https://doi.org/10.46991/S&L/2022.94.077

THE CONCEPT OF CIVIL LIABILITY

Hayk Baghdasaryan
PhD student at YSU Chair of Civil Law

The institution of civil liability with the right to property is one of the cornerstones on which the entire civil law system is based1. There is no question about the function and significance of civil liability in guaranteeing the smooth course of civil relations, the stability of civil turnover, as well as stimulating the lawful behavior of actors in civil relations. Civil liability is a part of the legal liability system, which simultaneously contains unique features that apply exclusively to civil law relations, determining the institution's unique position and function within the legal system.

Generally, "legal liability" is a multidimensional category with an internal stratification. As a complex legal institution, it encompasses a comprehensive legal and theoretical notion and is closely related to other legal terms and phenomena, such as offense, sanction, duty, obligation, etc. Therefore, the matter must be examined within a broader legal framework to uncover the core and content of “civil liability” being viewed as a comprehensive and autonomous institution.

In theory, there are two fundamental aspects of legal liability discussed:

- Positive or Perspective (active) liability or, what is the same, liability for the future, expected behavior, proper fulfillment of undertaken duty or obligation
- Retrospective (negative) liability, that is, liability for past actions, the behavior that implies certain negative consequences for the offender2.

At the same time, views on these aspects, forms, types, content and even the existence of legal liability differ in diversity3.

According to E. A. Sukhanov's concept, universal social duty includes both legal and moral liability. Moral liability is the duty and readiness to be accountable for self-actions and is expressed through condemnation of behavior basically concerning future behavior. Moral liability is positive, in contrast to legal (retrospective) liability, which is always associated with an assessment of the behavior already manifested4. A similar point of view was expressed by V. T. Smirnov, who believes that positive liability can only be spoken of as social but not as legal liability5.

Different perspectives are used to discuss positive (active, perspective) liability. On the one hand, this is seen as having a sense of obligation, a sense of

---

[1] See **Варкалло В.**, Ответственность по гражданскому праву, М., Прогресс, 1978 (Varkallo V., Liability under civil law, M., Progress, 1978), p. 8:

[22] See **Матузов Н.И., Малько А.В.,** Теория государства и права, М., 2000 (Matuzov N.I., Malko A.V., Theory of Law and State, Moscow, 2000), pp. 596–599; **Алексеев С.С.,** Проблемы теории права, М., 1981 (Alekseev S.S., Problems of the theory of law, M., 1981), part 1, p. 271:

[3] More about perspective and retrospective liability can be found at **Хачатуров Р.Л., Липинский Д.А.,** Общая теория юридической ответственности, Санкт-Петербург, Юридический центр, 2007 (General Theory of Legal Liability, St. Petersburg, Law Center, 2007), pp. 131-198:

[4] See Гражданское право: учебник / под ред. **Е.А. Суханова,** М., 2000 (Civil Law: textbook/edited by E.A. Sukhanov, M., 2000), part 1, p. 427:

[5] See **Смирнов В.Т., Собчак А.А.,** Общее учение о деликтных обязательствах в советском гражданском праве., Л., 1983 (Smirnov V.T., Sobchak A.A., The general doctrine of tort obligations in Soviet civil law., L., 1983), p. 43:

responsibility, and a feeling of personal accountability. On the other hand, as a duty to behave lawfully complying with the legal rules. In another case, it is determined as a status-based liability to fulfill duties, properly moral and legal obligations, as well as a method of willingly exercising legal obligations (in this instance, the distinction between positive and negative liability rests in its compulsory or voluntary exercise), etc. Several academics disagree with the separation of positive and negative liability, arguing that positive liability lacks any legal significance1.

Generally speaking, perspective liability is typically contrasted with retrospective one. Therefore, an effort is made to infer that positive liability doesn't have a strictly legal component while providing a socio-legal veil for its commonplace and practical meaning. In other words, in a perspective sense, "liability" is interpreted as prudent, consistent, consciously active behavior concerning obligations and liabilities.

Without delving into the existing debates or assessing the veracity of this or that approach, we want to emphasize that, in our opinion, positive or perspective liability in civil law relations manifests itself in two ways.

