

## Legal Responsibility as a Social Phenomenon in the System of Humanities

Sergey Petkov<sup>1\*</sup>, Anatolii Subbot<sup>2</sup>, Viktor Shemchuk<sup>3</sup>, Oleksandr Illiashko<sup>4</sup>,  
Nataliia Dobrianska<sup>5</sup>

<sup>1</sup>Research Center for Legal Support of State-Building and Security, V.I. Vernadsky Taurida National University, Kyiv, Ukraine; <sup>2</sup>Department of Constitutional, Administrative and Financial Law of Khmelnytsky University of Management and Law named after Leonid Yuzkov, Khmelnytsky, Ukraine; <sup>3</sup>Department of Public and Private Law, V.I. Vernadsky Taurida National University, Kyiv, Ukraine; <sup>4</sup>Educational and Scientific Humanitarian Institute, V.I. Vernadsky Taurida National University, Kyiv, Ukraine; <sup>5</sup>Department of Public and Private Law of the Educational and Scientific Humanitarian Institute, V.I. Vernadsky Taurida National University, Kyiv, Ukraine

\*Email: spetkov@ukr.net

Received for publication: 27 July 2021.

Accepted for publication: 25 September 2021.

### Abstract

The article analyzes the scientific approaches of scientists regarding evolution, the essence and features of the concepts of responsibility, social responsibility, legal responsibility. It is stated that responsibility is determined by the level of development of public consciousness, the level of social relations, and existing social institutions. Responsibility as a social phenomenon can manifest itself in a positive way by receiving remuneration, and in a negative way as a reflection for committing offenses. The classification of responsibility as a social phenomenon depends on the sphere of social activity, in connection with which political, moral, social, legal and other types of responsibility are distinguished.

It is theoretically substantiated that legal responsibility differs from other types of social responsibility in formal certainty, mandatory observance of legal norms, state control over their implementation, application of state coercion to the offender, prevention of offenses and the protection of law and order. The measure of responsibility in public and private legal relations has been determined.

In this study public tort (crime and misconduct) is analyzed, problematic issues are outlined and proposals for their improvement are provided. The types of legal responsibility for committing offenses (tort) are considered. Attention is focused on the fact that responsibility is a prerequisite for the development and effective functioning of the state, its effectiveness depends on the mechanisms for implementing responsibility in front of the person and is determined by the level of development of public consciousness, the level of social relations, existing social institutions. The key task of responsibility is fair application and inevitability of punishment.

**Keywords:** responsibility, legal responsibility, classification, offense, sanction, punishment, justice, legal norms.

### Introduction

A necessary condition for the development and effective functioning of a socially oriented market economy, ensuring a high quality of life for the population, creating a civil society and expanding conditions for human development is the formation and implementation of legal institutions, including the institution of legal responsibility.

The development of democracy without responsibility is impossible, democracy without responsibility turns into permissiveness, which we see in post-Soviet countries everywhere, at all levels from the personal to the state itself. Democracy and responsibility are two sides of a single whole. Democracy is necessary in the society, while responsibility is important in the state, democracy is a necessary part of the team, as well as responsibility plays an important role in the organization (Grishnova, 2011).

### **Materials and Methods**

This article analyzes the works of classical and modern scholars who consider legal responsibility as a social phenomenon and the greatest humanitarian value. Also, the regulatory framework was analyzed, providing for legal responsibility in different branches of law. Thus, the materials of the article are both the works of the scientific general philosophical and legal doctrine, and the current regulatory legal acts.

The main methods used in the research are such general scientific and special legal methods as analysis and synthesis; deduction and induction; search for information; systemic-structural, formal-legal and dogmatic.

The social and legal nature of responsibility was investigated by representatives of both the branch of law and other areas, among which were such as V.B. Averyanov (Averyanov et al., 2007), Yu.V. Alexandrov (Alexandrov et al., 2004), Yu. P. Bytyak (Bytyak et al., 2007), V. K. Kolpakov (Kolpakov, 2016), V.V. Kopeychikov (Kopeychikov, 2003) and others. However, the problem of responsibility is one of the important issues of our time, which now causes many discussions among scientists. That is why the purpose of the article is to analyze the essence of responsibility as a social phenomenon, the genesis of its development, to clarify the role of the legal institution of legal responsibility in public and private legal relations, to define the problem of responsibility for committing torts and to provide proposals for improving logical structures in the form of definitions and norms.

