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PECULIARITIES OF LEGAL LIABILITY FOR VIOLATION OF LEGISLATION ON PROTECTION OF PUBLIC MORALITY

The norms of public morality is the most common kind of social norms and principles of conduct, based on the views worked out by living conditions, ideas of different social groups, nations about good and evil, justice, responsibility, honesty and other values that are directly related to spiritual life of society. Today Ukrainian society has entered a stage of development at which value orientations of individual citizens and social groups are changed and in some cases distorted, that often negatively affects the moral principles of life, especially of the younger generation. All this requires further improvement of mechanism of legal liability for violation of legislation on the protection of public morality in Ukraine.

It is worth reminding that according to Article 1 of the Law of Ukraine "On Protection of Public Morality" public morality is a system of ethic norms, rules of conduct prevailing in the society based on traditional spiritual and cultural values, concepts of good, honor, dignity, social obligation, conscience, justice [1].

Relevance of the study of this question is stipulated, firstly, by backbone nature of interbranch substitution of legal liability for violation of legislation on the protection of public morality, and secondly, the importance of the protection of public morality in modern society.

The aim of our study is to determine the nature, characteristics and mechanism of implementation of legal liability for violation of legislation on the protection of public morality, making recommendations on the improvement of relevant legal substitution.

The basis of liability, including legal liability for violation of the law for the protection of public morality, is the axiom according to which the co-existence of individuals in society provides for the need to perform certain rules and requirements of conduct which ensure the proper functioning of society. The individual as a representative of a society, must coordinate his interests and actions with generally accepted and in this community values. If an individual violates rules of behavior, society, says

R. Muhayev, is forced to declare its attitude towards actions of an individual and form the conventional system of social liability [2, p.489].

Any liability is the right and obligation of a person to make his own choice of behavior according to the norms that exist in society and realize the need for accountability to the public for their choice in case of noncompliance with the requirements of social norms.

The choice of a particular behavior by an individual creates certain legal relationship. In turn, the entry of such subjects in such legal relationship creates certain legal connections with other subjects and, therefore, builds a system of rights and obligations which are reciprocal. It, as emphasizes R. Kosolapov, creates liability for performance of obligations to the other party [3, p.72,].

Thus, legal liability for the violation of legal norms is a form of social liability that comes for violation of various social norms (law, morality, religion, customs, traditions, corporate norms). The essence of legal liability lies in application to offenders under the law sanctions enforced by state coercion.

In jurisprudence it is accepted to differentiate between positive and negative legal liability. Positive legal responsibility is a kind of legal liability, which is the response of the state and society on generally useful lawful acts committed in the form of different legal measures of encouragement [4, p.36]. In turn, negative legal responsibility is considered as a special kind of legal liability, which is the response of society and the state on a wrongful act committed by an offender in the form of application of measures of state coercion including measures of personal (imprisonment), property (fine) and organizational (dismissal) character [4, p.39].

In scientific literature constitutional and constitutional and legal responsibility are treated as separate types of legal liability, but their characteristics in scientific sources is rather vague, therefore these types of responsibilities are often identified. Let's try to figure out which of these types of liability is applied for violations of legal liability for violation of legislation in the sphere of public morality.

Fulfillment of requirements of constitutional law provisions is provided by virtually all types of legal liability. In this aspect constitutional liability can be interpreted as a legal liability. The concept of constitutional and legal liability, says V. Shapoval, is narrower than the concept of accountability for violations of constitutional rights. However, this type of legal liability is associated not only with violations of constitutional law [5, p.433].

Domestic science has certain theoretical achievements in research of constitutional liability and its institutions, current constitutional law established separate grounds for constitutional liability that are unique to this type of legal liability, but this is not enough for real protection of rights and freedoms of a person and a citizen. Still constitutional liability as an independent legal liability is not recognized by law, that negatively affects its practical implementation. In addition, due to the lack of proper legal framework and mechanism for implementing the constitutional liability a significant number of violations of the Constitution and laws of Ukraine is left without proper response. Therefore, the doctrine of constitutional law has an urgent need to eliminate these gaps and create a holistic concept of constitutional liability.

Constitutional liability is aimed at ensuring the supremacy of the Constitution of the state and is part of the legal guarantee of the Constitution, and therefore A. Skakun emphasizes that the legal basis of the constitutional liability is provisions of the Constitution of Ukraine, which is directly applicable [6, p.472] and T. Zrazhevskaya considers constitutional liability as an independent legal liability that receives expression in the prioritization of the most important security relationship, and the possibility of occurrence of adverse effects on the subjects of constitutional rights violated (or those aspiring to break) the rules of constitutional law [7, p.26].

