PUBLIC FINANCE: LEGAL ASPECTS

Emiliia Dmytrenko, Yurii Pyvovar, Danil Getmantsev, Olena Hedziuk, Nataliia Iakymchuk, Liubov Kasianenko, Tamara Latkovska, Nataliia Kovalko, Yevhen Marynchak, Svitlana Nischymna, et al.

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FINANCIAL LAW CENTER

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PUBLIC FINANCE: LEGAL ASPECTS

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Monograph "Public finance: legal aspects" is a paper written by the team of leading Ukrainian scholars in the sphere of finance law and initiated by Financial Law Center and Department of Financial Law of Taras Shevchenko National University of Kyiv.

All monograph's authors are representatives of Ukrainian financial law school which was founded by Lidiia Voronova. In memory of our Teacher, Financial Law Center was founded to study the problems of legal regulation of public finance, and this monograph was prepared.

In the monograph, scholars presented their vision of solving the most topical problems at legal regulation of financial relationships. The concept of public financial activity is covered; the powers of bodies carrying out public financial activity in Ukraine are investigated; issues of the activities of local self-government bodies under the conditions of financial decentralization are considered; the concepts and features of public funds are determined; the content of public interest in tax law is presented, and the essence of the subject-matter of financial law is studied, etc.

The monograph will be useful to scholars, students and anyone who is interested in financial law issues.

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FUNCTIONS OF FINANCIAL LAW: THEORY AND PRACTICE OF THE IMPLEMENTATION

Emiliia Dmytrenko, Yurii Pyvovar

INTRODUCTION

Significant changes have taken place in the field of public financial activity in recent times. Therefore, it actualizes a scientific interest in Financial Law topics, in particular, concerning the research of Financial Law functions.

Financial Law functions are the main ways of influence on financial legal relations. Their implementation determines the significance, place and role of this important branch in the legal system.

The system of Financial Law functions covers different types of them, but the main place among which belongs to the regulative, protective and ideological functions. The goals of Financial Law are comprehensively solved through the implementation of these functions at a particular stage of its development.

A special role and the significance of Financial Law functions necessitates the existence and functioning of an effective and accomplished implementation mechanism, with the aim of proper regulation of financial legal relations and the proper protection and defense of their participants rights. Therefore, it indicates the necessity of scientific substantiation for various aspects of the above-mentioned problem.

The analysis of scientific sources shows that the problems of Financial Law functions in whole or in part are not being sufficiently researched, since only a few aspects of it were considered by scientists during the analysis of general issues of Financial Law. Therefore, the changes, which take place in the financial legal regulation, require the study of the content and specificity of the implementation mechanism of Financial Law functions. Consequently, the consideration of the implementation features of the regulative, protective and ideological Financial Law functions under the modern conditions of functioning and development of the financial system of Ukraine is relevant. It is also important to analyze the problems that affect the effectiveness of the implementation mechanism of these functions and determine the directions for its improvement.

1. Regulative and protective functions of Financial Law: features of the implementation mechanism under the modern conditions

The matter of Financial Law functions is one of the fundamental issue in the mechanism of financial legal regulation, taking into account their direct influence on the financial relations. A special and a decisive place certainly belongs to the regulative function of Financial Law.

The main purpose of the regulative function is to regulate financial legal relations, namely, the features of their occurrence, change or termination during the implementation of public financial activities. Therewith, due to the regulative function, the legal status of the financial legal relations participants fixes and changes, and a specific legal link between them is established.

Unconditionally, the implementation of the regulative function of Financial Law discloses the relations of legal (normative) and social aspects in the financial legal regulations. The analyzed function in the process of its implementation also reveals the reliance of Financial Law functioning on various factors that touch upon the regulation of financial legal relations. Equally important is the fact that the implementation of this function reflects the specifics of legal influence on the field of public financial relations and determines their essential featues in a particular period. Therewith, forecasting and finding the most effective means of legal influence on such relations is also carried out as a result of the implementation of the regulative function of Financial Law.

