

## PROSPECTIVE DIRECTIONS FOR IMPROVING THE LEGAL LIABILITY OF ENTITIES ENSURING STATE-PRIVATE PARTNERSHIPS IN THE FIELD OF HIGHER EDUCATION

*ORIENTAÇÕES PROSPECTIVAS PARA MELHORAR A RESPONSABILIDADE JURÍDICA DAS ENTIDADES QUE ASSEGURAM PARCERIAS ENTRE O ESTADO E O SECTOR PRIVADO NO DOMÍNIO DO ENSINO SUPERIOR*

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### ABSTRACT

Given the continuous improvement of information technologies and development of artificial intelligence, and the need to introduce advanced foreign standards of training of high-quality personnel in the national educational system, state-private partnership in the field of higher education is of great importance. In the course of ensuring the effectiveness of the latter, a special role belongs to legal liability, which plays an extremely important role in regulating social relations, ensuring their stability and security. The complex of these aspects determines the relevance of the topic. The purpose of the study is to identify promising areas for improving the legal liability of entities providing state-private partnerships in higher education. Such methods as analysis, synthesis, deduction, induction, and the logical and legal method are used in the article. The study analyzes the essence of social responsibility, the positive and negative aspects of legal liability, and the promising areas for improving legal liability in the area of state-private partnership in higher education, including academic responsibility within this area. With a view to ensuring a higher level of legality in the course of state-private partnership, the author recommends that administrative and criminal liability should be provided for violation of the principles and other requirements and principles of current legislation on state-private partnership.

**Keywords:** Subject; Provision; Higher education; Training; State-private partnership; Legal liability; Academic integrity.

### RESUMO

Considerando o aprimoramento contínuo das tecnologias de informação e o desenvolvimento da inteligência artificial, bem como a necessidade de introduzir padrões estrangeiros avançados de treinamento de pessoal de alta qualidade no sistema educacional nacional, a parceria entre o Estado e a iniciativa privada no campo do ensino superior é de grande importância. Para garantir a eficácia dessa parceria, uma função especial pertence à responsabilidade legal, que desempenha um papel extremamente importante na regulação das relações sociais, garantindo sua estabilidade e segurança. A complexidade desses aspectos determina a relevância do tópico. O objetivo do estudo é identificar áreas promissoras para aprimorar a responsabilidade legal das entidades que oferecem parcerias entre o Estado e a iniciativa privada no ensino superior. Métodos como análise, síntese, dedução, indução e o método lógico e legal são usados no artigo. O estudo analisa a essência da responsabilidade social, os aspectos positivos e negativos da responsabilidade legal e as áreas promissoras para aprimorar a responsabilidade legal na área de parcerias entre o Estado e a iniciativa privada no ensino superior, incluindo a responsabilidade acadêmica nessa área. Com o objetivo de garantir um nível mais alto de legalidade no curso da parceria entre o Estado e a iniciativa privada, o autor recomenda que a responsabilidade administrativa e criminal seja prevista para a violação dos princípios e outros requisitos e princípios da legislação atual sobre a parceria entre o Estado e a iniciativa privada.

**Palavras-chave:** Disciplina; Oferta; Ensino superior; Formação; Parceria Estado-privado; Responsabilidade jurídica; Integridade acadêmica.

## Introduction

The sustainability of this or that state institution is tested over time or under special, critical conditions (Salmanova, Shovkun, 2023). The most important factors of the welfare state are the development and improvement of social and labor relations, which constitute the content of the social orientation of legislation. This creates the need to find opportunities to harmonize socio-economic interests, which will help create a system of social relations that in foreign countries are called the institution of social partnership. Their activities are aimed at achieving social harmony, harmonizing social partnership, including consultations in decision-making by social partners at all levels (Golopych, 2021). Today, society faces various barriers to access to education, including socioeconomic factors, gender inequality, and geographical restrictions. At the same time, scholarships, grants, and financial aid play a significant role in promoting educational opportunities for disadvantaged and marginalized groups. In addition, there is a need for educational institutions to develop inclusive policies that would meet the unique needs and aspirations of students from different backgrounds (Kidega et al., p. 70). In overcoming these barriers, public-private partnerships in higher education are of great importance, as they are a complex, multifaceted activity carried out by an extensive mechanism that includes a number of actors and a range of tools. Legal liability plays a special role among these instruments. The latter is a very important means of regulating social relations, ensuring their stability and security.

