

U.D.C. 340.111.5:343.222

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CRIMINAL LIABILITY AS A FORM OF LEGAL LIABILITY

Summary

The work carries out the characterization of criminal liability as a form of legal liability. The concept and characteristics of criminal responsibility are stated, the different approaches of scientists in the definition of criminal responsibility and the prospect of jurisprudence in this area are emphasized.

Key words: legal liability, criminal liability, obligation, public censure, restrictions, signs of offense, negative consequences.

Formulation of the problem. Criminal liability is one of the main categories of criminal law, along with crime and punishment. In addition, it is a special element in the mechanism of legal regulation of relations on the person who committed the crime. However, around the concept of criminal responsibility has long sustained discussion. One reason for this is that often the Criminal Code of Ukraine (hereinafter - the Criminal Code of Ukraine) and other regulations, as well as scientists put a different

meaning to the concept of "criminal responsibility". Legal uncertainty in the theory of criminal and criminal procedural law allows you to interpret the term differently.

Analyzing the concept of criminal responsibility above all we must proceed from the fact that criminal responsibility - a type of legal liability. According to ch. 1, Art. 3 Criminal Code of Ukraine criminal liability and punishment only be a person guilty of a crime is such that intentionally or negligently committed prescribed by law on criminal responsibility socially dangerous act. It is this legal provision gives grounds to consider criminal responsibility as a criminal-legal type of legal liability.

Man lifelong interact with other people by engaging them in social relations. Man takes his social position, which requires certain functions objectively agreed with the functions of other members of society. Violation of these functions can lead to malfunction of the system. As a result, this has a negative impact on the subjects of the system. To organize the interaction of individual actors in general, the company introduces social control, that set of different norms and values that set the rules of conduct and standards regulating the interaction between the actors of society, as well as sanctions that apply to their implementation.

The rules differ in the degree of severity, and their violation entails different types of liability. In case of violation of any rule violator liability will be implemented by the state, the society called to monitor the implementation of such rules. In accordance with the result of the application of the rule of law and, above all, the implementation of sanctions by the state will be a kind of social responsibility - legal responsibility. Consolidation in criminal law the most dangerous acts indicate that the criminal liability as a form of legal liability is the most severe type of such liability.

Analysis of recent research and publications. Problems of criminal responsibility, its concepts and features studied by many scientists, such as M. Bazhanov, J.M. Brainin, B.V. Volzhenkinym, A.A. Gertsenzon, T.T. Dubinin, M.I. Korzhanskym, V.M. Kudryavtsev, M.S. Tagantsev, A.N. Trainin, M.D. Sergius, M.S. Strogovich and others. In the modern theory of law of Ukraine study the problems of crime and their signs deal with such scientists as Y. Baulin, N.V. Volodko, M.I.

The purpose of the article. The aim of this publication is to define concepts and attributes criminal liability as a form of legal liability.

Presenting main material. We know that the legal liability is a form of social responsibility and they relate to each other as the type and class. Legal liability - a relationship between the state and the subject of offense, characterized by condemning the wrongful act and the offender and imposing the obligation to incur under sanction violations of the rights of the adverse effects of the personal, property and organizational nature. According OF jumper legal responsibility - a statutory type and size of state-powerful (compulsory) feeling person losing the benefits of personal, organizational and economic nature for an offense [1, 430].

As a relatively independent element of the legal system, legal liability is characterized by the following features:

1. is a special legal institution within which the state response to crime.
2. Combined with the use of (the possibility of application) coercive measures by the state.
3. Provides a formal assessment of the appropriate authority behavior of a person as an offense, and himself as the offender. This feature leads to negative person point and contains an element of public condemnation.
4. Pulls certain adverse consequences for the offender. Sometimes they are confined to the above assessment of the offender, but in most cases specified limitation of certain rights and freedoms offender or imposing certain obligations.

However, the concept of criminal responsibility includes both generic characteristic of legal responsibility in general, and specific features characteristic of responsibility within the criminal law. In criminal law, some of these signs legal liability specified - especially considering the subject and method of legal regulation of this industry. With this specification, they are species (specific) signs of criminal responsibility. Thus, the signs of criminal responsibility include:

1. Criminal responsibility - a specific element in the mechanism of legal regulation, within which the State's response to the person committed a criminal offense.