### **Results and Discussion**

Responsibility as a social phenomenon arose along with the emergence of humanity and society, with the emergence of a system of normative regulation of social relations, the emergence of norms, customs, religious norms, morality and law. It is responsibility, rightly noted by B.S. Yakovlev, is a factor regulating human behavior throughout history, as well as one of the factors controlling human behavior (Yakovlev, 1978). "This is a definite phenomenon that exists independently of any subjective factors ... is a mandatory manifestation of the regulation of social relations within the limits of the correspondence of personal behavior between the subjects of social communication" (Grishchuk, 2012). That is, responsibility is objectively determined by the needs of society and is a mandatory manifestation of the regulation of social relations in society.

First, let's define the essence and content of the concept of responsibility. If we turn to linguistics, then the definition of "responsibility" is interpreted as: assigned to someone or assumed responsibility to be responsible for a certain area of work, business, for someone's actions, deeds, words (Busel, 2005); the need, the obligation to be responsible for their actions, deeds, to be responsible for them (Ozhegov, 1984). In the philosophical dictionary of M.M. Rosenthal: "Responsibility is a category of ethics and law, reflecting the special social and moral-legal attitude of the individual to society (humanity as a whole), characterized by the observance of the norms of law and morality" (Rosenthal, 1975).

Responsibility is a legal and state-administrative category that reflects the value-legal aspect of social relations, which are built on the principle of "person – society – state". "The actualization of the idea of a welfare state shifts the emphasis of both scientific research and political practice on the social responsibility of a person before society and the state to the social responsibility of the state before society and a person" (Shvets, 2012).

Thinking about responsibility as a means of ensuring the rights of citizens, it should be noted that it arose in the days of primitive society and had an exclusively social nature. It was used as a means of punishing community members who in their behavior deviated from generally accepted rules, norms and customs.

As for responsibility as a social phenomenon, this is a rather specific form of the relationship between the individual and society, which ensures the elimination of inconsistency, disorganization in public life, resolution of contradictions and conflicts between participants in social relations, and therefore arises when there is a need to coordinate human behavior with a system of social requirements (norms, rules).

Making an excursion into history, we note that one of the first definitions "responsible" and "responsibility" was used by I. Kant. He does not define the state as the real instance of responsibility, but the basis of the absolute moral law, which is embodied in the human conscience. But realizing that "the best controller - conscience - cannot always guarantee the observance of the principle of responsibility, Kant introduces into the system of values the absolute moral law of awareness of punishment for its violation (Weber, 1990). The ancient Greek statesman and philosopher Solon also noted the need to unite power and law, to carry out transformations in the state on the basis of an exclusively legal official and universal law. And it was precisely behind the legislative reforms of Solon, according to Aristotle, that Athenian democracy began (Nersesyants, 2002). Plato and Aristotle tried to explain the reason for this, and not another human act, considering the relationship between voluntary and forced, conscious and unconscious, objective and subjective, free and necessary. The responsibility of a person for his choice, as a result of freedom of choice, is obvious to Plato. In his writings, Plato presents the double nature of responsibility – moral responsibility and responsibility before the law, which is transformed into responsibility for its violation. Based on this theory, there are two aspects – positive (moral responsibility to society, the state) and negative (responsibility that a person experiences in violation of established norms) (Okhrimenko, 2015). For example, the *Timaeus* (treatise) describes how Er entered the kingdom of the dead, where he saw how people chose their own destiny. They are free in their choice and are responsible for this, since their choice determines their entire further path (Plato, 2002). In the doctrine of Heraclitus about the Logos, the main ethical problem is posed - the relationship between how real people behave and how they should behave (Dybnik, 1955). That is, the teaching of Heraclitus shows the possibility of a person's choice of behavior, and therefore it is he who is responsible for the results of this choice.

In ancient Rome, according to Polybius, responsibility was provided by the distribution of power between the three branches of government: the consuls, the senate and the people. The system of control and responsibility of the authorities, established in Rome, made it possible "... to control one branch of government by another, when possible claims of one government for inappropriate value meet with the corresponding opposition of other authorities, and the state as a whole retains its stability and strength" (Hobbes, 1991). It is worth paying attention to the fact that as soon as the system of social responsibility of Ancient Rome was broken over time, this led to the weakening and further destruction of the Roman Empire.

Thus, the emergence of responsibility as a social phenomenon is possible subject to the preliminary presentation of certain requirements for the behavior of people, enshrined in social norms.

Responsibility itself is determined by the level of development of social consciousness, the level of social relations, and existing social institutions.

The classification of responsibility as a social phenomenon depends on the sphere of social activity, in connection with which political, moral, social, legal and other types of responsibility are distinguished. Social responsibility and legal responsibility are related to each other as genus and species. So they are considered not only by the general theory of law, but also by all branch legal sciences.

