

UDC 340.12
DOI: 10.56215/naia-chasopis/4.2024.23

Essence and purpose of preventive and punitive functions of legal liability

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Abstract

The relevance of this general theoretical study is conditioned by the growing number of offences in the country, which indicates problems in society and the state, including the insufficient effectiveness of legal liability, and the need to improve its regulatory framework and proper performance of functions. The study analysed the preventive and punitive functions of legal liability as essential factors of prevention of unlawful behaviour. The purpose of this study was to initiate a scientific discussion on the mechanisms of legal liability's impact on unlawful behaviour, and to determine the possibilities of preventive and punitive functions in terms of preventing unlawful behaviour. The methodological framework of the study was based on formal-logical, systemic, and structural-functional methods employed within the framework of dialectical, phenomenological, and systemic approaches. The study resulted in the hypothesis that the normative model of legal liability (in the objective sense) can only serve as a general prevention of offences. The existence of a legal fact of an offence leads to legal liability in the subjective sense. At this stage, the punitive function is fully realised. Only the interaction of these functions will contribute to the implementation of the tasks of the institution of legal liability, primarily the prevention of offences. Thus, the functions of legal liability are its impact, practical implementation of the purpose which is expressed in establishing the legal limits of a person's conduct by means of its incentives, coercion, or punishment; the key functions are preventive and punitive; the preventive function is aimed at prevention and deterrence of offences, which is achieved by establishing sanctions for their commission; the punitive function covers both the purpose of punishment and education, and is implemented at the individual level by force in a certain procedural form. The practical significance of this study is that law enforcement agencies can use the findings to formulate effective strategies for developing modern political-legal instruments for preventing unlawful behaviour

Keywords:

unlawful behaviour; offence; crime; punishment; prevention

Introduction

The topic of legal liability is one of the most central in modern scientific research. This is caused by the combination of a series of factors that determine the theoretical and practical significance of legal liability for

relevant scientific research and prevention of unlawful behaviour in 2024 and in the following years, and, accordingly, for the stability of public life. In Ukraine, the number of unlawful acts is steadily increasing, which is

Article's History:

Received: 05.08.2024

Revised: 30.10.2024

Accepted: 26.11.2024

Suggest Citation:

Tymoshenko, V. (2024). Essence and purpose of preventive and punitive functions of legal liability. *Law Journal of the National Academy of Internal Affairs*, 14(4), 23-31. doi: 10.56215/naia-chasopis/4.2024.23.

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explained by the substantial complication of political, social, property, financial, and other relations related to fundamental transformations in all spheres of public life in Ukraine, especially corruption, which forces people to look for ways to survive, as well as the war waged by Russia against Ukraine, which has led to new problems for the civilian population. Specifically, a massive number of people from Ukraine are migrating to other countries, mostly European, in search of safety, where they encounter other cultures, languages, traditions, and mentalities. The degree of adaptation in a new place of residence largely determines the behaviour of a forced migrant: law-abiding or criminal. The growing number of offences also raises the issue of legal liability, which is not always enforced against every offender. Impunity gives rise to new crimes, undermines law and order, stability in society, and contributes to human rights violations. It is legal liability that guarantees against lawlessness and arbitrariness, is an effective factor in the system of checks and balances and helps to ensure the exercise of human and civil rights and freedoms. The principal purpose of legal liability is to streamline (regulate) social relations and prevent offences.

The grounds for bringing to legal liability and some of its functions have already been investigated by modern Ukrainian and foreign researchers. Specifically, F. Teichmann *et al.* (2023) considered the role of liability in society, recognising it as an effective means of preventing offences. It is not possible to present all their arguments in the present study, considering its scope and sections. M.E.N. Ninaquispe Soto *et al.* (2021) highlighted the ways of crime prevention and concluded that the use of modern technologies in crime prevention is becoming more frequent and that their wider application can contribute to reducing crime. G. Mahlangu & E. Zsvanai (2023) investigated the technologies of offender rehabilitation and substantiated the conclusion that e-learning should be included in offender rehabilitation programmes. A.M. Rubanenko (2022) examined the essence of legal liability as a structural element of the legal status of foreigners and stateless persons and considered three key approaches to the interpretation of the term “legal liability”, namely: retrospective, positive, and dual-aspect. D. Brown (2019) analysed the role of public sanctions and supervision in punishing an offender, positively assessing them, and emphasising the need for their wider application. X. Guan & T.W. Lo (2021) studied the punishment as a means of deterring people from committing a crime, providing concrete data on the consequences of punishment for the offender and society. I. Polonka (2018) performed the theoretical legal analysis of the stages of development of the mechanism of misconduct. F. Rahmadia (2020) examined the effect of criminal liability on the law-making process, substantiating the opinion that the legislation should recognise corporations as the subject of criminal liability.

