

Sociological Aspects of Legal Irresponsibility and Anomie

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ABSTRACT

The purpose of the research is to define the main characteristics of legal irresponsibility through the social concept of “anomie”. The research focuses on the social relations that are not regulated by social norms to the due degree, including the legal norms, as well as the conflict-based social relations caused by deviant behavior. Dialectic, formal legal, and comparative legal methods were used in the research process. The article offers a review of scientific ideas on the concept of legal irresponsibility and its characteristics based on the concept of anomie. While defining legal irresponsibility as an antipode to positive legal responsibility, the authors emphasize that this notion is not identical to such phenomena as an offense, legal anomie, and legal nihilism. Special attention is given to the institutional level of legal irresponsibility and the characteristics of legal responsibility relevant to the institutional level are analyzed.

Keywords: *legal irresponsibility, anomie, offense, deviant behavior, characteristics of responsibility, positive responsibility*

1. INTRODUCTION

The concept of “legal irresponsibility” is still in the process of being considered and formed in legal science. This concept is mentioned in legal research whether as the irresponsibility of a monarch within a monarchy form of government [1] or as the opposite of holding legally responsible, which means its absolute absence and a lack of any legal characteristics or features [2]. However, there are many researchers who have been actively investigating this topic [3–9]. Moreover, the problem of irresponsibility has been thoroughly studied in other research areas such as philosophy, sociology political science, ethics, and psychology for a long time [10–14]. At the same time, there is no single scientific position on the concepts of anomie and irresponsibility in sociology [15].

A common feature of the above-mentioned research is the definition of irresponsibility through the internal attitude of the subject (connivance and negligence as its extreme form) to regulatory requirements. However, there is no definition offered in the research. Sociology has introduced the term “anomie” that is seen as a social phenomenon characterized by the breakup and weakening of the norms’ influence (the lack of normativity). Durkheim studied anomie through external and internal aspects of this phenomenon. From the external side,

anomie is the subject’s attitude toward norms, while externally anomie is the absence of norms and standards that the subject can compare his or her behavior with [14].

This approach was later developed by Robert Merton who introduced the concept of “deviant behavior”. Merton’s understanding of anomie includes the vagueness and instability of regulatory requirements, their minor influence on behavior, a complete or partial lack of normative regulation [16].

From this point of view, anomie is quite similar to legal irresponsibility. However, the two concepts are not identical for a number of reasons. Firstly, anomie as a sociological term covers a full range of norms (not only the legal ones). Secondly, anomie as a mass phenomenon characterizes a special condition of society at a transition stage and is not caused by the lack of legal regulation.

2. MATERIALS AND METHODS

The authors based their research on a number of important methodological statements that made it possible to identify the characteristics of legal irresponsibility as a phenomenon opposite to the phenomenon of legal responsibility. Firstly, legal responsibility is integrated, norm-based, institutional and it has different forms (aspects) of implementation: positive and negative ones. Secondly, it is based on the state persuasion, coercion, and

encouragement, whereas legal behavior serves as the reason for its implementation. Thirdly, it has the following characteristics: formal definiteness, clarity, and specification, as well as its generally binding nature. The consequences of the implementation of responsibility are encouragement, approval, or punishment. The dialectic method of scientific cognition was used in the research to analyze the subject in an integrated way, in its development, unity, and contradictions. The methodology of paired legal categories was applied as the characteristics of legal irresponsibility are defined as the opposite of the characteristics of positive legal responsibility. Legal structures were analyzed based on the formal legal method of research.

3. RESULTS

By now, a completely new generation of Russians has already emerged and may still be forming. That generation can be characterized by relaxed moral norms, legal irresponsibility, intolerance, aggressiveness, all-or-nothing mentality, ignorance, pragmatism, egocentrism, disrespect for the older generations, and a tendency to act in a radical way. Whether we like it or not, under current social conditions in Russia, the youths may be a potential breeding ground of extremism and terrorism, and not necessarily of morality and integrity as we would like to. There are many reasons for legal irresponsibility and anomie.

1. Legal nihilism and legalism of the authorities themselves. Today, possessing power in the country guarantees a comfortable life and often results in a very high level of legal irresponsibility among public officials and civil servants. On the one hand, officials frequently break laws, however, the punishment for their violations or crimes turns out to be negligible and, as a rule, does not entail any serious consequences, such as life sentence, etc. On the other hand, the authorities almost always think that the key to solving any social issue is simply a missing legal rule (or institution/organization), the lack of which prevents the entire system from functioning correctly. Thus, they merely focus on updating the existing rules and regulations. The decision-makers seem to be unaware that the problem is not about the norms per se. Rather, the main issue lies in the actual implementation of those norms, since it is legal awareness and mentality, not words, that determine behavior. Therefore, in fact, the solution does not lie in establishing another public agency, which the authorities can always justify, and not in revamping existing regulations, which happened when the Russian authorities introduced a new Police Law that essentially changed nothing but the titles. The only solution may be to fundamentally change social relations between conflicting parties and/or create the conditions and procedures that ensure strict compliance with the law. And legal regulations, except in a few rare situations, should not be viewed as an actual way of changing reality, but rather a form of consolidating dynamic relationships as well as

reflecting the needs of society for security and development.