Political responsibility is awareness of the need to fulfill the requirements arising from political norms, as well as conviction for their failure to fulfill or improper fulfillment, for incompetence or vested interests. The activities of political parties, government bodies, local governments, their officials provide for their political responsibility to the social communities whose interests they express. Note that often moral responsibility and the means to ensure it are even no less effective than it is in the law (Bernstein, 1989).

From a psychological point of view, responsibility is a person's ability to adhere to social norms. The structure of responsibility as a sociological category was examined in detail by the Russian scientist M.A. Krasnov, who determined that it concentratedly includes the freedom of choice of a variant of behavior by the subject of responsibility, who has free will; establishing a model of appropriate, expected behavior or, conversely, inappropriate behavior; a causal relationship between behavior and its consequences; instance of responsibility; monitoring and evaluating behavior; the possibility of adverse consequences for the responsible entity found guilty (Krasnov, 1995).

In philosophy, it is generally accepted that the responsibility of the subject of social relations can be judged by finding out the relationship between the necessity and freedom of his behavior (Kosolapov, 1969). Responsibility does not matter if the person is not free in choosing his behavior or does not understand it, because "Will gives rise to responsibility, responsibility directs the will" (Leist, 1962).

When discussing the problems of responsibility, we can often find ourselves in the sphere of interests of such a sphere of science and social interaction as law. It is not surprising, firstly, the theoretical foundations of law are largely formed by ethics and social philosophy, an integral part of which we see the concept of responsibility in general and social responsibility in particular. And secondly, one of the basic postulates of law is the principle of equality of all members of society (in the case of legal regulation of social processes, this principle takes the form of equality of all members of society before the law). Any significant injustice in society can be the result of an offense (Radugin, 2003).

One of the main institutions of law is the institution of legal responsibility. Legal responsibility differs from other types of social responsibility in formal certainty, mandatory observance of legal norms, state control over their implementation, application of state coercion to the offender, prevention of offenses and the protection of law and order.

It should be noted that now in the science of law there is no single definition of legal responsibility. Some scientists (R. Engabaryan, Yu.K. Krasnov, M.I. Matuzov, O.F. Skakun, B. Ya. Tokarev) believe that legal responsibility comes down to the implementation of sanctions of the rule of law, that is, measures of legal coercion (Stolyarov, 1996), according to L. S. Yavich, legal responsibility is the application of the sanction of the violated law (Yavich, 1976), M.I. Matuzov and A.V. Malka note that this is one of the types of social responsibility of the individual, the key feature of which is that it is associated with the violation of legal norms, which is the apparatus of state coercion (Matuzov et al., 2015).

One of the functions of the state is the protection of the rights of citizens and the protection of the state structure. That is, the state protects with the help of legal instruments both public and private interests. We are impressed by the scientific position of F.V. Taranovsky, who divides legal relations into public and private, depending on the participation of carriers of coercive state power, in particular, according to the lawyer, legal relations are public if one of the subjects is the state (through its bodies) with the specific character of the carrier of coercive power. In private relations, the state does not participate as a subject or acts as a participant in legal relations only as a bearer of property interests (Taranovsky, 2001). These legal relations are a classic type of public law relations, their feature is that they, as a rule, have a vertical orientation and are subordinate, since the subjects of public authority occupy a clearly defined place in the hierarchy of the state mechanism and have a certain range of powers. In the process of legal relations, subjects exercise their rights, exercise powers, perform functions and implement the tasks assigned to them by law.

Legal liability in private legal relations occurs for violation of the contract and is expressed in the form of material sanctions: forced debt collection, imposition of a fine, and the like. Only a person who is legally capable in accordance with the norms of the law can carry out legally important actions and, accordingly, be liable for their commission. When it comes to legal responsibility in private legal relations, the key is the concept of a person's legal capacity. When it comes to legal responsibility for the commission of an offense, it seems more correct to use the term delinquency.

Legal responsibility in public law relations occurs only for the commission of tort. In Roman law, a tort (offense) meant the commission of an act that violated a legal order or prohibition, as a result of which harm was caused to another person, his family or property. The consequence of the commission of a tort was liability, which arose under the following conditions: the delinquency of the offender, guilt, the commission of an offense (Petkov, 2011). The generally accepted paradigm is a scientifically grounded and practice-proven approach that public tort - offenses according to the social significance of the committed unlawful act are divided into crimes (socially dangerous, guilty act (action or inaction) committed by the subject of the crime - Article 11 of the Criminal Code of Ukraine) (Criminal Code of Ukraine, 2001) and misconduct (unlawful, guilty (intentional or negligent) action or inaction that infringes on public order, property, rights and freedoms of citizens, on the established management procedure – Article 9 of the Code of Ukraine on Administrative Offenses) (Petkov, 2020).

