

Original article

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## The Concept and Implementation of Personal Responsibility: Theoretical and Procedural Aspect (on the Example of Article 113 of the Constitution of the Russian Federation)

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### Abstract

*Introduction:* the article is devoted to theoretical aspects of the implementation of personal responsibility of the Chairman of the Government of the Russian Federation to the President of the Russian Federation. The author analyzes Article 113 of the Constitution of the Russian Federation, as well as norms of the Federal Constitutional Law “On the Government of the Russian Federation” regulating personal responsibility of the Chairman of the Government of the Russian Federation in case of improper execution of his powers. It is noted that personal responsibility arises in the process of carrying out certain activities, within the framework of which a respectful and positive attitude of the subject to this activity is formed in order to achieve a positive result. *Purpose:* to give a theoretical and legal characterization of personal responsibility, as well as consider problematic issues of its implementation. The authors formulate the following research tasks characterizing the logical chain of reflections on personal responsibility and punishment of the Chairman of the Government of the Russian Federation: to consider general issues of personal responsibility of the Government of the Russian Federation; analyze key elements of personal responsibility; characterize the basics for implementing Article 113 of the Constitution of the Russian Federation and identify certain aspects. *Methods:* the methodology is determined by the specifics of the legal regulation of personal responsibility implementation. The article uses a complex of general scientific (dialectical, analysis and synthesis, system-structural approach) and special cognition methods. The formal legal method helps analyze provisions of legal acts regulating the process of implementing personal responsibility. *Results:* Personal responsibility can be realized both in positive and negative aspects. At the same time, there are 2 types: constitutional and legal, and disciplinary responsibility. The author models the process of implementing personal responsibility on the example of bringing the Chairman of the Government of the Russian Federation to legal liability. *Conclusion:* based on the conducted research, it is concluded that there are many unresolved problems of an applied nature in the field under consideration, which do not allow us to talk about effectiveness of personal responsibility. The legislative consolidation of this type of responsibility does not clarify the process of its implementation. It is necessary to actively continue scientific research and legislative initiatives on the analyzed issue, which will improve the quality of public administration.

Keywords: legal liability; constitutional and legal liability; personal responsibility; constitutional law enforcement; illegal behavior.

#### 5.1.1. Theoretical and historical legal sciences.

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#### *Introduction*

In addition to establishing the principles of building constitutionalism in Russia, the text of the Constitution of the Russian Federation also contains articles that directly or indirectly provide for various types of legal liability for some subjects of constitutional and legal relations implementing tasks in the field of state and municipal administration. Undoubtedly, legal liability is still an effective tool in the mechanism of restoring violated rights and freedoms, including in the activities of public officials.

To substantiate the relevance of the presented topic, we would like to mention that it is primarily due to the fact that the issues of establishing and implementing personal responsibility of the Chairman of the Government of the Russian Federation, in particular, to the President of the Russian Federation, are currently poorly studied not only in terms of general theoretical positions, but also in the context of the constitutional law theory. Thus, the concept defining personal responsibility, its elements and formation is not developed. In addition, certain aspects of implementing personal responsibility are not specified, including grounds for bringing the Chairman of the Government of the Russian Federation to this type of liability, as well as forms of its implementation. It is not entirely clear to what kind of liability (constitutional, disciplinary, administrative, etc.) the Chairman of the Government of the Russian Federation may be brought, as well as what punishment will be imposed as a result. And most importantly, how it will affect further work of the Russian Government as a whole. All these issues require scientific understanding and legislative regulation.

Article 113 of the Constitution of the Russian Federation is, perhaps, one of the most controversial in terms of understanding and legislative regulation of the application process (hereinaf-

ter referred to as the Constitution RF). It stipulates personal responsibility of the Chairman of the Government of the Russian Federation to the President of the Russian Federation for the exercise of the powers assigned to the Government of the Russian Federation. It is worth emphasizing that this article was amended during the constitutional reform of 2020 and fixed in the same wording in Part 2 of Article 27 of the Federal Constitutional Law No. 4-FKZ of November 6, 2020 “On the Government of the Russian Federation” (hereinafter FKZ “On the Government of the Russian Federation”).

Since this norm is rather new and has never been applied in practice, its implementation is rather uncertain and requires scientific justification, including from a theoretical standpoint. Let us make a reservation that we had planned to characterize only a procedural component of implementing this type of liability, however, during the study, certain difficulties in understanding personal responsibility as a whole arose. In this connection, within the framework of this article it seems possible for the author to consider theoretical and legal aspects of personal responsibility of the Chairman of the Government of the Russian Federation, as well as construct a theoretical model of the process of applying Article 113 of the Constitution of the Russian Federation.