However, adults often instill such unnecessary legalism into the minds of children. Such parents believe that children must obey them not because what they say is reasonable, correct, and can be clearly explained, but because parents see their own instructions as a “source of law” (e.g., “And stop arguing! You will do as I say!”). Formal obedience is perceived as normal and desirable. In this case, during adolescence, as young people become mature, acquire self-awareness, and aspire to control their rights and responsibilities, they typically stop obeying their parents, much to the parents’ disappointment, and start pursuing their own goals. At this period, parental influence typically becomes weak or non-existent. This happens in families with several children as well, since children are always different, even twins. When parents are not flexible enough, they may easily overlook the crucial differences between the personalities of their children.

Another negative example is the creation of public agencies and institutions that adolescents can work in. Through such institutions, older generations can transfer their legalism and formalism to the young. The most common illustration of that process is the modern youth parliaments.

In essence, these public institutions for the young may not be bad. However, most of them are created artificially and tend to be highly manipulated. Their activities seem to be not really useful, perhaps even harmful, for immature and malleable young people as well as quite far from actual politics and the practical implementation of policies. Participating in youth parliament elections and taking important positions in them becomes the most interesting and exciting part, if not the ultimate goal, to young people, which includes various political games, presentations of the programs, and forming coalitions and alliances. The rest of the political process seems unnecessary, superfluous, and boring to young people.

Such political games have nothing to do with the creation of a mindset that values political and legal responsibility. At the same time, they can be very dangerous in that they may promote a cynical attitude toward the voters and create a superficial perception of politics, as well as forming the habit of manipulating public consciousness. That is aggravated by the fact that young people lack experience and a clear understanding of how to manage society effectively.

2. The second reason for the low level of compliance with legal regulations among the public is a lack of sufficient knowledge in social sciences in the post-soviet society. Nowadays, school leavers are hardly aware of how political system in Russia (including the president, legislative and executive branches) actually works in practice, as opposed to how it is supposed to function in theory. A brief description in the textbook is not enough, besides, students lack personal experience. That creates unreasonable beliefs and the unwillingness to act in a responsible way. Meanwhile, many countries with strong democracies established some effective mechanisms that

allow young people to gain valuable practical experience on their way to adulthood. For example, in Germany, it is quite difficult to find a successful public official or civil servant who did not have any prior experience in a charitable organization or a non-profit institution. By today's standards, it is a mandatory part of a portfolio or CV (resume) in developed countries.

In Russia, however, senior officials are unable to realize the importance of this issue. For example, when the President of Russia talks about modernization, he never covers social or cultural aspects, focusing only on projects in science and technology. Thus, without any clear top-down strategy in this area, it is up to the representatives of the social sphere to look for solutions and justify the relevance of social and cultural modernization. In addition, we should not forget that without sufficient knowledge in social sciences and maturity of society, technology may become a dangerous tool, just like the atomic energy, which can be used either as a source of electricity or as a lethal weapon.

3. Finally, the third reason, which naturally stems from the second one, is the fact that in Russia, modern social and educational technologies and methods are still not widespread. They may facilitate the learning process and contribute to the formation of a creative mentality and critical thinking, which does not rely on dogmas enshrined in the paragraphs of the textbook.

Let us look at the legal science research to identify characteristics that distinguish legal irresponsibility from similar categories.

For instance, Bondarev A.S. believes that irresponsibility of the legal subject is expressed externally in unlawful conduct, namely offenses. Therefore, it is a kind of an antipode to legal responsibility. The internal aspect of legal irresponsibility of subjects is expressed "... in a lack of awareness or insufficient awareness of legal requirements set by mandatory and prohibitory norms of law, negligence to them and even in a direct negative legal attitude and the determined direction of one's behavior in an unlawful way [3]. According to the researcher's opinion, irresponsibility is a legal anti-culture that has two aspects: first, its external aspect represented by the unlawful conduct of subjects; secondly, the internal aspect that involves legal prejudices, the subject's unformed legal knowledge that serves as a motive for him or her to carry out unlawful activities [4].

M.M. Brinchuk defines irresponsibility as a legal category that is, on one hand, the reverse side of legal responsibility and, on the other hand, it represents nonfulfillment of obligations and comes down to latent offenses [2]. V.N. Borkov considers the phenomenon of legal irresponsibility as applied to the liberalization of responsibility for economic offenses and the escape from the responsibility of corrupt officials [8]. S.B. Polyakov associates the concept of legal irresponsibility with a lack of sanctions and a mechanism for their implementation [9]. N.A. Bobrova considers the concept of "positive responsibility of the top state authorities" [6].