The above-mentioned researchers considered certain aspects of legal liability or its individual types. However, the range of issues related to the theory of legal liability, its objectives, and functions is understudied. Specifically, the preventive and punitive functions of legal liability and their impact on the further behaviour of an offender require special research, which is why this study addressed this issue. To this end, it was necessary to characterise the essence of legal liability, to analyse positive and negative legal liability, to investigate the specific features of the preventive and punitive functions of legal liability, and to determine their role in preventing unlawful behaviour, and, accordingly, their significance for society.

The purpose of this article was to initiate a scientific discussion on the mechanisms of legal liability's impact on unlawful behaviour, and to explore the possibilities of preventive and punitive functions in terms of preventing unlawful behaviour.

Materials and Methods

The methodology of this study was based on a dialectical approach which ensured a comprehensive and objective coverage of the phenomena and processes under study, establishment of their characteristic links, assessment of each phenomenon or process from the qualitative and quantitative perspectives, and explanation of the dependence of the form of a phenomenon or process on its essence. This approach helped to explore the essence of the terms “legal liability”, “preventive function of legal liability”, and “punitive function of legal liability”, and to characterise the factors that determine these concepts and their relationship with a variety of social phenomena. The dialectical approach helped to explain the causes of the processes that entail legal liability. This approach assumes that it is impossible to obtain “knowledge of any fact in isolation; what is known must be included in a larger explanatory structure” (Meinwald, 2024).

The phenomenological approach helped to explore the theoretical legal foundations of the causes of offences through their perception by subjects, including those whose legal consciousness has undergone deforming changes, and to determine their subjective attitudes towards the factors that they perceive as unjust and violating their rights. It is phenomenology that allows understanding the purpose of the subject and the consequences of their behaviour for themselves, others, or society overall.

A synergistic approach was also useful, as it was applied to specify trends in the evolution of factors that lead to unlawful behaviour and legal liability. The study identified the principal threats from crime and analysed the effect of legal liability on individuals and society in general. The impact of certain traumatic factors associated with imprisonment on a person's legal consciousness and future life was also highlighted.

The study also adopted a sociological approach to legal phenomena, which involves recognition of the principle of social determinism. This principle requires proceeding from the fact that the entire set of causes, conditions, prerequisites, and grounds of law is located within the social world. Sociological methodology inherently contains the presumption of the priority of the whole over the part, of society over the individual, while law is perceived as a means of ensuring this presumption. In this study, this approach was manifested, for instance, in the analysis of the impact of imprisonment on the further fate of the offender (Tymoshenko, 2024).

The formal logical method was also employed in the analysis of a series of terms. It proved to be useful for clarifying the essence of legal liability, its preventive and punitive functions, etc. This helped to find logical contradictions in the structure of a range of judgements, and as a result, to avoid errors in the conclusions of this study. It was helpful to use the laws of formal logic, especially contradiction, identity, and sufficient grounds, which contributed to the certainty, consistency, and validity of the findings. As a result, new knowledge was gained on the prevention of unlawful behaviour.

When analysing the components of a series of phenomena and processes, the systemic method was applied, which helped to consider the object under study as a whole, rather than a set of its components, to determine the significance of these phenomena and processes for the system as a whole, to trace their functions in the system, and their interconnections. The phenomena and processes under study were considered in relation to the environment against which the system operates. Specifically, the study examined the relationship between crime and punishment, offence and legal liability, and the consequences of imprisonment for a person's future life. It is the connections between the elements of the system that are crucial for the integrity of this system. The systemic method allowed considering the object under study not only in a static form, but also observing the dynamics of its development. Previous studies served as the basis for theoretical constructs. To estimate the number of prisoners, the study used data from Yu. Hayduk (2024) and the Institute for Criminal Policy Research (ICPR), Birkbeck, University of London. Every year, the World Prison Brief publishes a special report ranking the countries of the world by the absolute number of prisoners (Countries with the largest number..., 2024). Empirical data on prisoners' education was taken from studies conducted by UNESCO (2021), F. Morken *et al.* (2021), S Hopkins (2022).