Thus, positive liability has both a subjective and an objective description in civil law. If, from a subjective perspective, positive liability is mostly characterized by metaphysical, moral, and psychological characteristics and the subject criterion is the subject's perception and attitude toward his or her expected behavior, then from an objective perspective, positive liability is a tool that assumes certain legal consequences, the evaluation of which already extends beyond the evaluation of specifically-internally triggering factors, established in the foundation of the desired behavior.

It lacks evaluative approaches and is utterly unconcerned with the emotional-psychological or socio-causal linkages underpinning the conduct since it is beyond subjective discretion and has a legally defined explicit meaning. With the "permission" of its governing principles of equality, the autonomy of will and property, freedom of contract, the impossibility of arbitrary interference by anyone in private affairs, and the necessity of unhindered exercise of civil rights, civil law, primarily in contractual relations, creates an opportunity for individuals to choose the scope of their rights and obligations. As a result, while negotiating, the parties can already outline what is expected or, more accurately, what their positive duty is. At the same time, the content of legal relationships may be set by law, but this does not affect the feasibility of imposing positive civil liability in a strictly legal sense.

The criteria in this instance are the presence of a legal relation prior to the offense and its capacity to regulate (be regulated) it in a wide radius. To put it another way, in civil relations, the parties can choose (or not) and bear previously predetermined liability for their actions.

In particular, according to Article 375 of the Civil Code of the Republic of Armenia:

> Under a contract of suretyship, the surety shall undertake an obligation concerning the creditor of another person to bear liability for the full or partial fulfillment of the obligation by that person.

Another example:

According to part 1 of Article 361 of the Civil Code of the Republic of Armenia2,

---

[1] See **Кисликин В.А.** Виды юридической ответственности., М., 2003 (Kislitsyn V.A., Types of legal liability, M., 2003), p. 12:

[2] See Civil code of the Republic of Armenia, Adopted by Parliament on 05 May 1998, entered into force on 01 January 1999.

> Joint and several obligations (liability) or joint and several claims shall arise where the joint and several nature of the obligation or joint and several nature of the claim is envisaged by the contract or prescribed by law, particularly where the object of obligation is indivisible.

The analysis of the abovementioned regulations (and not only) allows us to conclude that civil liability can be applied in a positive (perspective) legal sense and it sets apparent legal phenomena. Positive civil liability is a local manifestation of the principle of autonomy of will. It is a collection of legal mechanisms that allows, prior to the offense (the onset of retrospective liability), in the context of an already-existing legal framework, to predetermine the circle of obligated parties, the anticipated course of the subject composition, the content of mandatory behavior or, what is the same, positive (perspective) liability. Therefore, positive (perspective) liability, which is conceptually connected to the legal repercussions of the offense (retrospective liability), simultaneously has a specific, merely legal importance in civil legal interactions. However, we believe that perspective liability, even in its legal essence, serves a descriptive-practical purpose and is strongly connected with retrospective liability, which coincides with the nature of primary civil liability. In general terms, positive liability is a prelude to retrospective liability in civil law.

As for the subjective aspect of positive liability, without denying the influence of the phenomenon on legal relations we consider it necessary to note that in this case, the message of a particular legal meaning of "liability" may be superfluous, since it is primarily used in a philosophical sense. In light of the fact that consolidating or applying the principle of good faith, the content of which, from our perspective, includes such an interpretation of the concept of "liability," possible practical results of applying such general approaches can be achieved and it may be less important to consider an additional metaphysical aspect of the issue from the perspective of the occurrence of specific legal consequences. To our assessment, the issue, in this case, is primarily of an individual nature and depends on the degree of legal awareness of the individual, the circumstances underlying legitimate behavior, which in some cases may be a responsible temperament, in others may be fear, in still others may be an adaptive posture or even fear of God. For instance, if positive liability is defined by French law as the obligation to conscience and God, by Russian law, it is a form of social responsibility1. As a result, if it can be sufficiently interesting for philosophy or other branches of science, then from the perspective of civil law, the issue does not contain a base of cause-and-effect necessary for legal generalizations. Instead, we believe that the essence of the subjective aspect of positive liability is subject to discussion at the individual level. Even if it has an influence on any legal relation as it shapes the subject's legal conduct, from the civil law perspective its legal characteristics are not noticeable.

Negative liability, the opposing side of liability, is seen as an outcome of offense.