It should be emphasized that both the *corpus delicti* and the *corpus delicti* can be established only by law. It is erroneous to believe that the composition of misconduct can be established by secondary legislation. Also, it should not be allowed that the norms of the law establishing responsibility were of a blanket (reference) nature to any rules or instructions and the like.

Both a crime and a misdemeanor can be committed by a person during activities in any field and in particular, in management – administrative. But all misconduct is in fact a violation of disciplinary rules, a minor deviation from generally accepted norms of behavior. And crimes are a manifestation of a person's gross rejection of the foundations of society. Note that in the first case, the person bears disciplinary responsibility in the form of a penalty, and in the second – criminal responsibility in the form of punishment.

The main mistake of domestic science was that this division of torts (offenses) according to the degree of public danger was put on a par with other classifications, which led to some confusion. Therefore, it is now urgent to clearly distinguish between crimes and misdemeanors, to prevent mixing these concepts in one normative act regulating punishment for these different, diametrically opposite actions (Petkov et al., 2020).

The behavior of the subjects of state and power powers is determined by the norms of legislation, which are of an imperative nature. The duty to exercise the rights is characteristic of most public rights, while the private person does not have such a duty. For example, a person appointed to the position of a professional judge and endowed by the Constitution and the Law of Ukraine "On the Judicial System and the Status of Judges" with the right to administer justice is obliged to exercise his rights in good faith, and cannot use them solely at his own discretion or of his own free will. With regard to private-legal relations, a person is an independent manager of his rights and is free to resolve issues of using the rights granted to him by law. The division of legal relations into public and private is a paradigm proved by Roman lawyers.

The types of legal liability are criminal liability (conviction on behalf of the state by a court verdict of a person who committed a crime, and the application of compulsory, in the form of punishment or other measures of criminal liability provided for by the Criminal Code of Ukraine. and its establishment by a guilty verdict. That is, criminal liability takes the form of its real existence after a person has been convicted by a court for a committed act and a conviction) and disciplinary liability (the employee's obligation to answer to the employer for a disciplinary offense committed by him and to incur disciplinary penalties provided for by the labor law) ... The main task of criminal responsibility is to punish the offender and prevent further offenses, while the key task of disciplinary responsibility is to educate the person who committed the offense and prevent further offenses.

According to M.I. Korzhansky, it is very relevant now "... large-scale decriminalization of Ukrainian legislation and it is in the context of these two paradigms that the issue of amendments to the legislation should be considered, especially in that part of it that concerns legal responsibility. The essence of the departure from the Soviet model is not at all in the transfer (transfer) of norms from the KUoAO to the Criminal Code of Ukraine, but, on the contrary, in reducing the punitive and administrative influence of the state. From punitive to human rights! - the essence of the human-centered approach in criminal law. From administrative pressure in public service functions! – the essence of the person-centered approach in administrative law. And at the same time, the theory of law is the foundation for the innovative development of the law of Ukraine, embodied in legislation" (Korzhansky, 1999).

The Constitution of Ukraine states that a person can only be held liable for offenses that are defined in the legislation. The law must be clear and effective. The punishment is just and inevitable (Constitution of Ukraine, 1996). At the same time, a law will be effective only when all the components of a legal norm are present in it: a hypothesis as a rule of behavior; disposition – violation of this rule; sanction – punishment for violation (Petkov et al., 2020).

### **Conclusions**

Thus, responsibility as a social phenomenon is a necessary condition for the development and effective functioning of the state, its effectiveness depends on the mechanisms for implementing responsibility in front of the person and is determined by the level of development of public consciousness, the level of social relations, and existing social institutions.

Today, the theoretically unjustified novelization of the legislation on responsibility for an offense has become a real threat to national security. The chaotic, unsystematic heap of blanket norms in the basic codes, the introduction of new definitions and definitions into the legislation on criminal liability, a lack of understanding of the essence of disciplinary liability for misconduct, the creation of new bodies carrying out administrative activities that are carried out in the sphere of functioning

of other state bodies, have led to real irresponsibility of officials, persons of public authorities and the vulnerability of citizens from the unlawful actions of offenders.