The structural-functional method was also employed, without which it is impossible to investigate the impact of legal liability on the choice of behavioural model by a subject of law. At the same time, this method enabled the study of the autonomous qualities of the object (in this case, the legal consciousness of the offender) in terms of its internal structure and the role

of components in shaping the integral properties of the system. Specifically, this applies to the influence of possible consequences of an offence on the behaviour of a subject of law, the influence of the environment on the individual, and vice versa. This method helped to identify the genetic (diachronic) aspect, which allowed assessing the nature and laws of development of a particular phenomenon. In this way, the behaviour of a person was described depending on their personal characteristics, as well as the features inherent in the environment when certain conditions and circumstances change.

Results and Discussion

Legal liability can be considered as a type and measure of state coercion for a committed offence. At the same time, it is a legal relationship that arises between the competent state authorities and the offender, who is obliged to suffer certain adverse consequences prescribed by the sanction of a legal provision. The content of these legal relations is the state's right to impose and enforce the punishment set out in the sanction of the relevant legal provision, as well as the offender's obligation to suffer adverse consequences for the offence. This is legal responsibility in its negative, retrospective sense. It is this responsibility that is the focus of the present study. Legal liability implies that both parties to legal relations have respective rights and obligations and implements the task of protecting and safeguarding human rights, the existing socio-economic system, and the political regime.

Legal responsibility has a series of features. It is always a form of social responsibility stipulated by the current legislation. It is applied only by specially authorised bodies, is a form of state coercion, leads to adverse consequences for the offender, and is implemented in the form prescribed by the law. Finally, legal liability is a consequence of an offence and a tool for ensuring security.

Legal liability can be exercised not only compulsorily but also voluntarily. The content of the forms of implementation is determined by compliance with obligations or offences, encouragement, approval, punishment, condemnation, and suffering of adverse consequences. In other words, legal responsibility can be positive and negative. Positive legal liability is, arguably, a positive reaction of the state to lawful behaviour. Positive legal liability is based on a legal fact, namely, binding and prohibitive legal provisions that have entered into force. Negative legal liability is retrospective. It is exercised in protection legal relations, the content of which is the right and obligation of the state, represented by authorised bodies, to bring the offender to justice and make them bear the adverse consequences stipulated by the violated rule. Therewith, the deformation of the offender's legal consciousness should be corrected and guidelines for lawful behaviour should be formed.

The positive and negative aspects of legal liability are dialectically interrelated and directly aimed at preventing offences, i.e., it performs a preventive function. Firstly, the effect of negative liability measures is aimed at ensuring its positive manifestation. Secondly, positive manifestations of legal liability are aimed at shaping the future lawful behaviour of a person, where the effect of negative liability is unnecessary. The primary purpose of positive liability is to create an orderly state of social relations. The purpose of preventing offences is achieved through regulation by means of obligations, prohibitions, permissions, and incentives.

Legal liability performs certain functions, which are the key areas of its influence on the behaviour of legal entities, revealing the essence and social purpose of legal liability and ensuring the achievement of its goals. These are the following functions: regulatory, protective, preventive, punitive, educational, and law-restorative (compensatory). Since it is impossible to consider them all within the scope of the present study, let us focus on the preventive and punitive functions which the author of this study considers to be crucial.

The preventive function of legal liability is the area of legal influence of legal liability on the behaviour of subjects of social relations, which aims to prevent offences and to eliminate anti-social behaviour, as well as to narrow the factual and legal possibility of committing a new offence. The term "prevention" comes from the Late Latin *praeventio* – precede, warn; in English, prevention means warning, deterrence. For example, by implementing punishment, the state influences the consciousness of the offender. Moreover, the preventive effect is exerted not only on the offender themselves, but also on others.

The logical structure of the preventive function is as follows: objects, subjects; methods; purpose and outcome of influence. Depending on the subjects and methods of influence, the structure of the preventive function includes individual preventive influence and general preventive influence (general prevention). The ways of exercising the preventive function of legal liability are as follows: establishing obligations to follow the prescriptions of legal provisions; informational influence by the sanction of a legal provision (threat of legal liability); informational influence by the practice of applying legislation on legal liability; implementation of negative sanctions of legal provisions that guide the behaviour of the subject in the required manner or deprive them of the factual and/or legal possibility of committing a new offence. In the case of positive legal liability, the ways of its implementation are as follows: the establishment of legal norms, including incentives; informational influence as a result of lawful behaviour.

