DISCUSSION

THE PRINCIPLE OF SUBSIDIARITY IN THE LIGHT OF PERSONAL LEGAL RESPONSIBILITY

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Abstracts: *Legal responsibility is important element of legal development of every state. Authors consider the principle of subsidiarity in the aspects of the legal development. There are many problems in this field. Author suppose that main problem in this case is a providing of obey law. Legal responsibility is basic legal instrument for providing of obey law.*

Keywords: *subsidiarity, legal responsibility, offences, sanction, legal coercion, legal development.*

Its roots phenomenon of subsidiarity, taking in historical terms. Thus, even in times of Plato and Aristotle observed the real autonomy of the population in matters of local importance. In the Middle Ages, the phenomenon of subsidiarity continues to evolve, transforming into more advanced forms. To a great extent this is due process of formation of cities, followed by their natural desire for maximum freedom in the solving of local issues, and in some cases, even allowed to speak about regional significance. In the light of these processes is born, the so-called municipal law, emerging as the product of a certain expression of the population of the city. In the future Pope Pius XI declares that one of the foundations of social wisdom is the following rule: Do not permissible for delegate to society, to take from individuals what they can execute on their own, but you cannot also delegate a large community that can be made smaller and weaker human communities[1].

At present, the phenomenon of subsidiarity in European law was transformed in a fundamental idea - the principle by which we mean a real possibility and the ability to address regional and local levels as low as possible, where the results of such decisions will be truly effective and profitable. In addition to the subsidiarity European legal doctrine the concept of decentralization has developed. Exploring the content of these two phenomena, subsidiarity becomes in the process the actual realization of the ideas of decentralization, and this establishes the distinction between them. Further theoretical understanding of the principle of subsidiarity, it shows a multidimensional and multifaceted. We ensure that consideration of the doctrinal foundations of the investigated phenomena without their practical adaptations to the current perspective simply makes no sense. In this connection it seems necessary to consider subsidiarity, first, from the legal side, because that

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[1] *Quadragesimo Anno.* Encyclical of Pius XI, 1931; ANDERSON, R. Between Two Wars: The Story of Pope Pius. *Franciscan Herald Press.* 1978.

right is the basis for any law enforcement and organizational activities, and secondly, through the prism of existing and potential problems. Note that the concept of subsidiarity has many meanings. For example, in Russia the legal definition of subsidiarity, science is often associated with the notion of legal responsibility. In this light the principle of subsidiarity takes on new meaning. It therefore seems reasonable to consider it as part of this work is in this area. In the XIV century, Ibn Khaldun Mukkadima wrote about the five phases of the existence of the state in which one person or group of persons gradually seizing power, the most interesting and topical seen the latter, the so-called "phase of the wastefulness and embezzlement." Substantive core of this phase is the arbitrariness of the ruler, his supporters in the first place precisely because of the lack of legal responsibility, as such, the ruling class for their actions. Arbitrariness promotes the decomposition of the prevailing political system and thus the governor destroys stability created by ancestors. At this phase, the state catches up with the nature of senility (haram), it strikes a chronic disease that has not recovered and no cure. Then the state perishes[2].

Building on the border of the subsidiarity principle and in line with the position of Ibn Khaldun Muqaddimah should give a detailed definition, which will reveal the essence of legal responsibility to follow the ways of the real implementation of this principle. So, the notion of legal responsibility in the modern sense emerged relatively recently. One of the first Russian theorists who formulated an acceptable and to this day the definition of legal responsibility were M. D. Shargorodskiy, O.S. Ioffe, G. B. Galperin, and A. I. Korolev. According to them, and, according to a number of other authors, legal responsibility is a sanction in the form of legal coercion, which bears character of blaming the offender for the commission by the offender, the guilty, wrongful act and expressed in a deprivation of freedom, or property. Then is actually - this is a consequence for non-compliance the norms of law.

It seems that the legal responsibility in the narrow sense is permissible to understand how to measure the enforcement of the law applied by the authorities of the State to the subjects violate these regulations[3].

In our opinion, the following signs of legal responsibility, based on the definition of the M.D. Shargorodskiy: 1. Existence of guilty of the offense, there is reason to apply legally enforceable measures of legal responsibility. 2. Applies only in the form of state coercion authorized state bodies. 3. It have personify, blaming and preventive (precautionary) character.

Modern theorists often invest meaningfully different terminological contain, in terms of legal responsibility. It appears that, in essence, the difference in this light more terminology than of meaning, but often overlook some of the proposed definition of system of a guilt sign, which sets personification and generally subjective aspect of legal responsibility, without which it has no practical significance. In our view, the logical conclusion of

[2] KHALDUN IBN. *Muqaddimah: Introduction*. Historical and Philosophical Yearbook. M.: Science, 2008, pp. 69–71; ALAM, M. Ibn Khaldun's Concept of the Origin Growth and Decay of Cities. *Islamic Culture*. 1960, Vol. 34.

[3] KERIMOV, D. A., KOROLEV, A. I., SHARGORODSKIY, M. D. *General Theory of Law*. L.: Leningrad University Publishers, 1961, pp. 451–452; KERIMOV, D. A. Selected Works. In KERIMOV, D. A. *3 V. V. 1-3*, Publishing House «Academy», 2007. pp. 343–345; PETROV, V. S., YAVICH, L. S. *General Theory of State and Law: General Theory of Law*. L.: Leningrad University Publishers, 1961, pp. 394–395.

a guilt sign of the principle of fairness, which justifies the need to bring the legal responsibility only the offender. Note that some authors suggest to understand the legal responsibility as an application to offender of certain measures of state coercion authorized state bodies in the form of restrictions on the right of personal or property nature[4].

Other scientists suggest to limit legal responsibility, defining it as the application of statutory sanctions on the guilty persons and organizations for violating the law in the relevant field of public relations[5].