The generalization of research gave reason to identify several key aspects that scholars pay special attention to:

1. Social responsibility as a new socio-economic model based on a strategic decision of a person to assume obligations to society in an organized structure.
2. The two-aspect nature of legal liability, which is differentiated into positive and negative.
3. The formation of behavior that underlies the positive social responsibility of state-private partnerships in higher education is also facilitated by the

establishment of approaches to management in higher education, which is an interdisciplinary category on the periphery of education and economics.

4. Academic responsibility intersects with legal liability, which necessitates the legislative consolidation of the definition of "academic responsibility" and detailed regulation of all procedural aspects of bringing participants in the educational process to academic responsibility.

The study opens up the prospects for a more comprehensive understanding of the essence of legal liability of entities providing state-private partnerships in the field of higher education and substantiates the need to take into account the mechanisms and instruments of both negative and positive legal liability in further consideration of this issue.

## **PURPOSE AND OBJECTIVES OF THE STUDY**

The purpose of the research is to identify promising areas for improving the legal liability of entities providing state-private partnerships in the field of higher education. To achieve this goal, the following tasks need to be addressed: to summarize the general theoretical approaches to the definition of liability; to reveal the content of legal liability of entities providing state-private partnership in the field of higher education in its negative and positive aspects; to identify promising areas for improving the legal liability of entities providing state-private partnership in the field of higher education.

## **MATERIALS AND METHODS**

The purpose was achieved and the research objectives were fulfilled by selecting and summarizing the sources which analyze the legal liability of the entities providing state-private partnership in the field of higher education and the areas for its improvement. For this purpose: a) the works of domestic and foreign researchers on the essence of legal liability of entities providing state-private partnership in the field of higher education were studied and analyzed; b) the

sources characterizing certain areas of improvement of legal liability of entities providing state-private partnership in the field of higher education were analyzed.

This made it possible to: a) analyze the essence of social responsibility, the positive and negative aspects of legal liability; b) identify promising areas for improving legal liability in the field of state-private partnership in higher education, including academic responsibility within this area.

The following methods were used in the study:

- a systematic approach was used to understand the essence and significance of legal liability in the field of state-private partnership in higher education in the context of the challenges of our time;

- descriptive analysis and the logical and legal method were used to identify and consider promising areas for improving legal liability in the field of state-private partnership in higher education.

## RESULTS AND DISCUSSIONS

Responsibility is a key category in understanding the essence of the formation of lawful behavior and legal culture in society. T. O. Chepulchenko (2010) quite rightly notes that "the formation of civil society and the rule of law is inextricably linked to the problems of mutual responsibility of the State and the citizen, an important aspect of which is the category of responsibility, which at the present stage acquires a slightly different social purpose and loses its punitive nature". O. M. Lutsenko (2015, p. 92) emphasizes that "social responsibility is a concept that has a dual meaning. On the one hand, it is compliance by the subjects of social relations with the requirements of social norms. On the other hand (in cases of irresponsible behavior that does not meet the requirements of the norms or violates public order), a person's social responsibility means that he or she undertakes to bear an additional duty of a personal or property nature. This is the obligation of a person to assess his or her own intentions and make choices of behavior in accordance with the norms that reflect the interests of social development, and in case of violation of these norms, the obligation to report to

society and be punished. Social responsibility is considered in two aspects depending on whether a person's behavior is socially beneficial or socially harmful".

M. G. Majumdar and H. Rana (2015, p. 5342) note that social responsibility is a new socio-economic model based on the strategic decision of an individual to assume obligations to society in an organized structure. Given the widening gap between the wealthy and the needy in today's society, this model provides a systematic framework for redistributing wealth. The impact and structure of this model is outlined in the sectors of education, health, hygiene, small local businesses, and the environment. Researchers consider personal social responsibility mainly within the framework of the social entrepreneurship model.

A. Vutsova, M. Arabadzhieva and T. Yalamov (2023, p. 45) consider social responsibility as part of university educational programs. The authors compare French and Bulgarian students' perception of various elements of social responsibility and the approach to social responsibility in university curricula. Bulgarian students more often see social responsibility in volunteering, charitable activities and career opportunities, while French students associate it with environmental aspects.

The above features of social responsibility as a general category are also inherent in legal liability, which is a variation of the former. Most legal scholars emphasize the two-pronged nature of legal liability, which is differentiated into positive and negative. The first is related to the strict and timely observance by the subjects of legal relations of a positively regulated duty (duties) to perform positive functions useful for society and the state. In turn, negative legal liability is based on the causal (deterministic) legal relations between the tort and the subsequent negative reaction of society and the State to it with the application of appropriate sanctions to the subject of this tort (Surmin et al., 2010, p. 94).