The mechanism of influence of the preventive function of legal liability involves two stages. The first stage is from the moment a legal act enters into force. The scheme of this stage is as follows: a legal provision

establishing legal liability; informational influence stemming from the provision; comprehension of the requirements by the subjects of legal liability; lawful behaviour implemented in legal relations. The second stage is implemented in case of an offence committed by a subject. The scheme of its implementation is as follows: offence; obligation to undergo legal restrictions stipulated by the sanction of the violated provision; establishment of the fact of the offence; law enforcement act; and the offender's suffering of consequences. As a result, the offender should lose the desire to commit a new offence.

The primary area of combating unlawful behaviour is defined as the institution of prevention. These are direct and indirect measures taken to reduce, deter, and prevent unlawful behaviour. It can be argued that prevention is, firstly, a purposeful, systematic process that lasts for a certain time; secondly, the activity of all entities with state power and administrative authority that implement measures to influence the object within their jurisdiction. Crime prevention aims to improve the material and spiritual conditions of people's existence before, during, and after crimes are committed to prevent, control, eliminate, and reduce their number. Criminology considers crime from the standpoint of aetiology (identifying causes) and environmental influences. Aetiology is used to investigate the motivations for crime, which are often diverse and cannot be explained by a single theory. Analysing crime from an environmental standpoint involves considering crime as a trade-off between costs and benefits and recognising that people's understanding of the consequences determines their decision to commit or not to commit a crime. Before acting, people evaluate risks, the severity of penalties and rewards. If the rewards outweigh the risks, a person is likely to commit a crime (Hsu *et al.*, 2022).

A generic category that encompasses the content of both prevention and warning could be "prevention". Etymologically, prevention includes a system of general measures for all citizens (i.e., precaution), as well as individual targeted work (warning) and can be considered as a synonym for them. It should be perceived as a generic concept, an independent category of law, characterised by such indicators as generality, universality, and abstraction. The preventive effect applies to all subjects of law, exists in all branches of law, and is implemented by law enforcement agencies within the scope of their duties.

Prevention in legal doctrine is mainly considered in the criminological context. Whereas prevention is used in relation to a wide range of people, warning focuses on the addressee of the warning as a person who is prone to committing crimes and administrative offences. The punitive function of legal liability is a separate area of homogeneous, positive, structurally-organised, and coercive influence of law on the consciousness, will, and behaviour of offenders based on laws and other

legal acts, which, within the framework of regulatory and protective legal relations, is aimed at restoring social justice in the form of retribution for the offence and application of concrete punishment measures to offenders by courts, law enforcement agencies, and other competent authorities, while pursuing the goals of prevention, restoration, and education. The essence of the punitive function lies in the legal restrictions it imposes on offenders.

The legal restrictions that are a punishment for the offender, for the other party usually mean a benefit, which lies in restoration of the violated social relations, compensation for damage, compensation for losses, etc. The logical structure of the punitive function is as follows: objects, subjects (offenders, victims, competent individuals, officials and bodies, witnesses, etc.), methods, purpose, and outcome of influence.

The punitive function of legal liability is characterized by the following features: it is one of the main areas of legal influence of legal liability; it expresses one of the active sides of law, its creative transformative role in the regulation and protection of social relations; it pursues the goal of punishment as the main purpose, and at the same time, additional goals of education, prevention, restoration; it implements state coercion in specific legal restrictions; it has specific methods of implementation; it has a historically variable nature and is conditioned by the patterns of social and economic development.

The punitive function manifests itself as a reaction of society, represented by the state, to the damage caused by the offender. Punishment is always the infliction of moral, personal, and material burdens on the offender, and it is also the self-defence of society. It is implemented both by changing the legal status of the offender by restricting their rights and freedoms and by imposing further obligations on them. In other words, the punitive function is implemented within the framework of regulatory and protective legal relations in a certain procedural form and is externally expressed and consolidated in spoken and documentary acts.