It follows that the constitutional liability is a need for the occurrence of adverse consequences for failure (inadequate performance) by subjects of their constitutional duties and abuse of constitutional rights [8, p.8].

Constitutional and legal liability as part of legal liability is always related to violations of certain legal norms, without which it can not be applied, i.e. the use of appropriate enforcement measures, the implementation of sanctions a legal norm [9, p.289]. Thus, the constitutional and legal liability is a separate set of rules of Constitutional Law of Ukraine, kind of legal liability, primarily intended to provide legal protection for the Constitution of Ukraine, which implies the need for the subjects of constitutional violations to be accountable for their legally meaningful behavior, implemented in constitutional and legal relations [10, p.93].

Constitutional and legal liability is a functional institution for Constitutional Law, combining both constitutional and legal norms that regulate social relations in the prospective and retrospective legal liability of liable subjects for violation of norms of Constitutional Law of Ukraine is an important element of guarantee of all major institutions of Constitutional Law that are its objects. Constitutional and legal liability is

a special mechanism of legal protection defense of the Constitution of Ukraine and current constitutional law. Constitutional and legal liability. The sources of this kind of liability are not only the provisions of the Constitution of Ukraine and all other constitutional and legal norms already existing in the system of current Constitutional Law. Constitutional and legal liability are characterized by special procedural forms of implementation[11, p.120].

According V. Pohorilko and V. Fedorenko, constitutional and legal liability is defined as an independent kind of legal liability, providing proper and faithful execution by the subjects of constitutional law their duties (positive aspect) or the occurrence of adverse effects or undesirable changes in the constitutional status for these subjects for violations of applicable constitutional right (negative aspect) [11, p.118].

Some scholars argue that the constitutional and legal liability has a political nature; is a major institution of public law; occurs in the case of committing a wrongful act, and in default of duty; is a means of protection and defense of the Constitution [12, s.302].

Others consider it appropriate to distinguish between constitutional liability (for violation of constitutional norms) and proper constitutional and legal liability. In their understanding, the first includes all types of legal liability, based on a set of existing legal sanctions and in this respect can be seen as a legal liability, and the second is a separate type of legal liability and, therefore, the part of the first [13, p.51].

Constitutional and legal liability has a system-inherent nature, which means that it, firstly, defines the general principles of legal liability for violations of the Law of Ukraine to other types of legal liability, and secondly, provides independent constitutional sanction as a measure of legal liability for a constitutional tort. Grounds for constitutional and legal liability have their own characteristics, in particular, the basis of retrospective liability is legal fact of constitutional tort, i.e. wrongful malicious act of the subject of constitutional law, which is a set of specifically defined components. The range of subjects of constitutional and legal liability is smaller than the range of subjects of constitutional law [11, p.118].

Constitutional liability, as opposed to constitutional and legal, has no political character and its implementation is not related to politics and in this case can not be politicized. This is true about constitutional responsibility that comes with violating the rules on citizenship and refugee status rules that provide for the right to education, to health, to marry, to housing, to protect public morals and more.

Analysis of the Constitution of Ukraine states that the range of subjects of constitutional liability is much broader than the range of government bodies, officials, political actors that are political or constitutional liability (Articles 3, 19, 68).

Thus, Art. 68 of the Constitution, which establishes the obligation of every member of society to strictly abide by the Constitution and laws of Ukraine, not to infringe upon the rights and freedoms, honor and dignity of other persons is normative basis of the constitutional responsibility of individuals, including liability for violations of public morality. This authority is specified in the rules of civil, administrative and criminal law. The grounds for such liability is an offense, that is legal fact of misconduct.

Constitutional liability is intended to ensure the unity of the subjective and objective in the constitutional legal relationship – matching behavior of the subjects of relations to constitutional and legal norms. The purpose of the mechanism of constitutional liability is to maintain constitutional order and legitimacy. Considering the legitimacy as a specific social phenomenon of social life, individual element of the mechanism of state regulation, this phenomenon in a state of law can be defined as a mode (state) of compliance of public relations with laws and regulations. They must not conflict with the law, issued in the public interest and carried out by all participants of legal relations [4, p.133]. Hence, the understanding of the mechanism of implementation of legal liability for violation of legislation in the sphere of public morality, which is a collection of related regulatory, institutional, functional and ideological elements with the help of which the right of a normal personality development based on the norms of public morality, the right to protection of public morals is guaranteed, and in the case of committing by natural or legal persons a constitutional offense – application of legal sanctions to ensure the constitutional order and legitimacy.

The mechanism implementation of legal liability for violation of legislation in the sphere of public morality aims to provide a conscious exercise by citizens of their rights, duties, resulting in the implementation of the first positive (prospective) constitutional liability. In case of unauthorized encroachment of citizen on national constitutional and legal basis of protection of public morality, mechanism of negative (retrospective) constitutional responsibility in the form of sanctions comes into effect.