We agree with the researchers who insist that the positive side of legal liability should not be ignored. At the same time, it should be noted that it does not have such clear boundaries, grounds and procedure for application as negative liability, and is more focused on the moral and ethical side of human behavior and social relations. However, legal theorists have recently been increasingly



emphasizing that the development of a lawful, democratic state, as well as the education of a conscious and law-abiding citizen, are impossible by means of punishment alone (i.e., negative or retrospective liability). Positive responsibility is an important aspect of legal awareness and legal culture of a person. The importance of positive responsibility is also emphasized by the rulemaker, for example, when establishing rules of ethical behavior for public servants (professional ethics).

Given the above, we can conclude that a positive aspect of the legal liability of the entities providing state-private partnership in higher education is that these entities are deeply aware of the need, expediency and usefulness of lawful behavior, which consists in the proper exercise of powers and rights and obligations when deciding on the implementation of state-private partnership in higher education and in the process of its direct implementation. This type of liability is called for, so to speak, by a number of legal provisions enshrined in the Constitution and laws of Ukraine, as well as in bylaws of a centralized and contractual nature. This liability is established not in the form of negative consequences for illegal actions of the above-mentioned entities, but by encouraging them to voluntary conscientious, lawful and fair behavior within the framework of relations that in one way or another relate to state-private partnerships in higher education. Such responsible behavior, for example, is called for by the principles of state-private partnership enshrined in Article 3 of the Law of Ukraine "On State-Private Partnership", and if we analyze the memoranda concluded by the Ministry of Education and Science of Ukraine within the framework of state-private partnership, we can see that the content of almost every one of these documents contains provisions that oblige the parties to lawful, honest, equal, open, mutually acceptable and mutually beneficial behavior (State-private partnership).

A type of legal liability is administrative one, which is incurred for offenses under the Code of Ukraine on Administrative Offenses. The most severe type of legal liability is criminal liability (Knysh, 2018), which occurs for the commission of the relevant criminal offense, as defined by the relevant section of the Special Part of the Criminal Code of Ukraine.

The formation of the behavior that underlies the positive social responsibility of the subjects of state-private partnership in higher education is also facilitated by the establishment of approaches to management in higher education, which is an interdisciplinary category on the periphery of education and economics. While in the first case the connection is obvious, in the second it is hidden, but it is socio-economic processes that determine the activities of the manager, whose task is to study labor market trends and build an effective strategy for the overall development of education (Tsekhmister et al., 2021, p. 556). We are also convinced that positive social responsibility is based on emotional and volitional culture. According to R. Zelenskiy, O. Popova, V. Sokolovskyi and M. Stashchak (2018, p. 207), the pedagogical conditions for the formation of emotional and volitional culture in the process of professional training are: ensuring the development of sustainable motivation to master emotional and volitional culture through understanding it as a professionally significant quality; application of pedagogical means (forms, methods, tools) in the educational process that requires the manifestation of emotions and volitional qualities of the individual; stimulation to self-improvement of emotional and volitional culture. However, regarding the importance of the positive aspect of legal liability, it should be stated that in many cases, circumstances, situations, the efficiency and effectiveness of its forms and methods of influence on subjects are not enough. More decisive and tougher measures of influence are needed, which are precisely what negative legal liability is, as evidenced by the content of its numerous definitions provided by researchers in doctrinal, educational, encyclopedic sources and legal periodicals. In particular, lawyers interpret legal liability as:

the application to the person who committed the offense of coercive measures provided for by the sanction of the violated norm, in the established procedural order on behalf of the state and on the basis of the law (Volynka, 2003);

means of state coercion against a person who has committed an offense provided for by law and carried out in legal relations in a procedural manner by subjects authorized by the state, entailing for him the obligation to suffer adverse consequences of a personal, property or organizational nature, the type and extent



of which are provided for by the sanctions of legal norms (Tsvik, Petryshyn, Avramenko, 2009, p. 375).

Thus, legal liability in its negative context (or aspect) is the state's reaction to the unlawful behavior (actions or inaction) of a subject, which is expressed in a negative assessment and public condemnation of this behavior as violating the established regime of legality and legal order, encroaching on social values protected by law, rights, freedoms, interests of individual and (or) collective subjects, and provides for the application to the offender on the grounds, in the manner and within the limits determined by law, of unfavorable measures, the type and extent of which are also determined by law, and the implementation of which is ensured by the offender by the force of state coercion. Such an approach to understanding the negative (or retrospective) side of legal liability is also true for the liability of entities providing state-private partnerships in higher education.

