

**FaR 2021****International Forum “Freedom and responsibility in pivotal times”****CATEGORIES OF RESPONSIBILITY IN THE SYSTEM OF  
LOCAL SELF-GOVERNMENT**

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**Abstract**

In almost all countries of the world, local self-government is traditionally the element of public authority closest to the population of a particular municipality. The history of Russia since the formation of the Russian centralized state counts down the centuries-old history of the zemstvo. The revolutionary events of 1917 led to a radical change in the organization of public power at its «grassroots» level. Consideration of the issue of categories of responsibility of local self-government in the USSR to the population, state, society was mainly of theoretical interest. After the end of the existence of the Soviet Union, the authorities of the RSFSR, and subsequently Russia, faced the task of constructing new power-public institutions «from top to bottom». The Constitution of the Russian Federation adopted in 1993 not only consolidated the concept of local self-government, but also separated it from the institutions of state power. At the same time, one hundred local self-government bodies are fully included in the unified system of public authority in the Russian Federation. The vesting of local government with public law powers could not but entail consideration of the issue of defining and securing the categories of responsibility of the relevant municipal authorities and their officials. The article is devoted to the analysis of certain categories of responsibility of local self-government bodies in the Russian Federation, determination of the content of municipal legal responsibility, consideration of certain aspects of administrative and criminal responsibility in the system of local self-government.

2357-1330 © 2022 Published by European Publisher.

*Keywords:* Responsibility, local government, municipal employee, official, categories



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## 1. Introduction

Local self-government in the Russian Federation is currently a system-forming element of the unified system of public power in the country, which is directly enshrined in the Constitution of Russia. The fact that municipal bodies and their officials have a set of rights and obligations presupposes the obligatory existence of the responsibility of the indicated power institution. Municipal legal responsibility, realized in both its guises – positive and negative (retrospective), serves as a reliable guarantee of protecting the rights of the population of the municipality, the state, individuals and legal entities from arbitrariness and dishonest performance of their duties both by the municipality itself and by its officials.

## 2. Problem Statement

While studying possible ways to improve various categories of municipal and legal responsibility of local governments and their officials, we believe that in order to achieve full and objective results of such a study, we need to consistently formulate and solve a number of problematic issues.

1. It is necessary, on the basis of a critical study of history and modern approaches to the concept and content of the terms «category» and «responsibility», to determine their content in relation to local governments and their officials in the Russian Federation.

2. It is necessary to determine the most optimal content of municipal and legal responsibility of local self-government bodies, municipal employees and other employees of municipal authorities. Justification is required by the issue of determining the boundaries of municipal legal responsibility, both in the circle of its subjects, and in torts that give rise to one or another category of responsibility.

3. It is necessary to formulate and objectify the author's vision of the most optimal ways to increase the effectiveness and efficiency of the positive and negative manifestation of legal responsibility in the local self-government system. Such categories as administrative and criminal liability deserve special attention.

## 3. Research Questions

Under the subject studied in this brief study, we consider, first of all, the current norms of Russian federal legislative acts regulating the responsibility of local governments and their officials.

3.1. The Constitution of the Russian Federation (adopted by a popular vote on 12.12.1993 with amendments approved during a nationwide vote on 01.07.2020).

3.2. Federal Law of October 6, 2003 N 131-FZ «On the General Principles of Organization of Local Self-Government in the Russian Federation».

3.3. The Criminal Code of the Russian Federation of 13.06.1996 N 63-FZ.

3.4. Code of the Russian Federation on Administrative Offenses of 30.12.2001 N 195-FZ.

#### **4. Purpose of the Study**

As the goal of this study, we consider it necessary to consolidate the analysis of the current state of the institution of responsibility of local self-government bodies and its categories. It provides for the study of the concept and content of the category of municipal legal responsibility of local governments and their officials, the content of administrative and criminal liability as independent categories of municipal legal responsibility.

#### **5. Research Methods**

The methodological basis for the study of problematic issues of the categories of responsibility of local self-government bodies were general scientific, logical, comparative legal methods.

The development of proposals for the possible improvement of the municipal legal responsibility of local governments and their officials was carried out using private scientific methods of induction and deduction, the method of long-term planning.