### References

- Alexandrov, Yu. V., Antypov, V. I., Volodka, M. V. (2004). Criminal law of Ukraine. General part: textbook. Kiev: Legal thought. 352 p. [in Russian]
- Averyanov, V.B., Derets, V.A., Shkolik, A.M. (2007). Public administration: European standards, experience and administrative law. Kyiv: Justinian. 288 p. [in Ukrainian]
- Bernstein, D. I. (1989). Legal responsibility as a type of social responsibility and ways to ensure it. Tashkent: Fan. 150 p. [in Russian]
- Busel, V. T. (2005). Great Explanatory Dictionary of Modern Ukrainian Language. Kyiv; Irpin: Perun. 1728 p. [in Ukrainian]
- Bytyak, Yu. P., Garashchuk, V. M., Dyachenko, O. V. et al. (2007). Administrative law of Ukraine: textbook. Kyiv: Jurinkom-Inter. 544 p. [in Ukrainian]
- Constitution of Ukraine. (1996). Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian]
- Criminal Code of Ukraine (2001). *Vedomosti of the Verkhovna Rada of Ukraine*. №. 25-26. Article 131. [in Ukrainian]
- Dynnik, M. A. (1955). Ancient Greece: a collection of texts of Heraclitus, Democritus and Epicurus. Moscow. 239 p. [in Russian]
- Grishchuk, V.K. (2012). Social Responsibility: navch. posibnik. Lviv. 152 p. [in Ukrainian]
- Grishnova, O.A. (2011). Social responsibility in the context of the current systemic crisis in Ukraine. *Demography and social economy*, 1 (915), 39–46. [in Ukrainian]
- Hobbes, T. (1991). Leviathan or Matter, Form and Power of the Church and Civil State. Moscow: Mysl. 36 p. [in Russian]
- Kolpakov, V. K. (2016). Legal nature of the administrative tort law of Ukraine. *Administrative law and process: scientific and practical journal*, 1, 74-82.
- Kopeychikov, V. V. (2003). Jurisprudence: textbook. Kyiv: Jurinkom-Inter. 1518 p. [in Ukrainian]
- Korzhansky, M. Y. (1999). Sketches of criminal law. Kiev: Genesa. 208 p. [in Ukrainian]
- Kosolapov, R.I. (1969). Freedom and responsibility. Moscow: Politizdat. 95 p. [in Russian]
- Krasnov, M.A. (1995). Responsibility in the system of popular representation: methodological approaches. Moscow: RAS. 55 p. [in Russian]
- Leist, O.E. (1962). Sanctions in Soviet law. Moscow: Gosyurizdat. 238 p. [in Russian]
- Matuzov, N.I., Malko, A.V. (2015). Theory of state and law: textbook. Moscow: Yurist. 528 p. [in Russian]
- Nersesyants, V. S. (2002). Problems of the general theory of law and state: textbook. Moscow: NORMA-INFRA. 259 p. [in Russian]
- Okhrimenko, O. O, Ivanova, T.V. (2015). Social Responsibility: a new owner. *National Technical University of Ukraine "Kyiv Polytechnic Institute"*. 180 p. [in Ukrainian]
- Ozhegov, S.I. (1984). Dictionary of the Russian language. Moscow: Russian language. P. 816. [in Russian]
- Petkov, S. V. (2020). Scientific and practical commentary to the Code of Ukraine about administrative law enforcement. Kyiv: Yurinkom-Inter. 792 p. [in Ukrainian]

- Petkov, S. V., Kopotun, I. M. (2020). Delictology: monograph. Kunovice: Academy GUSPOL. T. 1. 438 p.
- Petkov, S.V. (2011). Rome right is the basis for encouraging a successful public-legal model of a common man: nutrition of legal delictology. *Forum of law, 1*, 756-770. [in Ukrainian]
- Plato. (2002). Laws. Kharkov: Legas. 48 p. [in Ukrainian]
- Radugin, A.A. (2003). Jurisprudence. Moscow: Center. 285 p. [in Russian]
- Rosenthal, M. M. (1975). Philosophical Dictionary: 5th edition. Moscow: Mysl. 617 p. [in Russian]
- Shvets, O.V. (2012). Responsibility as a social phenomenon: theoretical and legal ambush. *Scientific list of Lviv State University of Internal Reference*, 1. 84–92. [in Ukrainian]
- Stolyarov, L. D. (1996). Fundamentals of state and law: study guide. Rostov-on-Don. 320 p. [in Russian]
- Taranovsky, F.V. (2001). The encyclopedia of law. Saint Petersburg: Lan.560 p. [in Russian]
- Weber, M. (1990). Politics as vocation and profession: selected works. Moscow: Progress. 697 p. [in Russian]
- Yakovlev, B.S. (1978). Responsibility as a factor in the regulation of personality behavior. Moscow. 245 p. [in Russian]
- Yavich, L.S. (1976). General theory of law. Leningrad. 285 p. [in Russian]