#### *Describing the essence and features of personal responsibility*

Undoubtedly, the consolidation of various types of legal liability of the Government of the Russian Federation should enhance effectiveness of fulfilled tasks to some extent. Their non-fulfillment presupposes personal responsibility to the President of the Russian Federation. However, it is not entirely clear what is meant by personal responsibility?

The problem is that the concept of personal responsibility is not provided for by Russian

legislation. However, in practice, this is usually understood as the responsibility that a particular subject in a particular area personally bears for non-fulfillment or improper fulfillment of his/her work duties (powers), as well as other violations that may be committed during their execution. In this case, the subject may be brought, in particular, to disciplinary, material, and in some cases, to administrative liability. Nevertheless, it is premature to talk about criminal liability.

In this regard, it seems reasonable to determine general features of personal responsibility. Strengthening of the importance of individual behavior in society is widely discussed in sociology, political science, psychology, economics and a number of other sciences. At the same time, increased conflict in the interaction of interests of the individual and society is emphasized [1, p. 269].

It is worth noting that there are not so many studies in legal science devoted to general issues of establishing and implementing personal responsibility of a subject in the field of public administration. Nevertheless, some publications describe the concept of personal responsibility of the Government of the Russian Federation for a certain field of activity.

As A.V. Yarovoi argues that “personal responsibility of officials arises as a result of their guilty illegal behavior and implies the imposition of negative consequences on them for violating interests of public entities” [2, p. 34]. Under this approach, personal responsibility is perceived as a negative (retrospective) liability, that is, liability for an illegal act committed by the subject.

Some authors come to the conclusion that within the framework of personal responsibility, constitutional and legal liability is of particular importance, since its measures imposed on subjects of constitutional and legal relations that both neutralize the possibility of “improper” behavior and some of its consequences in the implementation of constitutional powers [3, p. 4].

From the above, a certain concept can be traced, according to which personal responsibility is realized as the attitude of a particular person to the state and society for his professional activity.

In this regard, the point of view of A.S. Vershkov is of interest that in modern socio-philosophical knowledge, personal responsibility

exists primarily as a category of ethics and law, which in its essence is associated with the fulfillment of socio-moral and legal norms of behavior in society. It is expressed in ethical concepts of duty and conscience, in a person’s independent, that is, free and conscious, choice of traditional culturally accepted principles of behavior and rules for the practical performance of duties to society, other people and oneself [4, p. 9]. It seems that in this case it is positive personal responsibility, that is, ensuring the subject’s lawful behavior in professional activity.

Summing up, it is possible to assume that personal responsibility arises in the process of carrying out a certain professional activity, within which a respectful and positive attitude of the subject to this activity is formed in order to achieve a positive result. The subject forms an appropriate level of legal culture and legal awareness, which allows him/her to effectively perform assigned tasks. Here we back a point of view of S.B. Tokareva that “personal responsibility is a special kind of consciousness associated with self-restraint. It is the person’s readiness to voluntarily and consciously assume obligations towards other members of society, take care of them, prevent risks, minimize damage from social actions and thus take care of social well-being” [5, p. 45]. Moreover, the structure of personal responsibility, according to D.A. Anufrieva, includes intellectual-cognitive, motivational-affective and activity-behavioral personal education, which combines the basics of motivating, regulating, controlling and executive behavior implemented by a person in various activities [6, p. 11].

Simply put, the establishment of personal responsibility of public officials for the effectiveness of their work means that they are personally responsible for actions (inaction) in the performance of public administration functions. At the same time, the highest levels of personal and professional responsibility are characterized by the person’s willingness to build his/her system of moral guidelines and determine priority addressees of responsibility (to whom and for whom to be responsible and from whom to receive sanctions), but at the same time correlate his/her ethical creativity with existing legal and moral norms [7, p. 39].

In turn, E.I. Pyzhova, considering personal responsibility of a judge, finds out that it can be

defined as an official duty provided for by material legal, procedural and ethical (moral norms) to prevent possible abuse of office due to the presence of a special status of judicial community members and obliging a particular person, in cases of certain circumstances, to report to the competent authority on the guilty act (inaction) in the performance of official duties or in off-duty activities, to be inspected and, in case of negative consequences to bear responsibility in accordance with the law [8, p. 147]. At the same time, the researcher identifies criminal, disciplinary and civil law liability among the types of personal responsibility.

In general, today in legal science scientists single out constitutional and legal responsibility in all its directions (restorative-compensatory and punitive), in the process of which officials are held accountable for committing a constitutional offense [9, p. 174].

