moral harm, instead of the formula "compensation for harm" applied to liability for causing damage to property, the legislator uses the formula "harm compensation", thereby emphasizing that the concept and types of damages used in Art. 15 of the Civil Code of the Russian Federation are not applicable. Thus, the application to liability for moral harm in determining the amount of money paid to the victim of the requirement for its compensatory nature is also denied. Considering that the provisions of Art. 151 of the Civil Code of the Russian Federation, the criterion for the court to take into account the degree of guilt of the offender and the physical and moral suffering of the victim, as judicial practice shows, is clearly not enough, the scientist believes that “the law must include additional criteria and the civil law concept of guilt” [23].

By the way, the stated position in this article is in full agreement with the point of view of Vitaly Saurseevich Yem, 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 protection measures [24].

IV. Conclusion

In conclusion, we emphasize that civil liability should not be identified with measures of civil legal protection. Understanding civil liability as the application by the court of civil sanctions that entail the onset of adverse (negative) property consequences for the offender, the following features can be distinguished: 1) its property nature; 2) is initiated, as a rule, at the initiative of the injured party; 3) it is divided into two types: contractual and non-contractual (tort). The forms of civil liability are: 1) forfeit (fine, penalties); 2) compensation for losses; 3) compensation for non-pecuniary damage.

References

- [1]. Kozhevnikov Vladimir Valentinovich. Theory of state and law: a textbook in 2 parts. Moscow: Prospekt, 2021. Part 2 P.582.
- [2]. Vinichenko Oleg Yurievich, Popov Vladimir Ivanovich. Theory of state and law: textbook. Moscow: Prospekt, 2010. P.344.
- [3]. Baitin Mikhail Iosifovich. Essence of law (Modern normative legal understanding on the verge of two centuries): monograph. Moscow: Law and State, 2005.P.227.
- [4]. Mikhail Evgenievich Roshchin. To the question of the concept of civil liability//Modern science: theory and practice. 2015. No. 1. Pp. 27-28, 29.
- [5]. Ioffe Olympiad Solomonovich. Obligation law. Moscow: Yurid. literature, 1975.P.95.
- [6.] Sorokin Vitaly Viktorovich. The theory of legal responsibility: textbook. Barnaul: Altai State. un-t, 2017. P.33.
- [7]. Vetrova Alena Aleksandrovna. The concept and essence of civil liability//Philosophy of law. 2013. No. 3. Pp. 23-24.
- [8]. Kuzmin Igor Aleksandrovich. Legal responsibility and its implementation: a tutorial. Irkutsk: Irkutsk state. un-t, 2013.Pp.120, 129.
- [9]. Commentary on the Civil Code of the Russian Federation. Parts one-three / ed. Evgeny Leonidovich Zabarchuk. Moscow: Exam Publishing House, 2006. P.323. [10]. Ilya Yurievich Sofonov. Reducing the penalty by the court: ways to counteract judicial discretion // Law and Economics. 2014. No. 13. P. 59.
- [11]. Braginsky Mikhail Isaakovich, Vitryansky Vasily Vladimirovich. Contract law. General provisions. M.: Statute, 1997.P.323
- [12]. Barseghyan Taniel Karapetovich. Penalty as a measure of responsibility //Jurist.2006.№7.C.20. [13]. Svirin Yuri Alexandrovich. The legality of reducing the penalty by the court //Modern law. 2018. No. 12. P. 77.
- [14]. Butova Ruslana Alexandrovna. Forfeit as a measure of civil liability: individual problems of theory and judicial practice // Law and Politics. 2012. No. 8. P. 1413.
- [15]. Novitsky Ivan Borisovich. Roman law: textbook. Moscow: Wolters Kluwer Russia 2009. P. 154-155.
- [16]. Usacheva Xenia Alexandrovna. Introductory remarks to the translation from French into Russian of P. Jourdain's monograph "Principles of Civil Liability" // Bulletin of Civil Law. 2021. No4. <https://istina.msu.ru › journals>
- [17]. Libanova Svetlana Eduardovna. Civil liability: recovery of damages: textbook. Moscow: Yurayt, 2022. Pp.13, 14.
- [18]. Decree of the Plenum of the Supreme Court of the Russian Federation of December 20, 1994 No 10 (as amended on February 6, 2007) "Some issues of the application of legislation on compensation for moral damage" // www.vsrfl.ru/documents/own/8282/ (date of access : 14. 04.22).

- [19]. Mukovnin Vitaly Valentinovich. Physical suffering as a sign of moral harm // Modern law. 2008. No 11. Pp.40, 41.
- [20]. Andreev Yury Nikolaevich. To the question of the restoration and compensation function of civil law // Modern law. 2014. No 11. P.52.
- [21]. The queen made a knight's move // The Halo newspaper. 2021. 27 Sept. -3 Oct. P.9.
- [22]. In Yaroslavl, the grandson sued the grandmother who cursed in his presence ... // nokstv.ru/.../ (date of access: 31.03.23)
- [23]. Mozolin Victor Pavlovich. Civil liability in the system of Russian law // Journal of Russian law. 2012. No. 1. Pp. 39-40.
- [24]. Em Vladimir Saurseevich. The right to protection / / Russian civil law: a textbook in 2 volumes. General part / resp. ed. Evgeny Alekseevich Sukhanov. Moscow: Statute, 2011. Vol.1. Pp.418-421.