#### **6. Findings**

The history of local (municipal) self-government bodies has a long history. In countries that have not experienced «building socialism in one separate state» (Lenin, 1915), the institutions of local government have been progressively developing. In the Soviet Union, the country of victorious socialism, with all the external formation and efficiency of local councils and regional executive committees, real power in the territory of the RSFSR belonged to the district committees of the CPSU, and in the territories of the union republics – to the district committees of the communist parties of the corresponding republics.

After the collapse of the Soviet Union in 1991, the RSFSR, and later the Russian Federation, faced a more than pressing issue of not only and not so much reformatting the structure of local self-government bodies, defining their rights and responsibilities, but also giving these bodies the status of a body of real power. The corresponding status implies, in addition to the right and the opportunity to exercise power powers in the territory of the municipality, receive revenues to the local budget, etc., also the responsibility of the municipal authority, its officials for violation of legal prescriptions fixed in legislative and subordinate normative legal acts.

The fundamental ideas that determine the organization of local self-government in the Russian Federation are enshrined by the Russian legislator in the corresponding federal law. Our scientific interest is caused by the content of Ch. 10 of this legislative act, which contains the norms defining the grounds and procedure for the responsibility of local government bodies and their officials before the residents of the corresponding municipality, the state, as well as individuals and organizations. It should be noted that the law does not contain a direct definition of «responsibility of local self-government bodies». Article 70 actually bears a reference character, since in order to resolve the issue of the responsibility of the municipality and its officials, it refers the authorized law enforcement officer to the norms of other legislative acts. Also, the federal law on the general principles of local self-government in the Russian Federation actually leaves the issue of categories of possible liability without legislative consolidation.

For the first time in scientific circulation the concept of «category» was introduced by Aristotle (1978) in the essay of the same name. In his understanding, the categories should be understood as the basic concepts of philosophical science, reflecting the most significant, related to everything, properties and relationships of the phenomena of the environment and the process of cognition. The categories themselves are the result of the generalization of the genesis of the process of cognition (Aristotle, 1978).

The views of the German philosopher I. Kant are quite interesting in relation to the content side of the concept of «category». As Uleman (2010) notes, in the understanding of I. Kant, a category is an intellectual concept attributed to the category of innate, reflecting the essence of the objects, phenomena and processes under study. By means of categories, Kant argued, the human brain carries out its intellectual activity, classifying and systematizing its initial chaotic sensations from the surrounding reality. It is through categories that, in principle, any systematized and ordered intellectual and mental activity of a thinking individual becomes possible (p. 189).

Based on these interpretations, taking them as a certain basis, we believe it is necessary to consider the content of the concepts of «responsibility» and «criterion of responsibility».

In modern science, the concept of «responsibility» can be attributed to the category of «interdisciplinary». It is an object of study not only of philosophy, sociology and jurisprudence, but other branches of scientific knowledge, such as psychology. In particular, from the point of view of modern philosophy, responsibility must be considered as a certain kind of state of dependence of an individual or social group on some material, spiritual, social object or phenomenon, which is felt by the indicated individual not only in retrospect, but also in a positive way. For an individual or social group, this relationship of dependence is decisive for making certain decisions that entail diverse consequences, for the actual implementation of certain actions aimed at maintaining the current state of affairs, as well as for changing and scrapping them. According to representatives of philosophical thought, not only specific individuals and the social groups formed by them, but also future (not yet born) generations of people, their social associations and even representatives of the animal world and abstract spiritual phenomena that are significant for society (Kondrashov et al., 2008).

From the standpoint of pedagogical science, responsibility is perceived as a definite quality inherent in a person's personality, bearing a positive connotation, which characterizes this person from the spiritual and moral side. In this vein, responsibility is manifested not only by the potential ability, but also by the actual readiness of the individual, the object of pedagogical influence, to be under the control of a hundred other persons, society and the state, to give an account of the actions taken and the result that has come (Bezrukova, 1992).

