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## SPECIFICITY OF MUNICIPAL LEGAL RESPONSIBILITY

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### SUMMARY

The article conducts a study of municipal liability, as a separate type of legal liability. Discloses the legal nature, the concept of municipal law liability, its form, composition. It has been substantiated that municipal legal responsibility, as well as constitutional legal, is a qualifying attribute of the branches of law that regulate and protect public relations associated with the implementation of public (state and municipal) power.

**Key words:** municipal liability, constitutional liability, public power, legal nature.

### СПЕЦИФИКА МУНИЦИПАЛЬНО-ПРАВОВОЙ ОТВЕТСТВЕННОСТИ

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### АННОТАЦИЯ

В статье проводится исследование муниципально-правовой ответственности, как отдельного вида юридической ответственности. Раскрывается юридическая природа, понятие муниципально-правовой ответственности, ее формы, состав. Обосновано, что муниципально-правовая ответственность, как и конституционно-правовая, является квалифицирующим признаком отраслей права, которые регулируют и охраняют общественные отношения, связанные с осуществлением публичной (государственной и муниципальной) власти.

**Ключевые слова:** муниципально-правовая ответственность, конституционно-правовая ответственность, публичная власть, юридическая природа.

**Statement of the problem.** In fact, nowadays, in the legal literature there is no clear idea of the legal nature, the concept of the municipal-legal responsibility, its forms, points and stadiums of attraction the definitions of the municipal law, its composition, etc. are not formed. As a result, we have extremely superficial scientific and theoretical achievements of the institute of municipal-legal responsibility and in some cases the fragmentary-normative legal consolidation of legal and procedural grounds, for the attraction to the municipal – legal responsibility, which in the last-minute negatively affects the efficiency of the functioning of this institute of municipal law of Ukraine.

**The relevance of the research topic.** A thorough and prehension assessment of the municipal and legal responsibility today is extremely important and urgent task for the science of municipal law, which is very necessary for full approval and development of the area of municipal law, but at the same time it is indisputable rather difficult task for today. The complexity of this task is due to the fact that domestic scientists use the category “municipal legal responsibility” rather cautiously or, in general, avoid the separa-

tion of municipal and legal responsibility as a separate type of legal responsibility to which may local self-government be involved for violating the norms of municipal law.

**Status of research.** It is appropriate to note that in modern conditions of decentralization of the public authorities in Ukraine the urgency and the importance of the issues of the institute of municipal and legal responsibility is particularly intensifying.

**The Object and Purpose of the Article** is the Study municipal-legal responsibility as a separate form of legal responsibility, which is one of the system-forming elements of the municipal law of Ukraine.

**Presentation of the main material.** Violation of the norms regulating realization of the right to legal self-government provides for the attraction to various types of legal responsibilities [constitutional legal, municipal-legal, criminal, administrative, disciplinary, civil law etc.

Some of the above types of legal liability are general-defined, have a long history of formation and development and are mostly stable, clearly defined normative. This in particular, concerns criminal, administrative, disciplinary, civil law,

property liability. Some types of legal accountability are relatively new for legal science. They are at the stage of scientific and theoretical formation and, as a rule, have not yet acquired normative consolidation.

For such species of legal responsibility, constitutional- legal and municipal-legal responsibilities can be attributed first of all. Of course, comparing these two types of legal liability, it should be noted that the constitutional-legal responsibility for a relatively short period of time, has become widely defined in legal science, in contrast to the municipal law. It is likely, that the dynamic formation and broad development of constitutional and legal responsibility are due to the leading nature of the constitutional law in Ukraine, the fundamental and exclusive importance of social relations, that govern this branch of law, the phrasing steps towards the rise of the Ukrainian state, aimed at increasing the efficiency of the state apparatus, local self-government, through holding the complex of reforms that are ongoing for today.