Therefore, the implementation of the regulative function of Financial Law determines which content of financial legal provisions under the modern conditions of the financial system of Ukraine requires reforming, and, consequently, shows the ways of their improvement. That is why the effective reform of the financial system of Ukraine directly depends on the accomplished mechanism for implementing of this function.

Modern conditions of state functioning caused by integration aspirations of Ukraine have a significant impact on the regulation of financial legal relations and determine the features of the regulative function of Financial Law. This may be a new democratic format for the relations between their participants – the state, legal entities and individuals – as partners. Another feature of financial legal relations under the modern conditions is that the actions of their subjects, albeit subject to public and private needs, but are directed primarily to the realization of public interest.

Consequently, the essence of financial legal regulation under modern conditions is its focus on the correlation of public and private interests, but with the domination of the public interest realization. Therefore, due to the regulative function, the acts of financial legal relations participants primarily aimed at satisfying public interests – state, social and territorial. This means that the participants of the financial legal relations (regardless of the organizational form, type of activity, ownership, legal status in general), in one way or another, take part (directly or indirectly) in the formation of public funds and distribution and use of their costs. Thus, the obligatory payments of legal entities and individuals to budgets and state target extrabudgetary funds not only ensure implementation of tasks and functions by the state and municipal authorities. This, in turn, also entails the creation of the common good for the satisfaction of both the general (public) and the personal (private) needs of legal entities and individuals. By virtue of this interconnection, the generalized (aggregate) interests concerning education, health care, social protection, etc. are notedly satisfied. Therefore, the financial resources already appear as a mechanism of social partnership, through which the balance of interests is achieved, the collective will of the community is formed; as a factor for the coordination of each individual or corporate interest, that is, the private interest with the national situation, and therefore – with the public and social interest[1].

Therefore, the feature of the regulative function of Financial Law is that its implementation directs the behavior of the financial legal relations participants at satisfying the public interest – the state and territorial communities (administrative and territorial units). However, its implementation also satisfies the generalized (aggregate) public needs of society, as well as the public and private needs of its individual social groups and members.

In consideration of the foregoing, the effective implementation of the regulative function of Financial Law is possible upon condition of the accomplished formulation of the requirements of financial legal provisions. Such provisions should have a qualitative content that will allow them to be effectively applied and implemented.

However, in financial legislation took place the adoption of separate financial legal provisions, which may violate the relationship between both

[1] Гетманцев Д.О. Щодо забезпечення публічного інтересу для фінансового права. *Часопис Київського університету права.* 2011. № 4. С. 153.

public (state and territorial) interests and between the public and private interests of the financial legal relations participants. This may be confirmed by the annual ammendments to the Budget Code of Ukraine and the Tax Code of Ukraine in connection with the adoption of the annual Laws on the State Budget of Ukraine.

A separate problem in the aspect of the regulative function of Financial Law implementation is the reformation of the local budgets generation mechanism, and, accordingly, the for a financing mechanism of local self-governing authorities functions during a budget decentralization. The above requires a standardization of changes of local authorities' powers, in particular regarding their decision-making discretion concerning the formation and use of budgetary funds.

Another problem is connected to the funds redistribution mechanism between budgets from separate tax revenues (in particular, personal income tax). Such a mechanism, despite the changes made to the Budget and Tax Codes of Ukraine, is not considered to be accomplished today.

These and other problems point to the need to look for the most effective ways and means of their resolving. One of these ways, in our opinion, is to improve the financial legislation. The above stipulates the necessity of a substantial revision and adoption of the updated list of own and delegated authorities and, accordingly, the expansion of the financial base of local self-governing authorities. Therefore, this can be possible subject to changes in both the Budget and Tax Codes of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine". Therewith, the mechanism of calculating the expenditures for financing education, health care, and other areas needs to be changed. Such a mechanism should be based on social standards in these areas, which until now have not been developed or adopted.