Approaches about negative (retrospective) liability also do not have uniformity. Some scholars would argue, that it is a punishment; on the other, it is viewed as a

[1] See **Villey M.** Esquisse historique sur le mot responsable // La responsabilite atravers les Ages, 1989, p. 75, **Посохов С. П.,** Ответственность за нарушение договорных обязательств в праве Российской Федерации и стран Европейского союза, Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2006 (Posokhov S. P., Liability for violation of contractual obligations in the law of the Russian Federation and the countries of the European Union, Dissertation for the degree of Candidate of Legal Sciences, Moscow, 2006), p. 22:

sanction, a measure of state coercion, the reaction of society to the offense, the obligation to be enforced, the obligation to bear deprivation, the legal relationship between the state and the offender, etc. Aside from individual distinctions, supporters of this idea primarily believe that liability is a measure of state coercion, a punishment in connection with an act that negatively affects the offender by denying subjective rights or imposing a new and extra civil obligation.

According to E. S. Sukhanov, civil liability is a measure of state coercion that entails the recovery of property penalties in the victim's favor in court, together with the imposition of adverse property consequences on the offender. It aims to rectify the victim's lost property status1.

According to B. I. Puginsky, liability can be realized in the absence of a dispute and even by paying the victim damages and penalties voluntarily, which, however, does not alter its state compulsory nature2.

A.A. Sobchak believes that not all measures of state coercion imply liability. Liability is not deemed to exist when coercive measures are applied under the pretense of requiring them to perform obligations in kind 3 . For instance, debt collection. Since the debtor is forced to do what he should have done willingly in this situation, the debtor does not bear an additional burden. This point of view is shared by O. S. Ioffe4. The author claims that civil liability is primarily a sanction provided by law in case of a possible offense. Civil liability is a measure of state coercion, a new and additional burden on the liable entity, expressed either in the deprivation of rights or in the burden of a new obligation.

T. I. Illarionova took a similar stance, stating that civil liability is the legal response that the state guarantees for the offense, manifested in the application of property-related measures to the perpetrator5.

According to Yu. S. Basin's assessment, liability is understood as a property penalty or a property burden applied to a subject of civil legal relations who has committed a violation provided for by law or contract and compensation for property losses of a competent person. Liability is a measure of state coercion. On the other hand, liability is a duty, an additional obligation6.

S. N. Bratus concluded that the enforcement of obligations is the essence of liability when turning to the issue of the relationship between legal liability and state coercion7. In this sense, liability is a state or a similar kind of public coercion to enforce the execution of a breached obligation by the imposition of a legal standard.

---

[1] See **Суханов Е.А.,** Гражданское право., М., 2002 (Sukhanov E.A., Civil Law., M., 2002), part 1, p. 431:

[2] See **Пугинский Б.И.,** Гражданско-правовые средства в хозяйственных отношениях, М., Юридическая литература, 1984 (Puginsky B.I., Civil legal means in economic relations, M., Legal literature, 1984), p. 137:

[3] See **Собчак А.А.,** Ответственность по советскому гражданскому праву // Правовой научно-практический журнал Кодекс-info, 2000 (Sobchak A.A., Liability under Soviet civil law // Legal scientific and practical journal Codex-info, 2000), № 2, p. 11:

[4] See **Иоффе О.С.,** Ответственность по советскому гражданскому праву, Ленинград, 1955 (Ioffe O.S., Liability under Soviet Civil Law, Leningrad, 1955), pp. 9, 39:

[5] See **Илларионова Т.И., Гонгало Б.М.,** Гражданское право, М., 1998 (Illarionova T.I., Gongalo B.M., Civil Law, M., 1998), part 1, p. 419:

[6] See **Басин Ю.Г.,** Ответственность за нарушение гражданско-правового обязательства (Basin Yu.G., Liability for violation of a civil obligation), available at https://online.zakon.kz/Document/?doc_id=1012152#pos=6;-106

[7] See **Братусь С.Н.,** Юридическая ответственность и законность, М., 1976 (Bratus S.N., Legal liability and legality, M., 1976), pp. 4, 42, 83:

Legal liability is the same obligation, which, however, is enforced if the person to whom the obligation is imposed does not fulfill it voluntarily.