At the same time, some scholars are of the opinion, that the existence of specialized branches of law proves the



existence of specific types of legal liability, including constitutional and legal [7 p. 34]. If in the corresponding period a variety of branches of law separated and segregated from profile branches, one can assume that similar processes should take place with the legal responsibility [7 p. 37]. It should be emphasized, that the municipal law of Ukraine was separated from the Constitutional law of Ukraine. Note that to see something extraordinary, unusual in the emergence of some types of legal liability, in particular, municipal law, is not worth it. After all, this seems an evolutionary process, related to the fact that society and the state are developing, new types of legal relationships appear and they require their legal protection by attracting new types of sanctions, which is a form of new reflection of new types of legal liability. If we consider the above provisions in relation to the municipal law of Ukraine, in this case the formation of a new field of the national legal system is taking place, which has its qualification features, qualitative features that distinguish it from other branches of the national system of law. As Demydenko V. O., observes rightly, the subject and method of legal regulation, social purpose and role, the presence of the own form of legal liability – the municipal legal [3, p. 125] refers to the qualification signs of this branch.

Thus, municipal-legal responsibility is one of the system-formed elements of the municipal law of Ukraine. Moreover, in legal science, there is a view that the separation of certain types of legal liability is due to the presence of responsible branch of law (in this case, the industry criterion for the classification of types of legal liability is applicable). Classification criterion of legal liability is its branch affiliation. That is if we recognize the existence of the municipal legal responsibility.

As a result, the above-mentioned theses have their own certain weakness. After all, the relevant branch of national law does not correspond to all types of legal liability. For example, there is a disciplinary and material liability, but there is no disciplinary and material branches of the national system of law. In this regard, it is worth to agree with Kutafin O. E., that a measure of public danger of offences and the nature of their consequences and other provisions that are being formed as criteria for the lim-

itation of legal liability and different types, that one way or another are divided from the subject and method of legal regulation is a criterion classification of legal liability.

Being derived from the material feature, object and the method of legal regulation, the corresponding form of legal responsibility reflects the peculiarity of social relations, which are the basis for the separations of certain groups of legal norms into an independent branches of law. So, considering the branch of law by subject and method of legal regulation, it is necessary to distinguish them by type of legal liability an obligatory component of each type of legal regulation [6, p. 390]. This opinion was also expressed by Alekseev S.S. He believes that the presence of a special method of legal regulation, which is a technique of legal action, a combination of them, characterizing the use of public relations in this area of any legal means, indicates the independence of a particular branch of law [1, p. 295].

Under the means of legal actions we should understand the measure of responsibility that determines the proper conduct of legal entities. Unfortunately, the municipal legal responsibility has not been yet adequately reflected either in the doctrinal nor in the normative-legal aspects. This conclusion can be reached by analyzing the scientific and theoretical foundation of municipal-legal responsibility, which is based on the research of this institute and is covered in text-books, manuals, monographs, dissertations, scientific and theoretical publications, materials of scientific-theoretical and practical conferences, round tables, symposiums and other sources. For the purposes of the most complete and thorough coverage of the theoretical basis of the municipal-legal responsibility, having analyzed the domestic text-books on discipline “Municipal law of Ukraine”, it is possible to formulate a generalization that the display of category “the municipal-legal responsibility” in them has such specifics: 1) in some cases authors generally avoid research of the municipal-legal responsibility of authorities and officials of local self-governments [9]; 2) in others-separate the special type of legal liability-municipal-legal responsibility, and along with this, identify it with the constitutional and legal responsibility [5, pp. 334–335]; 3) some authors categorically deny

the existence of such a separate type of legal liability, as municipal law. In this opinion, the current state of the legislative regulation of relations of responsibility in the sphere of local self-government, as well as trends in its development in modern Ukraine, the transfer of responsibility mostly to the political plane does not provide ground for it. [8, pp. 578–579].

Analyzing this point of view, it should be noted that the political nature of the municipal-legal liability is, by no means, a hindrance to its distinction as a separate form of legal liability. After all, municipal-legal responsibility, as well as constitutional-legal, is a qualification of the branch of law, that regulate and protect the social relations, associated with the implementation (state and municipal) power. Given such a special legal nature of constitutional-legal and municipal-legal responsibilities, they envisage negative consequences for the relevant subjects, which are stipulated by legal norms and are mostly political in nature.