We should pay attention that making amendments to financial legislation (in particular, to the Budget and Tax Codes of Ukraine), as general, is a compulsory step by the state or local self-governing authorities as it is necessary to solve the problem of insufficient revenues. However, for legal entities and individuals as financial legal relations participants, they are mostly undesirable and, in turn, will require the arranged measures to balance and protect their financial interests.

All of the foregoing indicates the interconnection between the regulatory and protective functions of Financial Law. The main direction of the protective function of Financial Law is to ensure the fulfillment of financial

obligations of legal entities and individuals before the state and local authorities. Another aspect of this function implementation is to encourage the financial legal relations participants in order to comply with the requirements of financial legislation. Another important direction for the protective function implementation is to prevent, detect and terminate violations of financial legislation.

The operating results of the financial control authorities indicate that the number of financial violations has recently tended to increase. That is why the implementation mechanism of the protective function of Financial Law through a system of various ways should help to ensure a compliance of financial legislation by the participants of financial legal relations.

In the system of funds that facilitate the implementation of the protective function of financial law, a special place belongs to the measures of financial legal coercion. On the basis of such measures, the legal impact on the participants of the financial legal relations is exercised, and, consequently, legitimacy, legal order and financial discipline are ensured in the process of carrying out a public financial activity.

Consequently, there are following forms of the protective function of Financial Law implementation: the public financial control mechanism and the mechanism of financial legal responsibility.

The essence of the public financial control mechanism means, first of all, control over the implementation of public financial activities. Financial control covers both the processes of public revenues forming, as well as their distribution and use in the enforcement of public expenditures. Thus, the mechanism of public financial control carries out a special function, which is to ensure the completeness and timeliness of revenues to public funds, their purposeful and effective use[2]. On the other hand, such a mechanism should much more be preventive. This means that controlling measures can prevent the commission of financial violations. In case if the offenses occurred – as a result of control activities, they can be detected and terminated in a timely manner in order to reduce the amount of damage.

Another form of the protective function of Financial Law implementation is the mechanism of financial legal responsibility. Effective and accomplished mechanism of financial legal responsibility is an effective way

[2] Дмитренко Е.С. Юридична відповідальність суб'єктів фінансового права у механізмі правового забезпечення фінансової безпеки України : монографія. Київ : Юрінком Інтер, 2009. С. 64.

of regulating the behavior of financial legal relations participants. With such a mechanism, the state, other public entities represented by their authorized bodies, determine the rules of conduct in the field of public financial activity by establishing of corresponding legal provisions. These rules must be observed by all participants in financial legal relations, since in case of non-fulfillment (improper fulfillment), according to the legislation, they may apply appropriate financial legal sanctions. The state shall establish such procedure in order to prevent or reduce or stop the pecuniary damage as a result of non-compliance with the established procedure for the implementation of public financial activities[3]. Therefore, the essence of the financial legal responsibility mechanism, in our opinion, is the reaction of the state (other public entities) represented by their authorized bodies in violation of financial legislation by applying appropriate financial and legal sanctions in order to maintain the established order in the field of public financial activity.

The effectiveness of the protective function implementation is influenced by various factors. Among them, first of all – the imperfect legislation, which regulates the implementation procedure of public financial control and the mechanism for the application of financial legal responsibility. Despite the recent amendments of legislation in the sphere of financial control, a significant number of problems in this area have not yet been resolved. Therefore, in order to increase the effectiveness of the implementation of public financial control, we propose to amend the Law of Ukraine "On the Basic Principles of the State Financial Control Enforcement in Ukraine", taking into account international standards, which provide for the introduction of modern methods and forms of conducting control measures and the formation of an optimal system of supervisory bodies. Thus, it is vital to foresee more active implementation of not fiscal, but preventive types and forms of financial control – Independent internal audit, public financial control, etc.