The theory identifies several characteristics of legal liability. In particular`

1) liability is a form of state coercion to comply with the norms of law,

2) applies to those who have committed an offense,

3) is a type of state coercion that may only be used by an authorized entity acting within its legal authority,

4) It is demonstrated by the imposition of legal sanctions against the offender, which serve as a means of their legal liability and have detrimental moral and material repercussions for them.1, etc.

Keeping in mind the unique aspects of civil liability, such as their equivalent compensatory nature, the fact that the offender is liable to private individuals and not the state, and the goal of restoring the violated rights of the victim, we would like to turn to the issue of the presence or absence of state coercion or the threat of it as a characteristic attributed to civil liability.

We believe that the incompatibility of the general characteristics of legal liability and the features attributed to civil liability does not manifest itself only in the cases listed above. In the face of the absence of state coercion, it has a more fundamental difference, which, among other things, forms a feature of civil retrospective liability.

Therefore, turning to negative civil liability, first of all, it is necessary to find out whether civil liability is a type of state coercion and whether state coercion is the content of civil liability.

It is challenging to disagree with the significance of the mechanisms ensured by state coercion in the fulfillment of obligations and their significant impact on the protection of subjective rights. Perhaps it is sufficient to mention that the Civil Procedure based court system is where subjective civil rights are primarily protected. But is state coercion or the use of state power a prerequisite for exercising civil liability? Or, in other words, is the impact of state authority a symptom of a legal relationship arising from civil liability?

The implementation of legal requirements is often carried out in the form of their observation, execution, and use in civil relations owing to the supremacy of the principle of autonomy of will. The application of the legal norms (the implementation with the mandatory participation of public authorities) is usually required while protecting subjective rights2. In general, the implementation of civil law does not necessitate the compulsory participation of public authorities. When the measures of civil liability to be applied are not carried out willingly, public involvement in the application of civil liability is required primarily to protect subjective rights.

Therefore, only the discretionary nature of state coercion use as a whole excludes the possibility of recognizing the use of state coercion as a civil liability influence mechanism.

As for the guarantee of state coercion, in the sense that although the possibility of voluntary execution is not excluded the subjective requirement is in any case guaranteed by the threat of public influence so in the case of such an interpretation, it

---

[1] See **Иоффе О.С., Толстой Ю.К.,** Основы советского гражданского законодательства, Л., 1962 (Ioffe O.S., Tolstoy Y.K., Fundamentals of Soviet civil legislation, L., 1962), p. 14, **Վաղարշյան Ա.Գ.,** Պետության և իրավունքի տեսություն 2, Երևան, 2011 (Vagharshyan A. G., Theory of Law and State, part 2, Yerevan, 2011), pp. 339-340:

[2] Individual cases when the implementation of subjective civil rights is conditioned by public permission, for example, obtaining a license, etc., should not be taken into account since these cases have no bearing on the topic at hand.

is generally necessary to abandon the idea of dividing legal relations into public or private ones, insofar as if we are dealing with legal relations, therefore, we are dealing with public relations subjected to legal regulation. And one of the criteria for differentiating legal relations and other public relations is the guarantee by state coercion of the precept of the normative norm of law. Therefore, with this interpretation, it turns out that any legal relationship has a public element in the face of the participation of public authorities since the monopoly on the legal regulation in all cases belongs to the Sovereign.

It is essential to precisely separate the means of protecting the right from the method and state that in the process of applying civil liability, state coercion is effective only if public means of protecting subjective rights are chosen. Notably, owing to the parties' shared business decency and good faith, civil liability may be applied without the need for any kind of public protection.

Application of the method of right protection does not always entail application of the means of protection. Moreover, it can be carried out using private, non-public means. State coercion, although practically applicable, is not a prerequisite for the application of civil liability, which can be carried out voluntarily, regardless of the existence of a matching necessity. They may be brought using a private claim obtained by a preliminary order or through alternative dispute resolution processes free of extrajudicial or coercive measures.

The use of state coercion cannot be seen as an indication of civil liability and cannot be included in its notion. Only the presence of such an alternative possibility is sufficient proof of this. The capacity to evade the institution of state coercion and the fact that this situation is not only not uncommon but also inherent in civil law already implies that the effect of state coercion on the nature of civil liability cannot play a distinct and significant role.