In view on the above, we note that there is very reason for identifying municipal-legal liability in a separate form of legal liability. After all, it is municipal-legal responsibility that is intended to ensure the effectiveness of legal norms of municipal law, promoting the establishment of the legality and monocracy on the field of local self-government, protecting the rights of subjects of municipal-legal relations from illegal violations and punishing these responsible for the conduct of municipal-legal delinquency. In the context of our research, the dissertation work of Chornohor M.M.: “Legal responsibility of officials and authorities of local self-government: the theory and matter”, undoubtedly deserves attention. He researched the system of responsibility of authorities and officials of local self-government even in 1999 and proposed to distinguish municipal-legal responsibility as a separate form of legal responsibility of bodies, authorities and officials of local self-government [11]. In particular, in paragraph 3 of the scientific novelty of dissertation, Chornohor N. N. observes, that it is advisable to introduce into the scientific treatment, the concept of municipal-legal liability, which is a branch type of responsibility of the same name in the field of law and an offence in which the legal obligation relates to the subject (body or official)



activities to achieve certain result, and in case of violation of these conditions - to suffer certain legal consequences of a negative nature.

At the same time, one cannot totally agree with the above provisions p.3, of the scientific novelty of the given work, namely with two-dimensional understanding of municipal-legal liability (positive and retrospective). In our opinion, in this case, the offender who committed a municipal-legal delinquency (subject of retrospective municipal-legal liability) and an obstinate subject, who exercised and is exercising the legitimate, legal activity in the sphere of realization of the right to local self-government, that is, according to Chornohor N. N., the subject to legal, positive, municipal-legal liability-are placed on the same plane. This, in our opinion, is categorically contrary to the legal nature of legal liability. Restoring the law order and punishing the perpetrators, in order to ensure the effectiveness of the legal requirements of municipal law, is the task of it.

In view of this, the category "positive municipal-legal responsibility", which nowadays is not uncommon in foreign dissertation researches, coincides, in many ways, with the concept "legal culture", "legal identity", contrary to the technique of determination of concepts in the legal science. In this regard, it is appropriate to prove the evidence of Todyk Y.N., Bodrov I.I., Tatsii V.Y., Boldyriev S. V., Serohin S. H., Lutsenko P.N., Solianik K. E., who in monographic research "Problem of the functioning of local councils and their executive bodies", considered generally-theoretical issues of legal liability of local councils and their bodies and noted that among the agreements, that prove the absence of positive legal liability, the most important are; a) the impossibility to formalize it (legal liability always has no external manifestation) ; b) impossibility to determine the moment of its occurrence; it arises and exists before the commission of the offence (there are still no actions or inactivity and responsibility already exists) [10; p. 62].

Being in full agreement with the arguments, given to absence of positive legal responsibility, we emphasize that they also completely confirm the absence of positive municipal-legal responsibility. However, the violation of the problem

of two-sided understanding of the municipal-legal responsibility, in order to establish objectivity and reality of scientific knowledge, definitely needs a thorough, comprehensive and systematic consideration.

In support of the existence of the municipal-legal responsibility, as a separate form of legal responsibility, dissertation of Dolhopolova M.S. "Municipal-legal responsibility: problems of legal regulation and implementation" also indicates [4]. In her dissertation research Dolhopolova M.S. observes rightly, that local self-government, being an independent form of realization of power, that belongs to the people, is based on a system of principles, the basic of which is the responsibility of the bodies and officials of local self-government before the population. It is the activity of bodies and officials of local self-government in addressing issues of local importance in their responsibility, that is the ground that ensure the separation of local self-government as an independent and substantive level of public power.

**Conclusions.** In the opposite case, the very notion of local self-government would lose value by recognition of the inability of the population to organize properly the solution of issues of local importance. [4, p. 4]. Despite the obvious significance, complexity and novelty, the institute of municipal legal responsibility does not attract close attention of the scientists. However, nowadays researches of the municipal legal responsibility, the formulation of a qualitative legislative basis for its implementation is one of the most important tasks for the science of municipal law. [4, p. 5]. And significance of this task is especially intensified in the current conditions of the development of the Ukrainian state, where bodies and officials of the municipal self-government should pay a significant role, subject to the actual implementation of decentralization of public authority. Exactly, they will solve the overwhelming majority of issues, related to ensuring the rights and interests of territorial communities, with the maximum, full-fledged and effective implementation of them.

