

THE DOCTRINE OF LEGALITY AND RULE OF LAW - AS THE MAIN CONDITION OF BUILDING A LEGAL STATE

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Abstract: In the article reveal the issues of conception of legality or rule of law and law and order in the sphere of realization of legal responsibility as well as their correlation. On analyze of these notions are noted the role and meaning of legality and law and order in the forming of democratic legal state.

Keywords: legal state, legality, rule of law, correlation, law and order, legal responsibility.

ДОКТРИНА ЗАКОННОСТИ И ПРАВОПОРЯДКА - КАК ОСНОВНОЕ УСЛОВИЕ ПОСТРОЕНИЯ ПРАВОВОГО ГОСУДАРСТВА

Аннотация: В статье исследуются вопросы понятий законности и правопорядка в сфере реализации юридической ответственности, а также их соотношения. На основе анализа данных понятий подчеркивается их роли и значение в аспекте построения демократического правового государства.

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Ключевые слова: правовое государство, законность, корреляция, правопорядок, юридическая ответственность.

ҚОНУНИЙЛИК ВА ҲУҚУҚ-ТАРТИБОТ ДОКТРИНАСИ - ҲУҚУҚИЙ ДАВЛАТ БАРПО ЭТИШНИНГ АСОСИЙ ШАРТИ СИФАТИДА

Аннотация: Мақолада юридик жавобгарликни амалга ошириш соҳасида қонунийлик ва ҳуқуқ-тартибот тушунчалари, шунингдек уларнинг ўртасидаги ўзаро нисбат масалалари тадқиқ этилади. Мазкур бўшунчаларни таҳлил этиш асосида демократик ҳуқуқий давлатни қуриш жихатидан уларнинг роли ва аҳамияти таъкидланади.

Калит сўзлар: ҳуқуқий давлат, қонунийлик; ўзаро нисбат, ҳуқуқ-тартибот, юридик жавобгарлик.

In the legal literature repeatedly noted the importance of the implementation of legal responsibility in strict accordance with the regulatory legal acts.¹ It is generally recognized that the implementation of this legal institution directly affects the rights, freedoms and legitimate interests of individuals and legal entities. Since legal responsibility is directly aimed at protecting law and combating offenses, legal conflicts that arise here directly affect the state of law and order in the state, directly affect the rights and freedoms of each individual citizen.

¹ See: I. Karimov. Justice is the priority of the law. Report on the VI session of the Oliy Majlis of the Republic of Uzbekistan of the second convocation, August 29, 2001 // For security and peace must be fought. Volume 10. - T.: Uzbekiston, 2002.-С.36; Khachaturov R.L., Lipinsky D.A. General theory of legal responsibility: Monograph. - St. Petersburg: Press, 2007. - P. 322; Ovsepyan Zh.I. Socialist legality is the constitutional basis of the activities of the Soviet state for the protection of the fundamental rights and freedoms of citizens of the USSR. Diss ... Cand. sciences. - RDD: 1983. - P. 72-74; Voplenko N.N. Legality and legal order. - Volgograd: Publishing house of VolSU, 2006. - P. 128.

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The First President of our state I. Karimov rightly noted that "... It is necessary to strengthen the legislative bases of law enforcement ... We are building a legal state where everything and everything will be subordinated to the law. The law becomes a universal means of governing society".² In this regard, the laws should contain requirements for law enforcement agencies of the state to build their activities so that the task of strengthening and ensuring law and order in the field of the implementation of the legal responsibility is fulfilled.

However, there is another legislative version of these requirements. A number of normative legal acts consider the provision of public order (which, if it is based on the law, acquires the character of law and order) as the main task that must be achieved, and legality in turn is regarded as the principle of the activity of the law enforcer. In this case, the provisions of Art. 14 of the Constitution, in which legality is proclaimed as one of the basic principles of state activity.³

In the legal acts regulating the implementation of criminal, administrative, disciplinary, civil and other types of liability, the main requirements of the principle of the legality of legal liability were obtained: equality before legal responsibility, duty to comply with the requirements of legal norms, unity of law and other.⁴

So, it can be noted that the legislator does not have a unified approach to the phenomena under consideration. They are considered to be contiguous, but they are

² Basic principles of socio-political and economic development of Uzbekistan. Report at the first session of the Oliy Majlis of the Republic of Uzbekistan, February 23, 1995 // The Motherland is sacred for everyone .- Volume 3. - T .: Uzbekiston, 1996. - P.12.

³ Constitution of the Republic of Uzbekistan: Adopted on December 8, 1992 at the XXI session by the Supreme Council of the Council of the Republic of Uzbekistan of the twelfth convocation. - T .: Uzbekiston, 2015. - P.6

⁴ Khachaturov R.L., Lipinsky D.A. General theory of legal responsibility: Monograph. - St. Petersburg: Press, 2007. - P. 322

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indicated separately, and, therefore, there must be certain differences between them. It should also be emphasized that in no normative legal act there is given an illegal definition, a full and complete explanation of what should be understood under the indicated phenomena. Meanwhile, the availability of such an explanation is extremely important for us, since it directly comes into contact with the questions of the implementation of legal responsibility and the extent to which its practical implementation corresponds to the norms and requirements of the law.

The lack of clarity in the doctrine of law and law enforcement practice regarding the notions of legality and the rule of law that is observed at the moment, as we believe, can negatively affect the practice of law enforcement, and the state of public consciousness. There is an urgent need for a scientific understanding of these concepts, including, with reference to the institution of legal responsibility, the construction of their legal definition.