We must admit that proper financial legal regulation is impossible without a stable and scientifically grounded framework of categories and concepts. Therefore, we consider the shortcomings of the formation and use of the conceptual apparatus as the another factor that affects the effectiveness

[3] Дмитренко Е.С. Юридична відповідальність суб'єктів фінансового права у механізмі правового забезпечення фінансової безпеки України : монографія. Київ : Юрінком Інтер, 2009. С. 147–148.

of the implementation of the analyzed functions of Financial Law. This also applies to the institutions of public financial control and financial legal responsibility.

Meanwhile, in financial legislation there are certain problems associated with the formulation of definitions and the choice of terms. Particularly, the term “public financial control” is still not used in the Law of Ukraine “On the Basic Principles of the Implementation of the State Financial Control in Ukraine” and the terms “financial legal penalty” and “financial legal mulct” are still not used in the Tax Code of Ukraine. The Budget Code of Ukraine has not defined so far the term “financial legal sanctions for violations of budget legislation”, that would be appropriate. In our opinion, such terms are scientifically grounded and useful.

To resolve these and other terminological issues, we propose to make appropriate changes to the specified financial legislation. We also consider as imperfect the title and the structure of Chapters 11 and 12 of the Tax Code of Ukraine, and therefore we propose to combine these chapters into one entitled as “Financial legal responsibility for violation of tax laws”.

In our opinion, these and other measures can significantly improve the efficiency of the implementation of regulatory and protective functions of Financial Law. This, among other things, will help to ensure compliance with the legitimacy, legal order and financial discipline in the process of carrying out public financial activities.

2. Theoretically aspects of the ideological function of Financial Law

The modern economic and social transformation caused by regional and worldwide globalization, objectively require and already bring from Ukrainian society the rethinking of role and rights of citizens in the development of a legal state. In the next “revolutionary” conditions the update of legal democracy in Ukraine is one of the basic tasks facing both to national society and the international community (particularly in the face of international entities, unions, international financial institutions like the International Monetary Fund, European Bank for Regional Development etc.). This task can be defined as the formation of a new ideology type that is uncharacteristic for Ukraine during the earlier stages of the state development. In particular, this ideology should be based on the principles of humanism, democracy, respect to the law, recognition of priority for rights and interests of citizen and human and so on. However, the

different areas of human life characterized with the specific features and establishment of social connections, obviously need the legal regulation, recognition and uppermost the voluntary compliance of established legal requirements by all entities in order to ensure the unified law enforcement, external and internal security in the country. One of these areas, which naturally include all members of Ukrainian civil society, is the public finances; and the financial law I the main branch of its legal support.

Based on the social nature of law in general and financial law in particular, we emphasize the importance of its role in the formation of not only social but also psychological and personality traits, the valuable orientation which strongly affects the legal order in all spheres of public life, including the financial.

In the legal science, the implementation of specified the role of law is associated with its ideological function, the impact of which is aimed primarily to individuals as bearers of ideology.

However, the lack of an integrated functional system of principles of financial and legal regulation of relations in the field of public finances, imperfection of current financial legislation, systematic violations of the law principle on the one hand (for example, the violation of stability principle in the tax law; adoption of conflicting rules in banking and social insurance legislation; transition to the “budget night” rule in budget rule-making etc.), and the absence of implementation of the regulatory requirements on the other hand, point to the need not only a detailed study of the ideological function of the financial law, but also the formation of clear mechanism for its implementation. The need for updating of the research work on the given issue is confirmed also among practitioners and financial institutions as well as researchers and lawyers who were respondents of our survey (this view is reflected in 95% of respondents).

The general overview of Ukrainian financial and legal science, unfortunately, gives the grounds to state a low degree in study of ideological function of the financial law. The several studies refer to functions of the financial law or some of its elements (D.A. Hetmantsev, E.S. Dmytrenko, A.J. Ivanski, G.L. Kovalchuk, V.F. Rol’, V.P. Nahrebelnyy, D.A. Kobylnik, L.M. Kapayeva, M.S. Lyakh et al.). And the analysis of the European doctrine did not allow to reveal in-depth scientific publications on this issue. However, the questions of the role, place and content of the ideological function of this legal branch are remained aloof the research attention.