The purpose of punishment, which was promoted by the Enlightenment and established in the second half of the 19th century, is not to torture and suffer the offender, but to prevent the perpetrator from harming society, to deter others from committing crimes (crime prevention) (Beccaria, 1764). Therefore, such punishments and methods of their execution should be applied that, being proportionate to the offence committed, would have the most tangible and lasting impact on the offender and would not cause unnecessary severe physical suffering. Punishment should be understood as humane and necessary to achieve the goals of education, prevention, regulation, and restoration, not revenge. In reality, the purposes and functions of legal responsibility form a complex system comprising two subsystems – the subsystem of functions and the subsystem of purposes. These relatively separate subsystems are

characterised by their internal interaction and interrelationships, which allow achieving the goals of legal liability not in isolation from each other, but only in a system.

The principal purpose of punishment – to prevent the commission of new crimes – can be achieved in various ways. This purpose is facilitated by increasing the length of imprisonment and expanding the possibility of imposing imprisonment for crimes of varying gravity. It is quite problematic to commit a new crime while in prison. However, isolating a person does not eliminate the threat of recidivism after release. Prolonged imprisonment leads to addiction and indifference to the conditions of isolation, and thus criminal punishment loses its educational and preventive value. A new crime is often committed immediately after being released from prison, only to return to the same place – to their familiar environment. It is clear that isolating an offender cannot fully address the issue of public safety.

There are also serious doubts regarding the educational role of prisons. Imprisonment is associated with a considerable number of adverse effects on a person's mental and physical health. The life course of people in prison is characterised by a low level of education. Thus, according to S. Hopkins (2022), an extremely high percentage of offenders in Australia have poor literacy skills, and this can be both a factor in their offending and an obstacle to rehabilitation. The low literacy levels of prisoners are also evidenced by UNESCO (2021) and a series of other empirical studies, as argued in the review article by F. Morken *et al.* (2021). Unemployment, lack of housing, poverty, and trauma – social determinants that negatively affect health – also affect behaviour (Marmot, 2018). Imprisonment is definitely associated with poor health, and after release from prison, a person faces a lot of problems, including health. Prison environments are known to be damaging to mental health, removing people from society and depriving them of meaning in life. The terrible conditions in prisons are often an aggravating factor that leads to post-prison syndrome, which is comparable to post-traumatic stress disorder. Accordingly, many former prisoners suffer from mental health consequences after serving their sentences (Quandt & Jones, 2021).

Imprisonment can be considered a primary stressor, as the experience of imprisonment is stressful in itself (Turney *et al.*, 2012). Even prison staff are profoundly affected by the prison environment, contributing to at least three major problems: bureaucracy, defensive behaviour, and commitment to a punitive culture (Torrente, 2024). Stress process theory argues that imprisonment can potentially generate other stressors, such as poor physical or mental health. Stressors can be coped with in a variety of ways, including engaging in crime or escaping reality through drug use. All this contributes to recidivism (Wallace & Wang, 2020). People with poor health or chronic illnesses may feel that various aspects of daily life are too difficult, which

reduces their ability to engage in daily activities. As a result, they may turn to crime as a way of coping with their problems. Chronic tension contributes to negative emotions such as anger or frustration, which leads to a tendency to relieve tension in deviant ways. In fact, even pre-trial detention, especially on its current scale, is punitive, which is likely to undermine the systemic goals of justice and public safety. It entails the same consequences as punishment (Anderson *et al.*, 2023). According to P. Zawadzki (2024), any “punishment involves the intentional infliction of harm and suffering. Both most famous families of justifications for punishment – retributivism and consequentialism – face several moral problems that are challenging to overcome. Furthermore, the effectiveness of modern methods of criminal punishment in ensuring the safety of society is seriously undermined by empirical research. For a modern and humane society, it is a moral imperative to find alternative means of administering justice”.

The negative consequences of prolonged isolation from society can be observed in the case of people called hikikomori in Japan. Their behaviour is considered a personality disorder akin to autism (Mori, 2020). Hikikomori can be caused by psychological trauma, upbringing deficiencies, etc. Japanese psychiatrists have concluded that this behaviour is not just caused by laziness or fear of communication. In their opinion, hikikomori (people with this disorder) are paralysed by profound social fears, suffer from increased anxiety, and are insecure (Trajtenberg & Ezquerro, 2024).