If we go back to the etymological sources of the "irresponsibility" concept, the only word we can find in

dictionaries, e.g. in the Ushakov dictionary, is "irresponsible" that means the one that "does not bear responsibility; is not restrained by the awareness of one's guilt". It is certainly impossible to design a definition of a legal term based on one etymological meaning, however, it should be taken into consideration. Moreover, the generic term "irresponsibility" (developed in philosophy and sociology) should also be considered [17]. Thus, a common characteristic inherent in this category, including legal irresponsibility, is the lack of legal responsibility. The analysis of this characteristic (the lack of responsibility) should be started not with the escape from responsibility or the implementation of sanctions but with the existence of normativity. By nature, legal responsibility is normative and is expressed through the existing system of legal norms. Therefore, the first sign of legal irresponsibility is the lack of legal norms that regulate legal responsibility. It is worth mentioning that this feature makes the term "legal irresponsibility" closer to the concept of "legal anomie". The latter has already been used in legal sciences (criminology, criminal law) to explain legal nihilism in the marginal behavior of the subject from the internal (psychological) point of view. In classical understanding, "anomie" is the lack or violation of the rules of behavior and their internal rejection by the majority of society (process).

As Russian law belongs to the Romano-Germanic legal system, Russian legal science tends to have clear, formalized structures. Therefore, such vagueness in definitions of legal phenomena is unacceptable. Therefore, for this research, it is worth dividing all characteristics of legal irresponsibility into three groups: 1) institutional ones conditioned by the nature of the legal institution; 2) law implementation characteristics associated with individual and collective legal awareness; 3) those conditioned by offense or abuse of right.

Institutional characteristics include those that are united within the framework of normativity, which is considered not only as the existence or absence of the system of norms but also as the social development law, which is understood as the need for the normative regulation of social relations. The institutional characteristics include the lack of norms for the regulation of the acts that represent social danger; the existence of norms along with the lack of a mechanism for their implementation (manifestation); redundancy of normativity that is expressed in over-regulation of the legal process that excludes actual bringing to responsibility; the discrepancy between the imposed sanctions and the degree of social danger of the act; the existence of legally enshrined opportunities to escape legal responsibility as well as the fixation of the values alien to the Russian mentality, and therefore doomed to rejection by society, in the legal norms.

The presence of law implementation characteristics of legal irresponsibility allowed us to distinguish them from the institutional characteristics. The analysis of the forms of law implementation in the legal responsibility context shows that violating prohibitions, not meeting obligations or abuse of law, on one hand, is the demonstration of the

subject's irresponsible psychological attitude to orders and directions (internal aspect) and, on the other hand, a conflict with the existing system of values (external factors). There is (must be) legal responsibility for violating prohibitions, not meeting obligations and abuse of law but only in case of efficient law implementation. The lack of the latter can result in actual legal irresponsibility that should be distinguished from formal legal responsibility.

There are different reasons for not bringing the subject to legal responsibility. Firstly, it can happen because of the crimes committed by an authorized subject (negligence, bribe, other abuse of powers by officials). Secondly, the criminal's high status implies a high level of professionalism or, on the contrary, law enforcement officials have a low professional level. These factors can considerably complicate the detection of a crime and the exposure of a guilty person. Moreover, it can result in an actual escape of the subject from legal responsibility. The consequences of the officials' corrupt activity include whether an escape of the guilty from legal responsibility or imposing the punishment inadequate to the committed offense and the offender's personality.

An offense is considered to be one of the forms of legal irresponsibility in research papers covering the topic [7]. This looks quite controversial because, according to most authors, punishability is one of the main characteristics of an offence or, in other words, a formal existence (provision) of legal responsibility.

One can agree that from the general social point of view offense is an act of irresponsible behavior. However, when considering offense and legal irresponsibility as legal categories, it is worth mentioning the essential differences between them in legal characteristics. From a legal point of view, it is unacceptable to equate offense and irresponsibility. Offense breaks a normal social bond in which positive legal responsibility is implemented. If an offender undergoes punishment or voluntarily compensates for the damage caused by the offense, his or her actions cannot be considered irresponsible. One can talk about legal irresponsibility at the level of offense only in regard to a specific unlawful act. It is also worth reminding that guilt (the internal mental attitude of the subject to the act and its consequences) is one of the characteristics of offense. The subject's negative attitude to the values existing in society reveals itself here and is characterized by legal irresponsibility. These values are formalized in such legal norms as life, freedom, property, etc. Thus, guilt is one of the characteristics of legal responsibility that is expressed in legal awareness, and we imply an internal aspect (mental and legal) when talking about a legally irresponsible attitude.

4. CONCLUSION

Legal irresponsibility at the institutional level is the lack of norms for regulation of the acts that represent social danger; the lack of norms for the regulation of the acts that represent social danger; the existence of norms along with

the lack of a mechanism for their implementation (manifestation); the redundancy of normativity that is expressed in over-regulation of the legal process that excludes actual bringing to responsibility; the discrepancy between the imposed sanctions and the degree of social danger of the act; the existence of legally enshrined opportunities to escape legal responsibility as well as the fixation of the values alien to the Russian mentality, and therefore doomed to rejection by society, in the legal norms.

Legal irresponsibility is not identical to such concepts as "offense", "legal nihilism", "legal anomie". There must be legal responsibility for violating prohibitions, not meeting obligations and abuse of law but only in case of efficient law implementation. The lack of the latter can result in actual legal irresponsibility that should be distinguished from formal legal responsibility.

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