We consider such situation as unreasonable, since naturally the financial law with its branch spiritual and axiological essence has to secure legislatively and legalize the most important social and spiritual values, thereby forming the legal consciousness a well as culture of society, community and citizen in the field of public financial activity.

Proceeding from the foregoing and based on the general legal doctrine, we consider certain aspects of the ideological function of the financial law, which serve as the basic characteristics of its content.

According to the most common approach in the jurisprudence, the function of law is understood as mainstream of the legal impact on societal relations, where the social essence and purpose of law is manifested.

The experience of state building demonstrates that for the successful achievement of political objectives in the field of public finances, the ideological strengthening of its legal basis in general and certain important legal acts in particular are applied. This conclusion is in line with the position of some European researchers, who argues that the ideological content of law is largely manifest in the content of specific laws, whether judicial rules or specific legislative enactments[4].

In the first case it is achieved by adopting declarative, forecasting and program acts containing ideas and guidance of the nearest and perspective development of various spheres of public life in the country, including the financial system, financial and material welfare of citizens, development of entrepreneurship and so on. These legal ideology forming documents in particular include: conventions, concepts, national and regional development programs, budgetary declaration (addressing of the President of Ukraine with the main guidelines of the budget policy), activity programs of the Cabinet of Ministers of Ukraine and the President of Ukraine, the annual messages of the President of Ukraine to the Ukrainian nation and others. Also, nowadays the public discussion of bills has become one of the most popular legal forms of realization of the financial law ideological function in Ukraine. This form of activity is used by the ruling elite to perform a "diagnostics" (check) of the population to its willingness to changes.

However, we have to note that this is activity is being done selectively. First of all, it is conducted only in relation to specific issues mainly initiated

[4] Hunt A. The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law. *Law & Society Review*. 1985. Vol. 19. № 1. P. 22. DOI: 10.2307/3053393.

by the leading party or the ruling coalition and has different position from that generally established by the society. For example, these are the issues related to redistribution of power in financial sphere aimed to “unload” the state with obligations that require substantial financial expenses; the introduction of new taxes and toughening of tax burden; raising the retirement age; reduction of social security and privileges; implementation of new forms of authorities and population cooperation, etc. Secondly, if the authorities initiatives meet the public objection, the overcome of “public veto” often happens in practice by adopting the proposed legislative amendments in primary edition. Alternatively, considering the social, political or economical tension in the society, the best decision is to postpone the approval of the proposed amendments by operational (without public discussion) implementation of alternative legislative changes that ultimately lead to achieving the intended (unaccepted by society in the primary submission) objectives of authorities initiatives.

In the second case, the ideological commencement is implemented by updating the existing regulations. The various preambles and introductory articles are included to their content, where the emphases concerned the definition of core values and issues in the corresponding legislative acts may be changed.

Obviously, neither in the first nor in the second case the legislator does not pursue the goal of perfect law creation. Instead he is guided by state political, economic and other factors that occur at the appropriate stage of the state development, including a crisis, a turning point, changing of national ideology (e. g. in the present conditions of Ukraine refusal from Soviet ideology).

Another thing that contributes to understanding the nature of the ideological function of Financial Law is the principles of the financial law.

In the theory of philosophy and law, the principles are considered as reflection of ideology. The rather wide range of factors plays the determining role in formation of content in the ideological function of the Financial Law, in particular: international, political, economical, social and moral. They determine the ideological orientation of modern regulation of the Financial Law principles in various combinations. In addition, they are reproduced in principles of the financial law.