A great number of people in the world are imprisoned. As of January 2024, El Salvador had the highest prison population in the world, with more than 1,000 people per 100,000 people. Cuba, Rwanda, Turkmenistan, and American Samoa rounded out the top five countries with the largest number of prisoners (Countries with the largest number..., 2024). Ukraine is among the top ten European countries with the largest number of people in prison. As of 1 March 2024, 44,621 people were held in penal institutions and pre-trial detention centres of the State Criminal Executive Service of Ukraine (Hayduk, 2024). After release, these individuals will face a myriad of issues that will impede their social adaptation and will not help to raise their level of legal awareness. This is why many penitentiary systems are increasing the use of non-custodial sentences and replacing the sentence specified in a court verdict with other measures of social restriction (Jouet, 2022).

Since the Enlightenment, a variety of societies, including European ones, have been characterised by liberalisation of penal policy. The implementation of the liberalisation policy in the form of changes to the current criminal and penal legislation, as well as changes to the principles and methods of operation of the penal system, should ultimately lead to minimisation of illegal behaviour in society. The experience of some Western European countries shows that in

terms of the effectiveness of achieving the preventive goals of punishment, imprisonment is inferior to comprehensive social work with a convicted person without isolation from society.

A noteworthy opinion on punishment was expressed by Norwegian criminologist and writer N. Christie (2006). He argued that the overwhelming majority of citizens commit “crimes” in their lives, i.e., what the criminal law means by this term. However, only a few are held accountable for these acts. N. Christie (2006) considered this to be unfair, while at the same time considering the problems of punishment in the context of the global socio-economic crisis that humanity is experiencing. Acknowledging that punishment plays a deterrent role, that without it society is threatened with “chaos”, Christie wrote that an attempt to link the severity of criminal punishment to the crime rate is unfounded, that there is no connection between the severity and number of crimes, on the one hand, and the severity of punishment, on the other hand.

Modern scientific knowledge about the essence of punishment is largely limited to the study of its restorative, compensatory and punitive, correctional, educational, and preventive functions. Criminal sanctions are particularly important for success in combating collective violence. Their role in protecting victims and society in general is constantly growing. As for victims, it is proposed to reorient victim-centred theories of punishment towards consequentialism and the adoption of a broader concept of justice. Consequentialism, the idea that the morality of an act is determined solely by its consequences, is another alternative to retribution. In terms of society, it is argued that in transitional settings, positive general prevention is the primary purpose. For both views, the conclusion is that the interests of victims need to be weighed against the interests of society and that a balanced approach to criminal punishment of offenders is required (Maculan & Gil, 2020).

Some researchers, such as X. Guan & T.W. Lo (2021) from the University of Hong Kong, argue that illegal behaviour can be reduced mainly by ensuring that police and courts treat all citizens fairly and respectfully, rather than by increasing the severity of punishments. It is hard to imagine this idea being implemented in practice. Moreover, the effectiveness of legal liability is manifested not in its cruelty or severity of punishment, but in its inevitability. The essence of the principle of inevitability of liability is that any person whose actions or inaction constitute an offence is subject to punishment or other measures of influence prescribed by law. Punishment is even considered a right of the victim, as well as a means of achieving peace and sustainable development. However, punishment should in no way be recognised as an end in itself, and the victim’s right to justice should not replace the rationale of criminal law as a means of protecting legal values and interests through the preventive function of punishment.

It cannot be argued that the inevitability of punishment is properly implemented in law enforcement practice. The reason for this is the shortcomings of criminal procedure¹ and criminal executive legislation² and the corruption component of law enforcement and the administration of justice, as noted by P. Bogutskyi (2018). Corruption breeds impunity, while impunity always results in new crimes being committed.

Consideration of criminal punishment as mandatory – in line with the principle of fighting impunity – can obscure the fact that victims' needs vary, that criminal law does not always meet them, and that punishment is usually imposed without prior analysis of the objectives of punishment and what can actually be achieved in relation to the individual victim and society. Punishment can become a hindrance if prosecution and punishment, using a purely punitive and maximalist approach, provokes new acts of violence or fails to end ongoing violence, and distances perpetrators from truth and reparation initiatives. In certain cases, the state may hypothetically try to satisfy victims' claims through other mechanisms, such as material and moral reparation, weighing these mechanisms against other goals and needs in search of the best possible solution to achieve the ultimate goal of maintaining social order, i.e., the combination of legitimate interests of society and the individual to be protected.