Approaching the concept of «responsibility» from a legal point of view, Chernyavsky (2015) talked about the objective nature of the institution of responsibility in general and its legal component in particular. The institution of legal responsibility is not speculative, it finds its practical embodiment in the norms of legislative and subordinate normative legal acts. In addition, responsibility can manifest itself, according to the scientist, both negatively and positively in terms of its implementation.

The definition of the notion «responsibility» is also given by Abulkhanova-Slavskaya (1991). She proposes to consider as this category based on the individual expression of will, without any external interference «implementation of necessity». It is noteworthy that the scientist leaves the boundaries of such

an implementation, as well as its external expression (forms) at the mercy of the subject himself. The individual himself mentally creates an ideal model, sets its perimeter, degree of complexity, etc., and then also independently implements it in a practical plane.

Using the term «categories of responsibility», almost all researchers do not give its decoding. In the typical understanding, it is perceived as a synonym or so close to the concept of «types of responsibility» that it is used by the authors as interchangeable terms (Sorokin, 2018).

We have given a far from complete range of scientific views on the nature and content of the institution of responsibility. At the same time, given that both the representative and executive bodies of local self-government perform the functions of public authority (although, according to the Constitution of the Russian Federation, they are not included in the system of public authorities), we consider it necessary in our study to focus on the legal component of responsibility.

In Russian legal science, it is a well-established consideration of legal responsibility as a combination of its two obligatory system-forming elements - positive and negative responsibility. Each of the elements is required. For local self-government, performing the functions of public authority, the presence of both categories of responsibility acts as one of the guarantees of the normal performance of the rights and obligations assigned to the municipality. Positive legal responsibility in the local self-government system presupposes the voluntary, conscious observance and fulfillment by the officials of the municipality of the duties assigned to them, provided not only by legal norms, but also by social rules, moral precepts and local traditions. It requires municipal employees and local government employees to be aware of their responsibilities to the population of the municipality, the state, organizations, etc. (Zakharov, 2018). As Kushkhova (2009b) believes, it is positive legal responsibility that should be positioned as a priority incentive for all employees of local government in the full and effective performance of their public administrative functions.

Negative or otherwise called retrospective legal liability in the most general sense implies the obligation of the subject, who has violated the regulations and prohibitions established for him, to give an account of his inappropriate, illegal behavior and to suffer adverse consequences provided for by the sanctions of the relevant legal norms. Thus, if positive legal responsibility stimulates the subject to properly perform his duties in the local self-government system, then for the onset of negative responsibility the fact of violation of established rules and a list of adverse consequences enshrined in social norms (including, first of all, legal norms) are required to be applied to the offender. Positive responsibility is aimed at the future, while negative (retrospective) one refers to actual facts of tort behavior.

The Constitution of Russia in Part 3 of Art. 132 directly establishes the belonging of municipal bodies to the unified system of public authority operating in the territory of the Russian Federation. Based on this constitutional provision, it can be argued about the public-legal nature of the legal responsibility of local governments. As a justification for this conclusion, we consider it possible to refer to both the Basic Law of the State and the norms of municipal law.

Recognizing the existence and validity of the constitutional and legal responsibility of state and municipal public authorities, Mustafin (2020) considers it possible to talk about its specific component - the municipal and legal responsibility of local self-government bodies. Earlier, Kushkhova (2009a) made an attempt to substantiate the need to identify as an independent element of constitutional and legal

responsibility such a part of it as responsibility of a municipal legal nature, inherent in municipal bodies and their officials. It is the municipal legal responsibility that predetermines the possibility and obligatory application of such classical categories of legal responsibility to the bodies and officials of local self-government as civil, disciplinary, administrative and criminal.

The category of municipal legal responsibility in its retrospective component is a normatively fixed set of negative consequences that must inevitably occur when the relevant local government bodies, municipal employees, and other employees of the municipal body deviate from the requirements and legal prescriptions that regulate them publicly legal activity. From this position, we can formulate two conclusions:

- the subjects of municipal legal responsibility can be persons directly involved in the execution of their public legal powers by the local government - the local government itself, its officials, as well as persons who do not have the status of a municipal employee, but perform public functions in the respective municipality,

- the onset of municipal legal responsibility for these individuals and legal entities is possible only if socially harmful consequences occur in connection with the implementation of public law functions of a local government body as an element of a unified system of public authority in the Russian Federation.