An analysis of the provisions of normative legal acts adopted in a centralized manner shows that the specified liability is regulated rather superficially. Thus, for example, the current Law of Ukraine No. 2404-VI "On State-Private Partnership" (2010) contains only a few provisions regarding liability, namely that the subjects bear full responsibility for their obligations within the scope of the state-private partnership contract, as well as the fact that persons acting on the side of one of the partners are jointly and severally (in the case that the partner is a private entity) and subsidiary (in the case that the partner is a public authority entity) liable. It can be seen from the above that the legislator, albeit fragmentarily, nevertheless provided for the principles of civil liability of subjects of state-private partnership. However, a completely logical question arises as to whether the subjects of the partnership under study bear other types of liability, for example, administrative and criminal? In this situation, we must state that there are no direct instructions in the current legislation that the state-private partnership is provided with means of administrative and criminal liability.

Regarding the areas of improvement of the legal liability of the subjects of state-private partnerships in the field of higher education, in order to ensure a higher level of legality during the implementation of state-private partnerships,

including in the field of higher education, it would be appropriate to provide for administrative and criminal liability for violating the principles and other requirements and fundamentals of the applicable legislation on the issues of the specified partnership, because today, in our opinion, the state partner, although it is the ultimate responsible entity before society for the quality and effectiveness of the state-private partnership, nevertheless retains this responsibility rather formal rather than real character. Given the above, the lack of proper results or even damage to the public and/or state interests as a result of improper cooperation within the framework of the partnership under study does not entail any significant negative consequences for those officials whose ineffective control caused the above problems. At the same time, in our opinion, in the field of higher education, the legal liability of state-private partnerships is based on academic liability, which researcher T. Krasniuk (2023) considers as a type of legal liability that occurs for violation of academic integrity of pedagogical, scientific and pedagogical and research staff of educational institutions, students in scientific institutions and educational institutions and entails negative consequences of state influence in case of committing an academic offense. The researcher proves that academic liability can be legal (civil, labor, administrative, criminal), social, moral, and ethical, and corporate. Thus, academic liability overlaps with legal liability. The researcher emphasizes the need to consolidate the definition of "academic liability" at the legislative level and to regulate in detail all procedural aspects of bringing participants in the educational process to academic liability.

## CONCLUSION

Summarizing the above, we can conclude that today's society faces various barriers to access to education, including socio-economic factors, gender inequality and geographical restrictions.

As for the positive side of legal liability, such liability does not have such clear boundaries, grounds and procedure for application as negative responsibility, and is more focused on the moral and ethical side of human behavior and social

relations. Positive responsibility is an important aspect of legal awareness and legal culture of a person. Such responsible behavior is called for by the principles of state-private partnership enshrined in Article 3 of the Law of Ukraine "On State-Private Partnership" and memoranda concluded by the Ministry of Education and Science of Ukraine within the framework of state-private partnership. However, in many situations, the effectiveness and efficiency of the forms and methods of influence of positive responsibility on the subjects is not enough, as more decisive and strict measures of influence are needed, which are exactly what negative legal liability is endowed with, which is the state's reaction to the illegal behavior (actions or inaction) of sub object, which is expressed in a negative assessment and public condemnation of this behavior as violating the established regime of legality and legal order, encroaching on legally protected social values, rights, freedoms, interests of individual and (or) collective subjects, and provides for the application to the person of the offender on the grounds, in the manner and within the limits determined by the legislation, measures unfavorable to him, the type and extent of which are also determined by law, and the execution of which by the offender is ensured by the power of state coercion.

Legal liability of entities providing state-private partnership in the field of higher education can be defined as the obligation of these entities to faithfully observe the material, legal and procedural principles of the implementation of state-private partnership defined in normative legal acts, to properly fulfill their powers, and in case of violation of the regime of legality, to suffer certain unfavorable (negative) consequences for oneself, provided by the power of state influence up to the point of coercion, the type and extent of which, as well as the grounds, procedure and limits of application, are determined by legislation.

In order to ensure a higher level of legitimacy in the implementation of state-private partnerships in higher education, it would be advisable to provide for administrative and criminal liability for violation of the principles and other requirements and principles of the current legislation on this partnership. Today, in our opinion, although the state partner is the ultimate responsible entity to society for the quality and effectiveness of state-private partnerships, this responsibility is

more formal than real. In view of the above, the lack of proper results or even damage to the public and/or state interests as a result of improper cooperation within the framework of the partnership under study does not entail any significant negative consequences for those officials whose ineffective control caused the above problems. In the field of higher education, the legal liability of state-private partnerships is based on academic responsibility, which necessitates the consolidation of the definition of "academic responsibility" at the legislative level and detailed regulation of all procedural aspects of bringing participants in the educational process to academic responsibility.

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