Note that in the legal literature the term "legality" is often considered in two aspects. Thus, legality is understood to mean either the behavior demanded by the state, which consists in unconditional observance of laws issued by the state by all natural and legal persons (broad understanding of legality) or compliance with laws by state bodies and their officials in their daily law enforcement activities, which is often identified as the most significant part of the law, the main element of its content.⁵

Supporters of such an understanding of these phenomena, note that the activities of physical persons

⁵ Ovsepyan Zh.I. Socialist legality is the constitutional basis of the activities of the Soviet state for the protection of the fundamental rights and freedoms of citizens of the USSR. Diss ... Cand. sciences. - RDD: 1983. - P. 72-74; Voplenko N.N. Legality and legal order. - Volgograd: Publishing house of VolSU, 2006. - P. 128.

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constitute the content not of the rule of law, but of the social category that embodies the sphere of legal order - and it is in the subjective composition that they see differences between these phenomena. In other words, the activities of state bodies to ensure legality differ from the activities of individuals who are not required to apply, but to comply with the requirements of the relevant regulatory legal acts, since the exercise of rights and the performance of legal obligations of entities occurs outside the law enforcement process. At the same time, one should agree with the opinion of N.N. Voplenko, who reasonably indicates that the exclusion of any of the entities responsible for the violation of the law should automatically release them from responsibility for the offense, which in principle is impossible, indicating the artificiality and illegality of excluding individuals from among its subjects.⁶

The proper implementation of legal responsibility is always ensured by the possibility of using state coercion, but not only state bodies, but also citizens, for example, within the framework of civil and labor relations, can and should participate in its implementation. Legality is the *dominant requirement* for the activities of state bodies and their officials, as well as individuals and legal entities involved in the implementation of legal responsibility.

In this regard, it is necessary to find a different distinction between the categories of legality and law and order. The problem is that at the present stage of the development of legal science the notion of legality, as the concept of law and order and the very legal responsibility, characterizes contradictory tendencies. The complexity of its understanding is determined by the fact that it represents an imperative-evaluative phenomenon of legal

⁶ Voplenko N.N. Legality and legal order. - Volgograd: Publishing house of VolSU, 2006. - P. 128.

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life and the corresponding concept. Legality prescribes the need for lawful behavior and simultaneously assesses this behavior through the prism of a legal and illegal, legally correct and incorrect.⁷

So, if the legality of legal responsibility is a principle that introduces certain requirements, then the rule of law is a state of actual organization and order of social relations arising as a result of their regulation by legal norms and the implementation of these norms.⁸

This is the social order that comes as a result of the realization within the society of the requirements of legality. According to his condition, one can judge the state of legality in general, about the extent to which legal regulations are being implemented, whether the state can be considered legal. By virtue of this, legality can be regarded as a link between law and order legislation, as the most important prerequisite for the rule of law, a necessary condition of a law-based state. Meanwhile, the rule of law is the real, complete and consistent implementation of all the requirements of legality, the ideals of the rule of law, above all the real and complete maintenance of human rights.

The rule of law is the rules of law in their implementation, together with specific rights, duties, a network of legal relations corresponding to them. It is this that the rule of law differs from arbitrariness, i.e. such a state of social life, under which laws exist, but are not applied, are not reflected in the relationships of citizens, are not embodied in legal relations.⁹ The principle of legality, expressed in the form of a system of political and

⁷Voplenko N.N. Order no. - P. 95.

⁸ Ioffe OS, Shargorodsky, MD, Problems of the Theory of Law. - Moscow: Yur. Literature, 1961. - P. 293; Kecheyan S.F. Legal relations in a socialist society. - M: Ed. AN SSSR, 1958. - P. 30.

⁹ See Ivanov A.A. Offense and legal liability. Theory and legislative practice. - M.: 2004. - P. 72

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legal requirements, at the level of law and order objectively materializes in the system of real legal relations, in the activities of entities authorized to participate in the implementation of legal responsibility. The attainment of the rule of law in society is the goal of this activity - and it is precisely so necessary to consider the difference between these concepts.

We should consider the principle of the legality of legal responsibility not as an abstract idea, but, first of all, as a real requirement that extends to the actions of all state bodies and officials, individuals and legal entities. This principle is addressed directly to the legislator and requires him to establish measures of legal responsibility only for those acts that, according to their objective properties, are socially harmful or dangerous, are contrary to the nature of law, to the values of society. The practical manifestation of legality is that the violated rights and freedoms of specific subjects of law are restored, the process of fulfilling duties is being established.

Legality, as a principle of activity of state bodies and their officials, is called upon, ultimately, to ensure the security of the individual and to protect society from socially dangerous manifestations, including by representatives of state authorities. This determines its role in the process of the origin and implementation of the institution of legal responsibility.

In this regard, at the present time the legality of legal liability must be considered in the quality of its components: as a strict requirement of observance of laws and other normative legal acts and as a result, contributing to the creation of certain values, for example, law and order, lawful behavior in society.¹⁰

¹⁰ Prosandeev D.V. Effectiveness of the right-realization process. Diss ... Cand. Jur. sciences. - RnD. : 2004. - P. 77

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Being content by the general legal principle and accumulating in itself the most important socio-political principles, legality must necessarily be duplicated in the system of principles of legal responsibility and law enforcement as a whole. Through this, from a declarative and to some extent an abstract legal idea, it turns into a reality that requires rigorous execution.

The principle of legality in a state governed by the rule of law is a fundamental legal idea, manifested in the requirement of strict and unswerving observance and implementation by the state bodies and their officials and other competent subjects of laws in the process of establishing a legal liability and its direct implementation. This principle is an indispensable feature, the basis of the entire field of activity of bodies involved in the implementation of legal responsibility permeates not only the grounds for responsibility, but also the entire process of its implementation.

Thus, in conclusion, it can be said that the fulfillment of the requirements contained in this fundamental legal idea is a necessary condition for establishing the rule of law in the field of the implementation of legal responsibility.