THE PRINCIPLE OF RESPONSIBILITY WITHOUT GUILT IN THE CONTEXT OF LAW TYPES: THEORETICAL ANALYSIS

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ABSTRACT

This scientific article is directed to studying and analysis of the innocence principle responsibility from the view point of positivism and natural law understanding. Such categories as "fault", "responsibility", "innocence responsibility" will be considered for civil relations and its institutes whereas publicly legal industries don't become a learning object. During the high-growth market, development of the law, including the civil law, the innocence principle responsibility considered by some authors as the concept has the determining character and is necessary for judgment through theoretical bases of positivism and natural law understanding. The importance of this work is concluded in that for the first time from the view point of law forms understanding the civil principle is considered by the author performing scientific work not only as useful to the law theory, but also necessary to studying for the practicing lawyers. Work represents the theoretical analysis of the innocence principle responsibility of entrepreneurs in the civil relations which is the exclusive principle for the law in general. The purposes of this work is approbation of the accumulated knowledge in the field of the law theory and the civil law in the researched subject, as well as their consolidation in complete work with tasks of detecting characteristic features of the innocence principle responsibility for positivists and supporters of natural law understanding.

Keywords: *law, private law, principle of the law, positive law, natural law understanding.*

INTRODUCTION

Revaluation of the importance of a natural and positive law-understanding during an era of new Russia construction from the economic and legal view point has rather urgent and timely character. Debatable disputes on a role of law forms understanding in law regulation, certainly, are accompanied by the fact that it is law not only multidimensional science, but also the necessary mechanism for regulation of the disputes and disagreements thereby infringing on interests of many persons in a broad sense of this phrase (Matuzov and Malko, 2005). The category "legal responsibility" in this case plays the determining role as the majority of disputes consist not only in a restitution, but also involvement of the person which violated the law of other person to legal responsibility. The role of law understanding of legal processes takes here a key position as from understanding of the law the subject of a scientific thought, how legal responsibility or any other category by expert’s lawyers, legislators and young scientists is considered depends. A subject of scientific interest of this work is the innocence principle responsibility which will be considered and analyzed through a prism of natural law understanding and positivism.

DATA AND METHODS

In work were investigated to work as classics of a scientific thought in a studying subject, and think of scientists of modern times both foreign, and domestic.

When carrying out a research such common methods of scientific knowledge as a method of materialistic dialectics, general scientific methods (the analysis, synthesis, induction and deduction, system and structural approach) were used, as well as applied historical and legal in the analysis of the law of Ancient times and the Soviet Russia, and a legallistic method in case of determination of doctrinal aspects of the innocence principle responsibility in the context of problems of natural law understanding and positivism.

It is known that one of key categories of the theory of the state and the law and industry sciences is the "legal responsibility" having the distinctive features of rather specific sphere of the public relations. It is conventional to allocate such types of legal responsibility as criminal liability, the administrative responsibility, civil responsibility, disciplinary responsibility. The doctrine of the law allocates also other forms of legal responsibility (Savin, 2013) which at the moment don't become conventional. And if the compulsory provision of availability of an actus reus or an offense in public industries is the fault, then in civil science finds reflection of an exception of the rule: accountability with fault (Azmi, 2011). Thus, the researched subject gained the extensive distribution in science of private law and therefore this scientific work analyzes innocence responsibility in the field of the private-law relations.

Already civilians of the Ancient world asked a question of involvement of the person to responsibility provided that the person showed "the highest care (diligena exactissima) about a thing" (Baron, 1899). Thus, for studying of innocence responsibility and its understanding in natural and positive concepts of determination of the law it is necessary to analyze the category "wines" which is of special importance for this work. Fault in law it is considered to be the mental and psychological relation of the person to its illegal actions (failure to act) owing to which there came harm to the other person or his property (Zulfugarli, 2011). So, the wine is how the offender estimates the actions, moved him conscious violation of specific regulations or its actions were followed by negligence or negligence. If to address fault it is applicable to the private-law relations, then it should be noted that there are those subjects who bear responsibility irrespective of whether guilt is seen in their actions. Such subject is the person performing business activity that is fixed by the Civil Code of the Russian Federation (The federal law of 30.11.1994). So, it is necessary to consider the statement of the jurist V.V.Rovny who polgat that "against the background of the majority of the relations in their positive stage the term "wines" doesn't reveal, the fault is subdivided only into three types, number of cases when its some version would matter, is small, and the extent of responsibility is generally influenced by offense consequences that corresponds to the principle of a full recovery of harm (losses). To a certain extent contradicting the thesis "without fault there is no responsibility" (Rovny, 2000). This note is useful for understanding of the law in general as "all lawyers unanimously and according to the law and the principles... humanity reject objective (innocence) criminal liability... Difficulty, however, arises when it is about torts as the civil legislation allows responsibility without fault... Whether it is possible... the requirement of establishment of fault as unconditional basis of legal responsibility in the criminal and administrative law to transfer to the civil relations?" (Bratus , 1976). The extreme question contains one of prerequisites of the analyzed subject. From the view point of natural law understanding where the law and the law is identified, and categories in different industries shall be considered and be applied similarly, from the view point of positivism where the law – is not the law as a fundamental factor of creation of the state and

private institutes, there can be big discussions on this matter. It is necessary to consider that this scientific work is directed to the analysis of the innocence principle responsibility it is applicable to private-legal relations which aren't an identification of the private-law relations. Though, without fail, the legal doctrine researches the studied principle relatively and private law in general, however within this article it is worth going deep into its certain current, that is the civil law.