2. Official Rating behavior of a person as a criminal offense, as well as the offender himself, according to ch. 1, Art. 62 of the Constitution of Ukraine [2], and ch. 2, Art. 3 of the Criminal Code of Ukraine [3] can be carried out only by the court in a conviction.

3. Criminal liability entails adverse consequences for the offender. In some places they are reduced by the court to recognize a person guilty of a crime and thus its condemnation of the state, but mostly a censure combined with application specific measure of legal influence provided by the law on criminal responsibility.

Recently in the legal literature actively developed the concept of so-called positive (prospective) criminal liability. Its essence is to ensure that in addition to responsibility for past behavior, which is a retrospective liability in the mechanism of legal awareness of the need to respect a person is criminal and legal prohibitions. Noting the fruitful concept of positive responsibility in theoretical terms, it should be noted that the current legislation of Ukraine considers criminal liability only as a responsibility for past behavior.

The above description of criminal responsibility, does not prevent discussion of the theory of criminal law on the substantive content of the concept. We can say that each of the different points of view somehow reflects the content of criminal responsibility. The most common in this regard points of view are:

- Criminal liability - regulated by the law the duty of the person committed a crime, subject to certain measures of negative impact and undergo statutory limit [4, 26];

- Criminal responsibility - a duty to be subject to measures of legal influence that contain restrictions suffering imposed by law on the person who committed the crime [5, 31];

- Criminal liability - is set by criminal law legal obligation to account to the person before the court of his socially dangerous act and suffer for it prescribed by law conviction and sentence [6, 136];

- Criminal responsibility - a kind of Ukraine under the Criminal Code and the size limitation of rights and freedoms of the offender that the court individualized and made special by the state [7, 626];

- Criminal liability - is the responsibility of the person who committed the crime, give an account of their socially dangerous acts and the obligation to undergo criminal punishment tolerate its legal consequences [8, 60];

- Criminal liability - is enshrined in the criminal law assessment on behalf of the state on behalf of authorized it acts as a specific crime [9, 35];

- Criminal responsibility - a statutory duty to comply with the perpetrator in the case of the crime in criminal proceedings, to submit to coercive measures that the state has the right to apply for committing socially dangerous acts [10, 96];

- Determination of criminal liability associated with the public condemnation of the criminal court for a verdict of guilty. This position is justified by reference to the known decision of the Constitutional Court of Ukraine of 27 October 1999 in the case of parliamentary immunity, which specifies that criminal liability is incurred from the date of entry into force of a court conviction [11, 43];

- Criminal responsibility - a forced sense of the person who committed the crime, public censure, and also under the Criminal Ukraine limitations of personal, property or otherwise determined guilty verdict and imposed on the perpetrator special bodies [12, 27].

Try to understand the above-mentioned positions of scientists. Start needs of etymological understanding of the term "responsibility". It means someone placed on duty to answer for things, be responsible for something. That criminal responsibility, as a kind of legal liability means that a person must be responsible for their behavior, which is caused by the requirements of the law on criminal responsibility. Thus, the criminal law obliging a person to behave a certain way. In other words, criminal

liability - is the responsibility of the person assigned to it by the law on criminal responsibility not to commit crimes.

207

This is fully consistent with the philosophical and sociological understanding of concepts such as responsibility, reflecting the objective, historically specific nature of the relationship between the individual, collective, state in terms of conscious exercise of mutual claims that relate to them.

It seems that the essence of criminal liability is to limit the rights and freedoms of the offender. This understanding of the nature of this category stems from its nature as a category of criminal law - one of the branches of public law [7, 627].