Conclusions

Therefore, legal liability is a legal obligation of the subjects of legal relations to follow the current legislation, not to abuse subjective rights, and in case of an offence, to be subjected to legally defined measures of state coercion. The nature of liability is determined by the nature of the duty. The purpose of legal liability is to consolidate, regulate, protect, and restore violated social relations, namely: to make them orderly and regulated; to prevent unlawful behaviour; to create conditions for the proper exercise of rights and freedoms; to restore violated property rights and compensate the victim for material and moral damage caused by the offence; to punish offenders and restore justice; and to re-educate offenders. The functions of legal liability involve the practical implementation of its purpose, which is expressed in the establishment of special legal limits to a person's behaviour by means of incentives or coercion. The key functions of legal liability are preventive and

punitive. The specificity of these functions is primarily conditioned by the specific nature of the tasks that are solved with their help.

The measure of legal liability stipulated in the sanctions of legal provisions, without the fact of an offence, has an informational, ideological, and educational impact on subjects, expressed in the message about the punishability of certain types of acts. This manifests the normative model of legal liability (in the objective sense), which can only perform the function of general prevention of offences. In this case, the purpose of preventing offences is achieved in the regulation process by means of obligations, prohibitions, permissions, and incentives. Thus, the preventive function covers the prevention and deterrence of offences. In the case of a real legal fact of an offence, legal liability is implemented at the individual level of legal regulation (legal liability in the subjective sense).

The point of the punitive function is to restrict the offender's behaviour, to shape their lawful behaviour both during the period of unfavourable legal restrictions and in the future. The punitive function of legal liability pursues both the purpose of punishment and the purpose of education. It is implemented within the framework of regulatory and protective legal relations, in a certain procedural form, and is externally expressed and consolidated in spoken and documentary acts.

Thus, the scientific originality of this study lies in the substantiation of the direct connection and interdependence of the results of the implementation of the preventive and punitive functions of legal liability and prevention of unlawful behaviour.

Modern scientific research should focus on the following issues: implementation of European standards in the application of legal liability; improvement of the practice of implementing the functions of legal liability; finding new ways to prevent unlawful behaviour. To prevent unlawful behaviour, to make the offender suffer adverse consequences for their actions and realise their harmfulness, and to influence their legal consciousness, all punishments should have not only a punitive but also a deterrent and educational effect.

Acknowledgements

None.

Conflict of Interest

The author of this study declares no conflict of interest.

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Сутність і призначення превентивної та каральної функцій юридичної відповідальності

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Анотація

Актуальність цього загальнотеоретичного дослідження зумовлена збільшенням кількості правопорушень у країні, що засвідчує проблеми в суспільстві й державі, зокрема недостатню ефективність юридичної відповідальності, необхідність удосконалення її нормативної основи та належного виконання функцій. Проаналізовано превентивну та каральну функції юридичної відповідальності як істотні фактори попередження протиправної поведінки. Метою дослідження було започаткувати наукову дискусію стосовно механізмів впливу юридичної відповідальності на протиправну поведінку, визначення можливостей превентивної та каральної функцій щодо попередження протиправної поведінки. Методологічну основу дослідження становили формально-логічний, системний та структурно-функціональний методи, використані в межах діалектичного, феноменологічного, системного підходів. За результатами дослідження було висунуто гіпотезу щодо того, що нормативна модель юридичної відповідальності (в об'єктивному сенсі) може лише виконувати функцію загальної превенції правопорушень. Наявність юридичного факту правопорушення призводить до юридичної відповідальності в суб'єктивному сенсі. На цьому етапі повністю реалізується каральна функція. Лише взаємодія цих функцій сприятиме реалізації завдань інституту юридичної відповідальності, насамперед попередженню правопорушень. Функції юридичної відповідальності – це її вплив, практична реалізація мети, що втілюється у встановленні правових меж поведінки особи шляхом її стимулювання, примусу або покарання; найважливішими є превентивна та каральна функції; превентивна функція спрямована на профілактику й попередження правопорушень, чого досягають шляхом встановлення санкцій за їх вчинення; каральна функція охоплює як мету покарання, так і виховання, реалізується на індивідуальному рівні примусово в певній процедурно-процесуальній формі. Практична значущість дослідження полягає в можливості правоохоронних органів використовувати отримані результати для формування ефективних стратегій розроблення сучасних політико-правових інструментів попередження протиправної поведінки

Ключові слова:

протиправна поведінка; правопорушення; злочин; покарання; попередження