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LEGAL NATURE OF THE POSITIVE CONSTITUTIONAL RESPONSIBILITY

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The subject of the paper is theoretical justification of legal nature of positive constitutional responsibility legal institute. The evolution of views on the institution of positive constitutional responsibility from the first works on it (S.A. Avak`yan, Yu.P. Eremenko, F.M. Rudinsky, N.A. Bobrova) to the present time is analyzed.

The purpose is to clarify its role in establishment and maintaining the regime of constitutional legality.

The results, scope of application. Doubts about the legal nature of positive constitutional responsibility up to its complete denial are identical with doubts about the legal nature of many constitutional norms, the denial of their direct action. These disputes will last forever.

Direct service of constitutional and legal responsibility to the quality of governance is a feature of this type of legal responsibility along with its pronounced political character, as well as the specific guilt of the subject of constitutional tort (liability not only for their acts but for the acts of their subordinates).

The emphasis on positive moral aspect to the detriment of "sanction" (retrospective) aspect of the constitutional responsibility does not meet the challenges of the new time.

Proponents of affirmative responsibility had good purpose to build its high creative and educational role from the positive side of the legal liability. However, this good purpose in practice has not led to optimistic results.

The authors come to the conclusion the legal regulation of mechanisms of responsibility enforcement in Russia is necessary.

Key words: *constitutional responsibility, constitutional-legal responsibility, constitutional-legal Relation, positive constitutional responsibility, legal nature, doctrine of constitutionalism.*

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1. Genesis of scientific approaches to understanding of the positive constitutional liability

The first scholars who started dividing legal responsibilitiy into positive (prospective) and negative (retrospective) were I.S. Samoshchenko and M.Kh. Farukshin in the monograph "The responsibility in Soviet law" [1, p.42] in 1971. The necessity of this differentiation arose precisely because the term "responsibility" did not always fit into the traditional concept of legal liability as a punishment, the state reaction to the offense, the application of sanctions.

Thus, Soviet acts established responsibility of folk deputies of all levels to voters. This responsibility did not only have moral or political nature but also of a legal nature and was reinforced by the imperative mandate, which included:

1) the duty of the deputy to report to the voters at least twice a year;

2) the obligation to perform electors (the concept and procedure for the adoption of orders of voters' meetings, their reduction in the work plans of the respective Soviets were regulated in detail);

3) the ability to be dismissed ny the voters in for unjustifying their confidence, which was expressed in incomplying parliamentary duties or deputy commission of an immoral act.

The law also mentioned responsibility of permanent commissions to form their deputies, responsibility and to the Supreme Soviet of the USSR of its bodies: the Council of Ministers, the Supreme With ud USSR General procuration Mr. USSR.

This responsibility did not credit with all existing types of legal liability, on the one hand, and could not be reduced only to the moral and political responsibility - on the other hand, it acquired legal significance.

The first scientists who have studied the phenomenon of state-legal (later - the constitutional and legal) responsibility were: SA Avakyan [2; 3], Yu.P. Eremenko and F.M. Rudinskiy [4] NA Bobrova [5, 6].

In 1984 and 1985 years. came the first three monographs by NA Bobrova and T.D. Zrazhevskaya [7, 8, 9]. In 1999 came the textbook of constitutional (state) law of EI Kolyushin, which first highlighted lecture "The responsibility in the constitutional law" [10, p.21-28].

2. The legal nature of constitutional responsibility

Almost half a century of history research institute of state-legal (constitutional) responsibility led almost all the constitutionalists to the recognition of the legal nature of this cind of responsibility. Moreover, most modern textbooks on the theory of state and law include constitutional responsibility as an independent form of a legal responsibility.

However, if you open the online materials on the word "constitutional responsibility", you can find that the constitutional responsibility of the development of an obligation not a political th order, and the development of scientific thought.