Publicly-legal relations are relations of power and submission, by regulation which is imperative method, and the only center of this regulation is the state [13, 36-46]. It is within these relationships established and implemented criminal liability for criminal offenses. Since the purpose of such liability is punishment and correction of criminals and prevent crime, the criminal responsibility can not be anything but a limitation of the rights and freedoms of the offender. But in this case there are contradictions between scientists, which boil down to the fact that the obligation of a person to answer for a criminal offense and bear no statutory restrictions is a reaction to state crime. In this regard, it is clear obligation itself can not be criminal liability. You can not equate criminal responsibility and punishment. The penalty is the main but not the only form of implementation of criminal responsibility, as evidenced, in particular, the provisions of ch. 1, Art. 3 and Art. 50 of the Criminal Code of Ukraine.

Interesting observations on the relationship between the concepts "criminal liability" and "punishment" did Osadchiy VI. He believes that the punishment - a coercive measure applied by a court to a person convicted of a crime and is prescribed by the law, and freedom of the convicted person. Criminal responsibility - a concept much wider than punishment. It includes the obligation of the person responsible for an act prescribed in the Criminal Code of Ukraine and punishment as a process of real application of the measures specified in the law on criminal responsibility [9, 75].

Drawing conclusions from the above, it should be noted that the science of criminal law there is no unambiguous understanding of criminal responsibility: some

authors identify it with a criminal penalty; second - characterize the criminal liability as a certain kind of duty; others - consider it as a specific criminal relations; fourth - understood as the realization of criminal liability sanctions criminal law; Five - find criminal liability conviction of those guilty verdict for the crime of sentencing or without others.

However, this restriction is vital for human benefit based on the rule of law, taking into account the possible separation of state power into legislative, judicial and executive (Art. 6 of the Constitution of Ukraine). In other words, the type and size limitations of rights and freedoms, guilty of a criminal offense shall be defined by the legislator (legislative aspect of criminal responsibility), appointed by the court (judicial aspects) and made special executive bodies (executive aspect).

Each of these activities has its own meaning and legal form which nevertheless reflect a single entity for their criminal responsibility - namely, limitation of rights and freedoms of the offender. The content of this activity can be represented as the interaction of its constituent elements, which include its subjects, objects and just act.

From this point of view the subject of establishing criminal liability is only the Verkhovna Rada of Ukraine. According to paragraph. 22 Art. 92 of the Constitution of Ukraine are determined by the laws of Ukraine acts that are crimes, and liability for them. This is the law in the Criminal Code of Ukraine.

The object of such a legally-defined criminal responsibility, rights and freedoms are those that have the potential identified in the Criminal Code of Ukraine as potential criminals. The conclusion of this can be done by analyzing a number of norms of the Criminal Code of Ukraine. First, the Criminal Code of Ukraine determines that socially dangerous acts that are crimes and persons (entities) may be responsible for their commission. Thus, a mandatory element of any crime is a range of people, able to be subject to this type of crime. This restriction of the rights and freedoms of persons and are subject to certain legal and criminal liability.

Second, the Criminal Code of Ukraine also determines what penalties apply to persons who have committed crimes. This definition takes place in two stages. In the first stage of the Criminal Code of Ukraine determines penalties that may then apply

judgment. Article 51 of the Criminal Code of Ukraine provides 12 types of penalties. According to ch. 1, Art. 50 Criminal Code of Ukraine penalty is provided by law restricting rights and freedoms of the convicted person. But even before the figure will be convicted, Criminal Code of Ukraine establishes a comprehensive list of sentences and characterizes each of them (what and how The rights and freedoms of prisoners future). Further legislator provides for certain penalties sanctions in the relevant articles of the Criminal Code of Ukraine. Thus, the legal form of legally defined criminal responsibility is sanction criminal law.

The activity of the Verkhovna Rada of Ukraine to establish criminal responsibility is carried out within the constitutional relationship. It is concerning such activities take the concept of criminalization pedalizatsiyi and differentiation such liability. It Verkhovna Rada of Ukraine establishes and differentiates the type of restrictions and limits of rights and freedoms, which in the future may be adjudged guilty of a particular criminal offense.