All civil law institutions must adhere to the fundamental meaning of the principles of civil law. Civil liability is similarly subject to the principles and is affected by them objectively. For instance, even when civil liability is based on law, the autonomy of the will is crucial. It has a significant impact on whether or not civil liability measures are applied.

The parties in a civil turnover act equally and have the only authority to bring (or not) to liability. It is known as the right of final determination or decisive vote. The recipients and beneficiaries of the application of civil liability are liable for determining the extent of their rights and obligations as well as the vigor and timeliness with which they exercise those rights.

Consequently, civil retrospective liability is an additional or primary (in the case of extra-contractual liability) obligation resulting from an offense. The requirement to impose such a measure is nothing more than a personal choice that the right's titular owner has the discretion to exercise or not.

As a result, we can conclude:

- Perspective civil liability is dual in nature, including both a subjective and an objective aspect. The subjective side is a private application of the good faith principle. In an objective sense, it has a clear legal purpose in light of the potential for identifying the circle of obligated parties prior to a potential offense, the extent of the parties' rights and obligations, and is closely related to retrospective liability.
- State coercion or coercive influence is not a necessary element of retrospective civil liability. The latter is a main (in the case of a delictual obligation) or an additional obligation that is not included in the content of the primary obligation and arises as a result of an offense based on a contract or law.

Hence, we find that:

The concept of civil liability describes the primary (in the case of an extra-contractual liability) or additional obligation arising as a result of a breach of the main obligation, and from a perspective point of view, means for the proper performance of liability, including the liable parties, their rights and obligations, as well as the scope of the liability.

ПОНЯТИЕ ГРАЖДАНСКО-ПРАВОВОЙ ОТВЕТСТВЕННОСТИ

Айк Багдасарян
Аспирант кафедры гражданского права ЕГУ

Понятие гражданско-правовой ответственности является важной составляющей частью гражданского права. Верное определение данного понятия, кроме теоретической ценности, имеет важное практическое значение и дает возможность правильно наметить как правотворческую, так и правоприменительную деятельность, реализацию и защиту субъективных прав участников гражданско-правового оборота.

В статье анализируются понятие гражданско-правовой ответственности, ее признаки и виды. Исходя из отличительных особенностей и признаков гражданско-правовой ответственности, выявляется её место в системе правовой ответственности, формулируется определение гражданско-правовой ответственности.

«ՔԱՂԱՔԱՑԻԱԻՐԱՎԱԿԱՆ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅՈՒՆ» ՀԱՍԿԱՑՈՒԹՅՈՒՆԸ

Հայկ Բաղդասարյան
ԵՊՀ քաղաքացիական իրավունքի ամբիոնի ասպիրանտ

Քաղաքացիական պատասխանատվությունը քաղաքացիական իրավունքի կարևոր բաղադրատարրերից է: Նշված հասկացության ճիշտ սահմանումը, բացի տեսական արժեքից, ունի նաև գործնական կարևոր նշանակություն: Այն հնարավորություն է տալիս ճիշտ ուրվագծել ինչպես իրավաստեղծ, այնպես էլ իրավակիրառ գործունեությունը, քաղաքացիական շրջանառության մասնակիցների սուբյեկտիվ իրավունքների իրականացումն և պաշտպանությունը:

Հոդվածում վերլուծվում են քաղաքացիական պատասխանատվության հասկացությունը, հիմնական հայեցակարգերը և դրա տարբերակիչ առանձին հատկանիշներ: Քաղաքացիական պատասխանատվության տարբերակիչ առանձնահատկությունների և հատկանիշների հիման վրա փորձ է կատարվել բացահայտել դրա տեղը իրավական պատասխանատվության համակարգում, քաղաքացիական պատասխանատվության հասկացությունը և տեսակները, ձևակերպել քաղաքացիական պատասխանատվության սահմանումը:

Բանալի բառեր – *իրավական պատասխանատվություն, քաղաքացիաիրավական պատասխանատվություն, պերսպեկտիվ, ռետրոսպեկտիվ, կամքի ինքնավարություն, պետական հարկադրանք:*

Ключевые слова: *правовая ответственность, гражданско-правовая ответственность, перспективная, ретроспективная, автономия воли, государственное принуждение.*

Key words: *legal, liability, civil liability, prospective, retrospective, autonomy of will, state coercion.*