According to other approaches, it is parliamentary responsibility of the government, expressed in a certain state of the executive authorities and the government as a whole, which consists in developing a strategy and tactics of the act and discussing it with the parliament. Broadly speaking, the Government of the Russian Federation is responsible to the state and society, which means that it must justify its actions in the eyes of parliament and prove correctness of the decisions taken to public institutions [10, p. 47].

R.S. Markunin believes that the subject of responsibility represented by a public authority, having a certain list of duties and performing them, ensures implementation of positive responsibility. However, when evading their duties or committing an offense, the subject of legal responsibility turns to a negative manifestation, involving elements of a systemic phenomenon in the form of negative measures and procedures for their implementation. Such a transformation takes place within the framework of one system of legal liability of public authorities [11, p. 38].

Based on the above, we can state that personal responsibility of the Chairman of the Government of the Russian Federation can be both positive and negative. R.M. Dzidzoev notes that "in this case, we are talking more about positive responsibility, expressing subordination of relations between the head of state and the head of government. It can turn into legal, constitu-

tional, since the above constitutional wording allows the President to dismiss the Chairman of the Government of the Russian Federation from office without announcing the government's resignation as a whole ..." [12, p. 50].

In addition, in modern scientific research many authors pay more or less attention to the concept of the dominant role of the President of the Russian Federation in relation to the Government of the Russian Federation [13] and mention the possibility of bringing the Chairman of the RF Government to justice by dismissing him from office while implementing personal responsibility [14].

Moreover, the analysis of various points of view and norms of legislation makes it possible to doubt that the President of the Russian Federation can unreasonably dismiss the Chairman of the Government of the Russian Federation from office. For example, the basis for implementing measures of personal responsibility against the Chairman of the Government of the Russian Federation in the form of dismissal from office or disciplinary measures against him is not entirely clear. It is worth noting that the FKZ "On the Government of the Russian Federation" does not fix an exhaustive list of grounds for the dismissal of the Chairman of the Government of the Russian Federation by the President of the Russian Federation, although the meaning of this can be traced throughout the regulatory act. For instance, Part 2 of Article 7 of the FKZ "On the Government of the Russian Federation" grants the President of the Russian Federation the right to dismiss the Chairman of the Government of the Russian Federation.

In general, the Government of the Russian Federation terminates its powers only in the following cases:

- before the newly elected President of the Russian Federation;
- in case of resignation;
- in case the State Duma expresses no confidence in the Government of the Russian Federation or refuses to trust the Government of the Russian Federation.

So, today the Chairman of the Government of the Russian Federation is not entitled to implement measures of personal responsibility against himself, including in connection with the inability to fulfill his duties, as it was before. For example, in accordance with Article 7 of the Federal Constitutional Law No. 2-FKZ

of December 17, 1997 “On the Government of the Russian Federation”, termination of powers was possible at the request of the Chairman of the Government of the Russian Federation on resignation, as well as in case of the inability to exercise his powers.

The history of the Russian statehood development has witnessed numerous government resignations. So, since 1993, the Government of the Russian Federation has been dissolved five times by the President of the Russian Federation (twice in 1998 and 1999, as well as in 2004) and twice resigned voluntarily (2007 and 2020). In other cases, the resignation occurred in connection with the inauguration of the elected head of state (the State Duma of the Russian Federation has never passed a vote of no confidence in the government). Moreover, the reasons for resignations were the desire of the President of the Russian Federation to form a more energetic and effective team to ensure economic recovery and solve social problems by correcting the crisis situation in the economy and social sphere, and determining the course of the country’s development.

We believe that for the moment the legislator did not take into account the practice of government resignations and formalize this procedure in Article 113 of the Constitution of the Russian Federation, but also further complicated its understanding. We find the wording of exercising the responsibility of the Government of the Russian Federation in the Federal Constitutional Law No. 2-FKZ more understandable and logical.

To be fair, we note that in case of improper performance of its powers, the Government of the Russian Federation may initiate the process of implementing measures of constitutional and legal liability in the form of voluntary resignation, which the President of the Russian Federation either accepts or not. So, what kind of personal responsibility are we talking about? As can be seen from the above, there is not a single reason in this list, using which the President of the Russian Federation might dismiss the Chairman of the Government of the Russian Federation for non-fulfillment of his powers, which implies personal responsibility. Unfortunately, this issue remains open for now. Here we cannot but agree with R.S. Markunin’s opinion that disparate and very abstract norms do not allow building a unified system of liability of

public authorities, there is irresponsibility and permissiveness of the above-mentioned subjects [15, p. 53].