For such persons individualized criminal liability by the court. There is a principle of justice, under which penalties and other measures of criminal law that apply to the person who committed the crime should be fair, that conform to the nature and degree of public danger of the crime, the circumstances of its commission and the individual characteristics of the perpetrator. This principle its content coincides with the principle of individualization of punishment. Along with these principles there is the principle of individualization of criminal responsibility, which in content is wider than the previous two. Its content is that all measures of legal compulsion in whatever form they are manifested, all penal consequences must meet the social danger of the criminal offense in respect of which they apply.

According to Art. 62 of the Constitution of Ukraine shall be deemed guilty of a crime and not be subjected to criminal punishment until his guilt is proved through legal procedure and established by a court conviction [2]. Thus, the subject of individual criminal responsibility is defined only court. The object of this individualization have specific rights and freedoms of a person who is recognized by the court guilty of having committed a criminal offense which is the basis for laying

criminal responsibility of the offender. Prerequisite court individualization of criminal responsibility is a legal qualification by the person committed a criminal offense. Depends on what rights and freedoms of individuals and as Court may limit because sanction the criminal law is typed, depending on the type of criminal offense, the commission of which convicted the person concerned.

Activity Court for individualization of criminal responsibility is governed by the provisions of the Criminal Code of Ukraine about the concept and purpose of punishment, general principles and order of sentencing. Therefore, individualized court criminal responsibility is identified mainly with the concept of punishment.

Legal form individualization of criminal responsibility is a court indictment. Under the current Criminal Code of Ukraine can define three types of individualization of criminal responsibility. The first - the recognition of a person guilty of a crime without punishment, that limit its dignity. For example, according to ch. 4. 74 Criminal Code of Ukraine a person who committed a crime of small or moderate, perhaps by a court released from punishment if it is recognized that in view of excellent behavior and conscientious attitude to work that person at the time of the trial can not be considered socially dangerous. In that case, the court shall render a guilty verdict, which recognizes the person concerned guilty of the act of committing a particular crime, but it makes no punishment.

The second type of court individualization of criminal responsibility - a conviction with the appointment of the person of a certain type and amount of punishment from serving which it is released. For example, according to ch. 1 and ch. 2, Art. 75 Criminal Code of Ukraine if the court when sentencing of correctional labor, official restraint, restriction of liberty and imprisonment for a term not exceeding five years, given the severity of the crime, the identity of the perpetrator and other circumstances of the case, determines the possibility of correction convicted without punishment, it may decide to release from probation. In this case the court approves release the convict from serving the sentence, if within a specified court probationary period does not commit a new crime and perform the duties assigned to him.

The third type of court individualization of criminal responsibility - a conviction with the appointment of that person of a certain type and amount of punishment with the need to serve it.

Personalization court criminal responsibility is carried out within the criminal legal relations. These relationships occur after a person has committed a criminal offense. At this stage, the executive carries out prosecution of a person under criminal procedure relations. The Court notes in a conviction that the person actually committed certain criminal offenses and individualize her criminal responsibility in the manner specified above. Personalization considered completed after the date of entry into force of conviction. In this form it exists before the date of this sentence to execution.

Criminal legal consequences of individualization of criminal responsibility is, as a general rule, the emergence of conviction in the convicted person.

Executive aspect of criminal responsibility has two aspects: on the one hand, is the activity of special executive bodies (stakeholder) to implement the judgment of conviction, ie activities related to real restriction specified by the court the rights and freedoms of the person sentenced. On the other hand, this feeling that person restriction of rights and freedoms (of the object) that individualized trial.

Conclusions. Based on the above during criminal responsibility should be considered a type of legal liability, which is the duty of the person who has committed a criminal conviction to experience and feel the state limit personal and property as defined by the Criminal Code of Ukraine and specified in the judgment of conviction. The concept of criminal responsibility includes both generic characteristic of legal responsibility in general, and specific features characteristic of responsibility within the criminal law.

Criminal responsibility exists within the criminal relations but does not coincide with the moment of their appearance, because its starting point is the conviction of the court, not a person has committed a criminal offense.

The legal form of the criminal liability is a guilty verdict. You can define three forms of implementation of criminal responsibility: the recognition of a person guilty of a crime without punishment; the conviction of the person of a particular purpose of

punishment from serving which it is released; conviction of the purpose of a particular person and his real punishment serving.

212

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