The scope of the article does not allow for an in-depth analysis of all categories that, in their totality, form the municipal and legal responsibility of local self-government bodies. We suppose to dwell on the consideration of such of them as administrative and criminal liability.

The normative component of legislative definitions of both administrative offenses and crimes provides for the obligation to enshrine in a codified legislative act (the Code of Administrative Offenses of the Russian Federation and the Criminal Code of the Russian Federation) a prohibited model of behavior, the responsibility for the implementation of which is directly stipulated by the sanctions of the norms of the relevant federal laws. Only that violation by a local government body and its officials of the requirements of the current regulatory array is subject to criminal or administrative liability, which is enshrined in the Special Part of the Administrative Offenses Code of the Russian Federation or the Criminal Code of the Russian Federation. Undoubtedly, in addition to the very unlawful and punishable act, all other elements of the corpus delicti or the corpus delicti of an administrative offense must be identified and proven.

Speaking about the category of administrative responsibility in the local self-government system, it seems to us an interesting list of its subjects. In accordance with the requirements of the Code of the Russian Federation on Administrative Liability in the System of Municipal Public Power, not only officials of this body, but also the local self-government body can be brought to this type of liability. Moreover, bringing the municipality, as a legal entity, to administrative responsibility does not deny the need to bring to the same type of legal responsibility the corresponding municipal employee, whose official powers included the prevention of the facts of tort behavior.

A fairly large volume of administrative offenses committed by the local government and its officials, as Prudnikova (2016) notes, is directly related to violations of the rights of citizens, the responsibility for which is provided for in Ch. 5 of the Administrative Code of the Russian Federation.

In accordance with Art. 19 of the Criminal Code of the Russian Federation in the Russian Federation, only sane individuals who have reached the age provided for by the Criminal Code of the Russian

Federation can be involved. Accordingly, when discussing the criminal category of municipal and legal responsibility of local self-government bodies, we should talk about the criminal responsibility of officials of municipal authorities in the sphere of their execution of public powers. In the current Criminal Code of the Russian Federation, responsibility for committing these criminal offenses is provided for by Ch. 30 of the Criminal Code of the Russian Federation. The greatest negative assessment on the part of the population of the municipality, the state, individuals and legal entities is deserved by crimes related to the category of corruption - bribery and mediation in it, as well as abuse by municipal employees of their official powers and their abuse, negligence, etc. All these acts are punishable in the criminal law order, they not only cause harm calculated in material order, but also, which is undoubtedly more harmful, undermine the confidence among the population of the municipality in the institutions of local self-government and public authorities in general.

## 7. Conclusion

Having analyzed the concept and content of categories, responsibility, such specific forms of its implementation as various categories of municipal and legal responsibility of local governments and their officials, we believe it is possible to outline, in our opinion, the main substantive aspects of the categories of responsibility of local governments, as well as ways to improve legal regulation of various categories of legal responsibility in the field of public law activities of local self-government bodies.

1. In accordance with the Basic Law of Russia, local self-government bodies, their officials are included in the unified system of public authority in the Russian Federation and, accordingly, are affected by all possible categories of constitutional and legal responsibility.

2. The positive component of the legal responsibility of local self-government bodies in the Russian Federation aims and serves as a positively colored guideline for the forthcoming public law activities to protect and ensure the rights, freedoms and legitimate interests of the population of the municipality.

3. The negative (retrospective) component of municipal legal responsibility not only outlines the limits of activities prohibited under the threat of punishment for the municipality and municipal employees, but also stipulates the obligation of violators of legal prohibitions to endure adverse consequences of their illegal behavior.

4. The most destructive, both from the point of view of material consequences for the municipality, and the social status and significance of the local self-government body, is the fact of bringing a municipal employee to criminal responsibility for malfeasance and, above all, for corruption.

5. We believe that a consistent state anti-corruption policy should envisage not only measures to toughen criminal liability for this criminal offense, but also a set of measures to improve the prevention of corruption among officials of local self-government bodies, as the public authority closest to the population in Russia.

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