In the period of Antiquity in Russia, the due attention wasn't paid to development of private law owing to what there was no little distinct line item of the state concerning "fault", "responsibility", "innocence responsibility". However it is necessary to address such source as "The story of temporary years" in which it is told that "if it happens to any of us, the Russians who arrived from a castle something will be taken to be killed or from a castle, then let responsible be sentenced to punishment", as well as was mentioned that "the guilty person let pay five silver for that lawlessness" (Story of temporary years: Text and translation, 1999). The above-stated examples, illustrate opinion of the legislator that that person which is guilty of violation of the law, the agreement or the laws of the other person shall bear responsibility.

So, the innocence principle responsibility was researched also during the Soviet period of development of domestic statehood when exclusively state-owned property prevailed and the system denied all private. It would be desirable to note that the separate periods of a construction of the Russian state are exposed to the analysis, but not assessment in any way. The famous Soviet jurist M. M. Agarkov wrote: "needless to say that railway operation, tram... is lawful. But from here doesn't follow that causing at the same time death or mutilations either spoil or destruction of someone else property are lawful" (Agarkov, 1940). Conclusion that innocence responsibility is an exclusive principle, according to which if the person performs certain activities owing to which it is possible to bear responsibility without fault, then the beginning of implementation of these activities is integrated to understanding of the person performing it that these activities have risk character and is followed with the increased concentration of this person is reasonable. The concept of innocence responsibility is significant for both considered types of law understanding. From the view point of natural law understanding, the studied principle shall be considered so: as far as activities which did harm are risk and put her subject (awareness in any sphere, experience) in more protected provision, than his partner. Also there will be a logical question of supporters of the natural theory of law understanding which is that whether responsibility without availability of fault in each case answers the spiritual beginnings and whether this responsibility and the nature of human mind proceeds. If to address the theory of positivism, then the innocence principle responsibility is, first of all, the law what it is, dictated by many factors, from political to economic which needs to be accepted, so it doesn't encumber the party, partners know about existence of this specific regulation and consequences of its application. In view of the fact that the theory of natural law understanding includes conclusions about the law as an ideal, coming from a being of human nature, it appears that the innocence principle responsibility is rather close on the moral and ethical component to a line item of supporters of "primary" theory of law understanding.

RESULTS

The immemorial problem of positivists and supporters of natural law understanding which is expressed in what theory is more important and more useful to science of the law and legal practice is solved by the analysis of the civil legislation. So, the established principle innocence responsibility, being an exception of general doctrinal provisions of law, also has own

legal "delisting". § 5 hl. 30 Civil codes of the Russian Federation, governing the relations under the agreement of contracting, enshrine in the Art 538 that "the producer of agricultural products which didn't fulfill the obligation or an inadequate image fulfilled the obligation, bears responsibility with his fault". It is known that this paragraph is regulated also by rules, about the delivery agreement where one of the parties is the subject performing business activity which answers to the partner irrespective of availability of fault. Thus, the exception of the concept of the innocence principle responsibility is observed that confirms the fact] that, in my opinion, the dispute on a problem of the importance of theories of law-understanding has no under the person of the thorough soil. One theory exists and develops thanks to other theory, they are for each other sources of receipt of useful knowledge, they are necessary each other, also as well as the law is necessary for the state and vice versa. Certainly, any rule has an exception, but in the sphere of the law, as shown in an example, there are provisions representing usefulness of the innocence principle responsibility in the civil relations for the law theory, being in what is law - it is such science which has "exceptions in exceptions" (you shouldn't perceive in a broad sense).

CONCLUSIONS

Summing up some results, it is possible to note with confidence that the innocence principle responsibility in the civil relations in a context of positivism and natural law understanding, first, has sufficient usefulness for further development of the law theory and industry sciences. Also, this scientific work achieved a main goal which the theoretical analysis of the considered principle and allocation of its most important features was. Besides, this article as it was already noted is useful to theorists and practitioners in branch of jurisprudence, and not important to what form of law understanding they adhere as well as to what legal family state policy of heads of legislature of their country belongs.

In the conclusion it would be desirable to note that the innocence principle responsibility not only is important as the principle by means of which use legal practice accumulates, but also is necessary for studying as the category which is by the nature an exception of general-theoretical rules, but having own phenomena. Thus, the foundation is laid for the analysis and studying of the principles of the law through general-theoretical categories of positivism and natural law understanding that is important help for a further research and development of science and replenishment of useful knowledge in this sphere

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