Consequently, the key element of the modern constitutional reform, regarding the decentralization of power is, among other things, the issue of the proper normative-legal consolidation of munic-

ipal-legal responsibility of local councils and villages, towns and cities mayors. Given the above, and taking into account the new political and legal processes on the decentralization of public authorities in Ukraine, the institute of municipal-legal responsibility becomes of special importance for the regulation and ensuring of social relations, connected with the realization of the rights to local self-government. However, municipal-legal liability, which unquestionably exists along with other types of legal responsibility and plays an important role in protecting social relations, connected with the realization of the rights for local self-government, is unfairly deprived of the attention of the legislator.

As a scientific category, municipal-legal responsibility has relatively recently acquired scientific recognition and there is every reason to hope, that in the long run, it will be an effective, complete, legal reality. At the same time, the lack of proper legislative regulation of municipal-legal responsibility not only negatively effects the enforcement activities of local self-government in general, but also impedes mostly the further improvement of the legislative regulation of social relations, associated with the realization on the right to local self-government, complicates its conceptual development. For this reason, the study of the municipal-legal responsibility of representative and other subjects of local self-government is becoming urgent. Taking into account the above, it can be argued, that the effectiveness of the implementation of the requirements of the municipal law of Ukraine, its full opportunity to ensure the regulation and protection of public relations, associated with the implementation of the right for local self-government, is the basis for the allocation of a separate form of legal liability the municipal-legal.

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## МЕТОДОЛОГИЯ ИССЛЕДОВАНИЯ РЕГУЛИРОВАНИЯ ПАРНИКОВЫХ ГАЗОВ

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#### АННОТАЦИЯ

Статья посвящена исследованию методологии правового регулирования инвентаризации выбросов и парниковых газов. Рассматриваются методы публичного управления (администрирования) в области защиты окружающей среды. Раскрывается содержание административно-правового механизма инвентаризации парниковых газов и классифицируется на жесткие, ориентирующие и поддерживающие.

**Ключевые слова:** методология, правовое регулирование, администрирование, инвентаризация, парниковые газы.

#### RESEARCH METHODOLOGY FOR REGULATING GREENHOUSE GAS

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#### SUMMARY

The article is devoted to research of the methodology for the legal regulation of the inventory of emissions and greenhouse gas. The methods of public administration (administration) in the field of environmental protection are considered. The content of the administrative-legal mechanism of the inventory of greenhouse gas is disclosed and is classified into rigid, orienting and supporting ones.

**Key words:** methodology, legal regulation, administration, inventory, greenhouse gas.

**Актуальность темы исследования.** Для Украины остро стоит вопрос создания и развития внутренней системы торговли разрешениями на выбросы парниковых газов. Второй период обязательств по Киотскому протоколу способствует развитию и внедрению в национальное правовое поле концепции публичного управления (администрирования) относительно инвентаризации парниковых газов. С целью достижения результатов исследуемого объекта понимание методологии административно-правового регулирования способствует обобщению существующих доктринальных и прикладных подходов и внедрению новаций в исследуемой сфере.

**Состояние исследования.** Исследуя проблематику методологии регулирования парниковых газов, целесообразно отметить, что в контексте публичного управления (администрирования) определённым аспектам в той или иной степени было уделено

должное внимание такими исследователями, как Д. Бахрах, А. Витченко, Д. Кожушко, С. Кожушко, Ю. Козлов, М. Латынин, Ю. Лерега, М. Толкачов, Э. Юдин и др.

**Цель статьи** – исследование концептуальных основ методологии административно-правового регулирования инвентаризации парниковых газов.

**Изложение основного материала.** Определение сущности и структуры методологии административно-правового регулирования в целом и регулирования инвентаризации парниковых газов в частности, демонстрирует сложность и неоднозначность доктринальных подходов к исследуемой тематике.

Методология – понятие, которое обязательно предполагает употребление второго термина, что означает «деятельность». По сути, когда употребляют понятие «методология», то всегда имеют в виду именно методологию деятельности. Э.Г. Юдин, отме-