It appears that legal science should be guided by a single integrative definition of legal responsibility, reflecting all the essential features and denoting the mechanism of legal regulation. It seems that the most acceptable and currently remains the definition given M.D. Shargorodskiy, D.C. Ioffe, G.B. Galperin, and A.I. Korolev, because it combines all the essential signs that determine the subjective component of the legal responsibility. But with all of this, it lacks the mechanism of legal regulation. In analyzing the procedure of legal responsibility, for example in the electoral process, each of specific type legal responsibility has its own unique application process. In this regard, there is an objective need for the general concept of legal responsibility of such a significant signs and features, as the specific process of application, which is denoted by itself the mechanism of legal regulation. We also want to note that foreign legal literature, there is similar with the above, the system of signs of the legal responsibility that form its definition. It certainly shows a single vector evolution of legal science, and strengthening the integrative tendencies of Russia and European legal thought[6, 7].

In consideration of this issue we want note that measures of legal responsibility on the basis of the above definitions are specified in the law «punitive» sanctions, which are traditionally referred to in the scientific literature, punitive or exemplary[8].

The basis of legal responsibility has traditionally been considered the commission of an offense subject under law [9]. It seems necessary to point out that modern jurisprudence defines this concept widely enough. At present, the theoretical construct of legal responsibility forms two components - a positive (i.e. fixing the rules of conduct in a particular legal norm) and a negative or retrospective (the negative consequences that follow for an act provided for the disposition of legal norms).[10] We note that such a theoretical construct is supported by foreign authors.[11]

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[4] PROKOPOVYCH, G. A. *Legal responsibility in Russia's law: theoretical aspects.* Abstract. Thesis for scientific degree c.l.s. M., 2003, pp. 10–14; IVAKHNENKO S. N. *Legal responsibility in modern Russia's right*. The thesis for scientific degree c.l.s. Stavropol, 2005, pp. 13–20; LUCHKOV, V. V. *Legal responsibility in the mechanism of legal regulation*. Moscau 2004, pp. 41–45.

[5] AVAKYAN, S. A. Public responsibility. *The Soviet State and Law*. 1975, No. 10, p. 36; ALEKSEEV, S. S. *General Theory of Law: in 2 vol*. Moscau 2001, pp. 332–335; CHERDANTSEV, A. F. *Theory of State and Law*. Moscau 2003, pp. 356–358.

[6] BURAZIN, L. *Towards a new theoretical conception of sanction and legal responsibility in the case of causing damage*. Zagreb 2008, pp. 2–3; LEVENBOOK, B. B. Responsibility and the normative order assumption. *Law and contemporary problems*. 1986, Vol. 49, No. 3, pp. 81–88.

[7] LEVENBOOK, B. B. op. cit. sub 6, pp. 81–88.

[8] Course of lectures on electoral law and election process Russia. Available on: http://www.democracy.ru/library/learning/lectures/index.html

[9] ALEKSEEV, S. S. op. cit. sub 5, p. 163; LEYST, O. E. *Methodological issues of legal liability*. Moscau, 1999, p. 471; CHERDANTSEV, A. F. op. cit. sub 5, p. 359; LIPINSKI, D. A. *Legal responsibility*. Moscau, 2002, pp. 35–37.

Creation of the regulatory framework provides the basis for legal development, which in the modern sense is impossible without the implementation of specific measures and the types of legal responsibility, specific to each legal branch. The principle of subsidiarity, as we have already noted, involves issues at the local and regional level, the most efficient and profitable, thereby curbing the process of centralization of power. However, the realization of this principle is possible only if exists adequately designed and well thought-out system of legal rules that state the different types of personal legal responsibility, because the development and subsequent evolution of any legal institution in the modern sense requires the establishment of mechanisms conducive to the proper implementation of the dispositive part of the regulations. The systematic collection of such mechanisms forms the legal responsibility as such. Thus, answering on the popular question: «what is subsidiarity: the principle of legal or political slogan? » should be considered in addition to the theoretical design, this principle, and the real possibility of its implementation, which is expressed in an effective and appropriate forms of legal responsibility, which will provide it. Otherwise, even the really good ideas to counter the centralization, which ultimately contributes to an dictatorship, that is a constant in power of one person or group of people, and as a final consequence of this phenomenon - the perish of the state, as written by Ibn Khaldun Mukkadima. In this case it will be only the usual political slogan, do not having legal background.

Consistent with the importance of the institute of legal responsibility, both in general terms to the law, and for the realization of the principle of subsidiarity, this work can be completed by the following expression: Right from the morality only one restrict really separate, and it called the legal responsibility.

[10] LIPINKSI, D. A. op. cit. sub 9, pp. 40–50; KOZHEVNIKOV, O. A. *Legal responsibility in the law*. Thesis for scientific degree of jurisprudence, Togliatti, 2003. pp. 72–87; LUCHKOV, V. V. op. cit. sub 4, pp. 35–42; BAZYLEV, B. T. *Legal responsibility. Theoretical issues.* M., 1985, pp. 20–26; BEOLONOVSKIY, V. N. Positive and retrospective forms of implementation of legal responsibility. *Bulletin of Moscow University of the Ministry of Internal Affairs of Russia.* 2005, No 4, pp. 30–32.

[11] PARKER, L. S. *Moral and legal responsibility: the problem of strict liability.* 1990, pp. 237–241; HAMILTON, W. M. Legal responsibility and moral responsibility. *Fortress Press.* 1965, pp. 24–26; DAVIS, P. E. *Moral duty and legal responsibility: a philosophical-legal casebook.* Appleton-Century-Crofts, 1966, pp. 113–116; CANE, P. *Responsibility in law and morality.* Oxford, 2002, pp. 30–33.