Even in the modern period of development of science some authors have questioned the legal character of constitutional responsibility. For example, in the textbook by S.A. Avakyan there are over forty negative measures of constitutional liability (sanctions), and they are quite diverse [11, p.108-124].

The first deputy chairman of the Supreme Court P.P. Serkov states that constitutional norms and norms of other constitutional legislation are not able to consolidate legal responsibility [12, p.33], and a legal obligation can not be simultaneously a legal liability [12, p.78]; availability of misconduct does not mean the existence of a negative kind of legal responsibility, if there is no material and procedural regulation [12, p.85]; the nature and degree of danger of the constitutional unlawfulness of actions (inaction) are unknown [12, p.132]; in the reviewed studies fail to find evidence of the relevance of the constitutional responsibility and the need for its adequate legal registration, although constitutional responsibilities, in contrast to the traditional forms of legal liability, with the interdisciplinary nature, claims to be the nature of the industry [12, p.12-27]. P.P. Serkov, recognizing the presence of only specific relationships and denying the legal nature of common relations [12, p.423-428], the possibility of the existence of common constitutional relations, thereby negates the positive constitutional responsibility in terms of controllability and accountability of rights of certain subjects to others.

But P.P. Serkov does not stop denying the existence of positive legal responsibility. He denies the existence of signs of legal responsibility in such law enforcement measures as the recognition of a normative legal act as inactive and not applicable [12, p. 34-35]. The nature of legal responsibility does not deny them except perhaps in relation deprivation of deputy powers for established judicially guilty transgressions deputy [12, p.329].

By the way, the possibility of early termination of the powers of a deputy of the State Duma of the Russian Federation for a pass for more than thirty plenary sessions (with the phrase "for the systematic failure to fulfill the duties of a deputy") for disrespectful reasons [1] is an

additional argument in favor of the development of the institution of negative constitutional responsibility.

P.P. Serkov pretends to a full rethinking of the achieved level of research on constitutional responsibility, stating that the dominant hypothesis about the existence of constitutional responsibility, the measures of this responsibility, disorientates the public consciousness, its imperfections are incorrigible, therefore qualitatively different approaches are required [12, p.407].

All such measures of state response P.P. Serkov calls organizational measures to improve governance [12, p.232], and even the Constitutional Court of the Russian Federation, recognizing by the constitutional responsibility (early deprivation of parliamentary powers), according to P.P. Serkov. did not legalize it, but rather expressed an interest to government officials and responsibly and conscientiously perform their duties [12, p.330-331].

In our opinion, the institute of the constitutional responsibility of the effectiveness of public administration and the legal nature of this responsibility are not mutually exclusive, but complementary factors. They do not interfere with one another but also help one another. Direct service of management to the constitutional responsibilities of the quality is a feature of this type of legal responsibility along with his pronounced political nature to them, as well as the specifics of the subject of the constitutional tort guilt (responsibility not only for their actions, but also for the acts of his subordinates).

Professor Lazarev noted that "practice is essential comprehensive understanding of symptoms, and a combination of the effectiveness of different types and forms of responsibility, not only in terms of the implementation of legal norms, but also in terms of real quality assurance exercise and its effectiveness" [14, p.10] . The same things writes the Nobel laureate in economics in 1986 (in the area of management decision-making) J. Buchanan [15].

3. The importance of the theory of positive constitutional responsibility in modern conditions

The guilt in constitutional responsibility is specific: subjects are officially responsible not only for their work but also for the actions of their subordinates.

The emphasis on positive and moral aspect to the detriment of "sanctions", the retrospective aspect of the constitutional responsibility does not meet the challenges of modern times.

Moreover, there are officials who understand the scope of their responsibility exclusively as its own prerogative, in which no one has the right to intervene and, especially, to control them. Paradoxically, in practice officials formula for the area of its responsibility shall be construed as full freedom in this area, with read, complete irresponsibility. For example, it is with this understanding of responsibility that the authors of these lines collided in the face of the university leadership.