In our opinion, the mechanism of constitutional liability for violation of legislation in the sphere of public morality should include the following elements: 1) a set of legal rules governing the constitutional and legal basis

of protection of public morality (among them a special place is occupied by the rules that establish the limits of legal protection of public morality, the failure of which is the basis for the imposition of sanctions), 2) the legal rules that define the form of illegal conduct in the area of public morality, and 3) public authorities and public institutions to monitor the observance of norms of public morality by natural and legal persons aimed to react on time to illegal acts of the letter, and 4) legally outlined form of legal proceedings on cases on liability for violations of constitutional and legal basis of protection of public morality, and 5) justice agencies whose competence includes litigation of charges of violation of public morality and making decisions on them.

Considering the mechanism of constitutional liability for the violation of constitutional law on the protection of public morality, we consider it appropriate to combine more systematically the legal rules that define everyone's right to free development of his personality within the norms of public morality, determine its meaning, and include this law, defining features of the positive (prospective) liability in public morality. This set of rules is proposed to define as normative (regulatory) element of the mechanism of constitutional enforcement powers for the protection of public morality.

The rules underlying the regulatory element of the mechanism of implementation of constitutional liability for violation of legislation in the sphere of public morality are constitutional and legal provisions set out in: 1) the Constitution of Ukraine, 2) the law of Ukraine "On Protection of Public Morality", 3) other laws, regulations and administrative regulations. Thus, the limit of use of freedom is legally set, which is to select only those forms of activity which are not prohibited by the Constitution and laws of Ukraine. That is, certain rights and freedoms in the field of public morality border with certain restrictions.

Regulatory element of the mechanism of implementation of constitutional liability also reinforces negative (retrospective) constitutional liability for the violation of law on the protection of public morality, but this liability is defined only at the level of legal norms, as occurs only for committing offenses specified in legal norms and accompanied by the use of legal sanctions. In other words, it occurs when individuals or legal persons have moved beyond the limits of freedom defined by positive liability. An example of negative constitutional liability is Part 1 of Article 2 of the Law of Ukraine "On Protection of Public Morality," which states that "the production and circulation of any form of pornographic products in Ukraine is prohibited" [1].

Study of the content of legal liability for violation of legislation in the sphere of public morality assumes clarification of its internal structure, elemental composition. Content of any type of legal liability requires: subjects, objects, actual and formal grounds, general social and legal implications and so on.

Generally accepted in legal scholarship is to determine the basis of legal liability as a set of circumstances, the presence of which makes legal liability possible and proper [14, p. 476]. Among such conditions are the legal and factual grounds for legal action. Violation of regulations contained in the norms of constitutional law must be admitted the legal basis of the constitutional liability, but the Constitution of the State can not be the only source of this type of liability, it is designed to regulate only the basics of all types of liability. Content of norms of constitutional law confirms that the issue of legal liability for violation of legislation on the protection of public morality gets further specification in it. This specification is observed in the Law of Ukraine "On Protection of Public Morality."

The actual ground for legal liability for violation of legislation on protection of public morality in constitutional law is constitutional tort committed in this area, by which is meant as socially dangerous, illegal, malicious act (action or inaction) that infringes on the right to the protection of public morality, which provides for the commission of constitutional responsibility.

The object of constitutional violations is the constitutional law and order as an element of the constitutional order. Objective side in the constitutional tort by analogy with the definition of the objective of other offenses constitutes wrongfulness of the act which legally expresses public danger or harm of an offense.

Therefore it is necessary to define the bodies of state power and public institutions to monitor compliance with the law for the protection of public morality, and judicial bodies, whose competence includes cases in this area. The set of persons that provide for public and social control in the field of constitutional liability for violation of legislation on protection of public morality is proposed to define as the institutional element of the mechanism of implementation of such liability.

Procedural form of an established proceedings on liability for violations of the law on the protection of public morality should be considered as a set of procedures and processes related to the implementation of the constitutional liability (both positive and negative liability) and as a functional element of the mechanism of constitutional liability for violation of the law on the protection of public morality.

We also consider it appropriate to single out normative axiological element of the mechanism of implementation of liability for violations of the law on the protection of public morality, which includes conscientious attitude of constitutional legal subjects to exercise of their rights and fulfillment of their duties before other subjects of constitutional relations (positive liability) and willingness to take responsibility for committing constitutional violations in the sphere of protection of public morality (negative liability).

Thus, legal responsibility for violations of the law on the protection of the principles of public morality is revealed in the form of constitutional and non-constitutional and legal liability and thus has specific characteristics and mechanism of implementation.

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