Nevertheless, the following key features of personal responsibility can be identified:

- first, the basis is that fact the subject performs his powers improperly or does not perform at all;

- second, it is expressed both in a positive (ensures future lawful behavior of the subject) and in a negative aspect (implemented upon the commission of an illegal act);

- third, it is functionally aimed at the effective implementation of powers of a particular subject;

- fourth, it is formed as a subject’s responsible attitude to the powers performed, etc.

We believe that the President of the Russian Federation may impose measures of constitutional and legal liability or disciplinary liability on the Chairman of the Government of the Russian Federation as part of the personal responsibility implementation. It is more logically follows from the meaning of Article 113 of the Constitution of the Russian Federation.

#### *Implementation of personal responsibility*

Despite the uncertainty of legislative regulation of implementing personal responsibility of the Chairman of the Government of the Russian Federation, it is necessary to bear in mind the fact that, like certain types of legal responsibility, personal responsibility of the Chairman of the Government of the Russian Federation should be exercised in a strictly procedural form and within the framework of appropriate law enforcement relations. The latter can be realized within the framework of constitutional law enforcement.

As mentioned earlier, personal responsibility is positive, which expresses the subordination of relations between the President of the Russian Federation and the Chairman of the Government of the Russian Federation, but under some circumstances it can turn into a negative one.

It seems to us that personal responsibility in retrospect cannot be limited only to measures of constitutional liability, in the form of resignation. In this regard, a logical question arises: what prevents the President of the Russian Federation from correcting further behavior of the Chairman of the Government of the Russian Federation in the exercise of his powers by disciplinary measures? Moreover, in prac-

tice, such liability has already been repeatedly implemented against some members of the Government of the Russian Federation precisely for the unsatisfactory implementation of the instructions of the President of the Russian Federation.

Nevertheless, speaking about the implementation of this type of responsibility, it is worth noting that the subject of the application of Article 113 of the Constitution of the Russian Federation, based on its meaning, is the President of the Russian Federation, since his powers include assessing the quality of activities of the Chairman of the Government of the Russian Federation and identifying shortcomings, and the Chairman of the Government of the Russian Federation is personally responsible to him.

At the same time, it remains unclear what will be the basis for exercising personal responsibility. The commitment of the Chairman of the Government of the Russian Federation of the relevant offense (non-fulfillment or improper fulfillment of his work duties) constitutes grounds for the emergence of relevant law enforcement relations (as it follows from Article 192 of the Labor Code of the Russian Federation). For example, the non-fulfillment of presidential instructions by Government of the Russian Federation leads to a negative result in their activities.

According to the legislation, the basis for exercising the corresponding type of liability may be a resolution of the State Duma of the Russian Federation on the expression of distrust or denial of confidence in the Government of the Russian Federation (Article 35 of the FKZ "On the Government of the Russian Federation"). This fact also gives rise to the realization of responsibility towards the Government of the Russian Federation.

The final stage of the constitutional law enforcement under consideration is to pass a law enforcement verdict and make the interested person aware of it. It can be assumed that the law enforcement act in this process will be a decree of the President of the Russian Federation

on the imposition of appropriate measures of legal liability. We agree that the institution of responsibility of the Chairman of the Government of the Russian Federation is of a procedural character, if the legislative level that the application of liability measures is carried out by a decree of the President of the Russian Federation [12, p. 51].

In this case, punishment may be the following: dismissal from the post of the Chairman of the Government of the Russian Federation, admonition or reprimand.

#### *Conclusion*

The conducted research shows a number of problems of an applied nature in the sphere of personal responsibility of the Chairman of the Government of the Russian Federation. As can be seen from the above, the amendments to Article 113 of the Constitution of the Russian Federation, introduced in 2020, as well as the adoption of the new Federal Constitutional Law "On the Government of the Russian Federation" do not clarify the process of imposing personal responsibility on the Chairman of the Government of the Russian Federation for non-fulfillment or poor-quality performance of their powers. It seems that the wrong meaning is laid down in the regulation of responsibility of the Chairman of the Government of the Russian Federation, which follows from literal interpretation of the norms under consideration.

It is worth mentioning that we cannot consider all aspects of the implementation of personal responsibility of the Chairman of the Government of the Russian Federation within the framework of this article, since it goes beyond the format of the study subject, which indicates the relevance and imperfection of the institution under consideration.

Thus, it is safe to say that scientific research, as well as legislative initiatives on the analyzed issue, should become the basis for strengthening the role of the head of state in the mechanism to implement personal responsibility of the Chairman of the Government of the Russian Federation for the exercise of his powers.

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