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FEATURES OF DIFFERENTIATION OF LEGAL LIABILITY IN CIVIL AND CRIMINAL LAW

***Abstract:** the article discusses the controversial aspects of the implementation of the principle of differentiation of legal responsibility, including in the field of civil and criminal law, the authors consider the problems of intersectoral differentiation, the importance of optimal use of differentiating regulatory mechanisms for the implementation of the principle of justice in civil and criminal law.*

***Keywords:** civil law, criminal law, legal responsibility, differentiation of responsibility, intersectoral, grounds for differentiation.*

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ОСОБЕННОСТИ ДИФФЕРЕНЦИАЦИИ ЮРИДИЧЕСКОЙ ОТВЕТСТВЕННОСТИ В ГРАЖДАНСКОМ И УГОЛОВНОМ ПРАВЕ

***Аннотация:** в статье рассматриваются дискуссионные аспекты реализации принципа дифференциации юридической ответственности, в том числе в сфере гражданского и уголовного законодательства, авторы рассматривают проблемы межотраслевой дифференциации, значение оптимального*

использования дифференцирующих нормативных механизмов для реализации принципа справедливости в гражданском и уголовном праве.

Ключевые слова: *гражданское право, уголовное право, юридическая ответственность, дифференциация ответственности, межотраслевая дифференциация, основания дифференциации.*

Differentiation of legal responsibility is an objective process of modernization of modern Russian law, the development of legislation, due to the dynamics of social development, and represents the division of legal responsibility as a legal phenomenon into its constituent independent types, depending on the objective criteria (grounds) of such a division. Differentiation of responsibility in modern normative construction is the most important direction of legal thought, which allows determining what kind and to what extent a person is subject to legal responsibility for a committed offense (tort). Differentiation of legal liability is understood as the establishment in the law of its various types (forms) «depending on the most typical properties that characterize in a generalized form various groups of offenses» [1, p. 76].

Depending on the scope of legal regulation, the following types of differentiation are distinguished (division of types of differentiation «vertically»):

1) international (interstate);

2) general legal;

3) intersectoral (for example, liability for copyright infringement is provided for by civil, administrative, criminal legislation. Liability for violation of contractual obligations, depending on its typical degree of public danger, can also be provided for not only by civil, but also by administrative, criminal legislation);

4) sectoral (differentiation within administrative, criminal legislation. Thus, the public danger of an attempted crime, as a general rule, is higher than the public danger of a completed crime. A striking example of the differentiation of civil liability is additional liability measures for violation of consumer rights);

5) at the level of any branch institution (for example, differentiation of responsibility of accomplices of a crime);

6) within the group of norms (allocation of privileged compositions, differentiation of various forms of theft);

7) within the limits of a separate rule of law (allocation of qualifying features, special grounds for exemption from criminal liability) [2, p. 77].

Scientists attribute a wide range of factors to the grounds for differentiation of responsibility: the nature and degree of public danger of the act, the characteristics of the perpetrator, forms of guilt, mitigating and aggravating circumstances, etc[3] As S.D. Brazhnik and R.Y. Smirnov rightly note, the definition of the grounds for differentiation of criminal responsibility contributes to the construction of a clear and consistent system of normative differentiation (separation) of responsibility in criminal law. Scientists regret that the division criterion often has to be determined a second time, that is, based on the division that has already taken place [1, p. 77].

We are close to the position according to which the basis for the differentiation of criminal responsibility is the nature and typical degree of public danger of the crime. Also, a certain role in the differentiation of criminal responsibility is played by the typical characteristic of the personality of the perpetrator.

The legislator carries out the differentiation of criminal responsibility with the help of means. L.L. Kruglikov points out that in a broad sense, a means is everything that contributes to the achievement of the goal, that is, separation, gradation, stratification of criminal responsibility (differentiation). The means of differentiating criminal liability permeate the Criminal Code almost completely. It is important to divide the funds into those in the General and Special parts of the Criminal Code.

The means of differentiating criminal responsibility in the General part are the institutions of plurality (recidivism), stages of crime (preparation and attempt), complicity, mitigating and aggravating circumstances, exemption from criminal liability and punishment, categories of crimes, etc. In a special part, the means of differentiation include sections and chapters of the Criminal Code of the Russian Federation, general and special compositions, qualified and privileged compositions, special types of exemption.

A.V. Vasilevsky identifies not only the means, but also the circumstances of differentiation of criminal responsibility, which are understood as the conditions for the use of means of differentiation set out in the law (for example, qualified elements of a crime belong to the means of differentiation, and qualifying signs belong to the circumstances).

The differentiation of civil law regulation is due to the existing qualitative features of certain groups of public relations that make up the subject of civil law. These features are taken into account during the modeling of civil legal relations by the relevant norms, which are objectively divided into separate sub-sectors and institutions of the civil law industry. In the mechanism of civil law regulation, it is the dynamically developing civil legal relationship that occupies a central place, since the very purpose of such regulation – the ordering of property turnover – is achieved due to the exercise of subjective civil rights and civil obligations that make up the content of legal relations. As for the civil legal personality being realized at the same time, as well as civil law norms and civil law facts, they create the necessary prerequisites for the deployment of a civil legal relationship [4].

It should be clarified that the differentiation of civil law regulation can be traced primarily at the level of civil legal relations, the identification of specific features of which allows mainly to reveal the essence of the considered method of the civil method. The final knowledge of this essence is connected with the study of the imperative prohibition, which is an auxiliary and at the same time an obligatory element of the sectoral regime. Thus, the differentiation of civil law regulation is a technique of the civil method, expressed in the formation of legal regimes of certain types of civil legal relations, as well as an imperative prohibition, within the framework of the general sectoral regime [4; 5].

Thus, one of the most important principles of law and at the same time the direction of legislative policy within the framework of improving national legislation is the differentiation of legal responsibility, which is a gradation, the choice of various legal measures depending on the nature and degree of public danger of the offense in order to ensure the constitutional principle of justice.

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