Not by chance, some scientists have given up the positive constitutional responsibility in the legal nature, attributing it to the political sphere and relegating it a preventive role in the constitutional legal relations.

Power at all times "runs" from the actual legal responsibility, while not avoiding demagogic arguments about some abstract positive responsibility. Constitutionalists were carried away by the justification of positive legal responsibility, having shown quite understandable scientific romanticism.

The same romanticism showed in his early scientific works and the author of the present article to what honestly wrote in a monograph in 2003 [16, p.242-251]. The harsh realities have shown that the theoretical structure of the positive responsibility of the state, its agencies and officials took away from their responsibility in the proper legal sense in the sphere of morality.

We do not deny that there is a moral responsibility of the government, and the high degree of responsibility for the fate of Russia carries Russian President VV Putin, but to the actual legal responsibility this has nothing to do.

Speaking about the realities of the Yeltsin period, AA Belkin and A. Burmistrov bitterly ironic, that "the government to be responsible on behalf of the state is not difficult, because the responsibility of the Government and the State is frankly mythical. But this is often not only criticized but is justified ... probably attributed to the State and its organs false constitutional responsibility serves as an indispensable component of the modern state, which in theory should be subject only to justify the responsibility of the state ... there is purely doktrinal design created only for romantic desired future" [17, p.100].

O.E. Leist criticized the theory of positive responsibility: "The most vulnerable link in the idea of legal positive responsibility is the inability to determine its legal properties and quality, something different from the well-known concepts of "responsibility","good behavior","personality","delictual","fulfillment of obligations"and others. perennial calls to develop the concept of positive legal responsibility, revealing her peculiar legal content, did not go further declarative discourse"; "... proponents of positive legal responsibility does not find other reasons, apart from references to non-lawyers belonging to the argument. From the fact that the actual lack of responsibility we would call theoretical liability, no progress or development problems of legal science, nor to combat crime " [18 , p. 479, 489] .

The essence of the actual legal responsibility consists in enduring the responsible person of the negative for themselves for the results of their (and their employees) activities eroded such categories as "awareness of the need to give an account", "responsible state", "a conscientious attitude to his duties" "sense of responsibility". Proponents of positive responsibility had good cause to build from the positive side. However, this good purpose, in practice, did not lead to optimistic results.

A.S. Shaburov [20, p.15-16] and others tried to warn about the danger of "moral drift" in the construction of positive legal responsibility advantageous for those who want to avoid this legal responsibility, replacing it positive.

Incidentally, in the present legislation regulating the status of the deputy, also points to the deputy responsible to the voters, but this responsibility is not mandatory, and a free mandate, legitimizes the legal irresponsibility.

As the short anecdote perceived position , according to which "The governor of the Samara Region is responsible to the Samara Regional Duma" [2] (Article 67 of the Charter of Samara region), since in reality the opposite is true : the Duma is completely dependent on Governor. Subsequently, this formula is replaced by the annual report of Samara Region Government (headed by the Governor) to Samara Duma.

As we have already pointed out, on ne of the first to scientifically substantiated the existence of constitutional responsibility as an independent type of legal tvetstvennosti, including a positive aspect , was SA Avakyan.

The most surprising fact is that, the term "legal responsibility" is presented in the encyclopaedia "Constitutional Law" exclusively in retrospective way [21, p.409-411]. Moreover, in the encyclopedic edition there was no place for the concepts and even the term "on the positive constitutional responsibility." It's like an allegorical answer to the question of whether there is a positive constitutional responsibility proper permanently legal content .

4. Conclusions. The issue of how much legal content there is in constitutional responsibility of the President to the people, of the government before the State Duma, of heads of regions to the people who elected them and the regional legislature etc. is still unsolved. After all, this dispute is similar to a dispute about how much legal content is there in constitutional norms, especially in abstract constitutional principles.

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