As it was rightly noticed by academician V.Ya. Tatsii, without these principles one can’t imagine a system of financial law, where they serve as

initial commencement in the construction and development of financial and legal norms. The principles of law, especially those of financial law, bear the objective character. At any given historical moment they reflect the actual needs of public relations development, and they are not "invented" randomly by researchers or legislators[5].

It should be added that the mentioned principles define the conceptual legal bases of forming and directing of the further development and operation of the Financial Law. However, one has to keep in mind the ideological nature of principles, because each of principles of the Financial Law is closely connected with the ideology in general and legal ideology in particular Thus, each principle serves as a component of ideological basis of the Financial Law, reflects the basic ideological assumptions of the ruling political elite, whose will is reflected in the law. In this dependence, the current state of regulatory consolidation of the law principles in general, and the "work" of certain legal acts including norms is manifested. For example, in the current Tax Code of Ukraine the legislator fixes the principles of tax legislation and the principle of loyalty to the law of the taxpayer decisions, while another important principle – individual tax liability is absent in the tax law.

However, the mentioned issue is the extremely required need of taxpayers, due to recent fact of multiple measures of state coercion to VAT payers for the violations which they actually haven't committed, but have become conscientious members of the financial and economic chains of production sales[6]. Nevertheless, these principles have ideological foundations that underlie the law and must be embodied in laws. That is why the principles are a prerequisite for availability of ideological functions in Financial Law, and their combination with the law contributes to realization of overall ideological function.

No less important issues in the study of ideological function of the Financial Law are the limits to its action. The decision of this issue should be based on etymological affinity and simultaneously on feasibility

[5] Таций В.Я. Принципы финансового права: постановка проблемы (вступительное слово). *Принципы финансового права* : материалы междунар. науч.-практ. конф., Харьков, 19–20 апреля 2012 г. / редкол. : В.Я. Таций, Ю.П. Битяк, Л.К. Воронова и др. Харьков : Право, 2012. С. 7.

[6] Пивовар Ю.І., Казанцев А.І. Принцип індивідуальної юридичної відповідальності платника податку на додану вартість: проблеми нормативної визначеності та реалізації. *Наукові праці Національного авіаційного університету. Серія «Юридичний вісник. Повітряне і космічне право».* 2016. № 4(41). С. 80.

of separation of the law and the state functions. In this context, it would useful scientifically to consider the ideological function in the light of the functions division into internal and external. It is known, that the main priority for each state is a solution of internal problems. For this purpose the national law, including the Financial Law defined primarily by boundaries of the national territory, is formed. However, we consider unacceptable the use the specified thesis in its full understanding for the ideological function of the Financial Law. The national Ukrainian financial law in the external (foreign) world is manifested mainly from the axiological and ideological viewpoints, rather than from purely legal one (though not without it).

For example, the decision of Ukraine to choose the course of integration with the European Union had served as an impulse of increasing the attention from the international community to the development of Ukraine in general and various spheres of national economy in particular. In addition, in relations of state loans (especially in process of Ukraine's fulfillment of the state government debts on international credit agreements and expectations of new tranches), the adoption of the annual budget laws and amendments to the tax, currency and banking laws is being conducted under scrutiny from international financial organizations and foreign countries, and adequately reflected in their further cooperation. Therefore, any populist, situational, irresponsible, political decision made nowadays and expressed in the form of law, especially regarding the sector of public finances, forms for foreign colleagues a generalized image of Ukrainian ideological priorities and makes unfavorable adjustments for Ukraine to its further international cooperation, and so on.

On the other hand, the ideological function of the Financial Law as part of the national law tends to the perception of external factors impact, in particular the principles of international, European, foreign law, legal ideologies of states as the legal family joint with Ukraine, and others, that actively adjust cooperation with Ukraine. In this context we consider that the ideology of the national financial law should be both flexible and stable, able to form legal consciousness and culture, based on national interests and defend them as well as to develop the Ukrainian economy and improve the welfare of citizens, etc. However, the current state of international financial law relations points to the existence in Ukraine a confrontation of ideological positions between the ruling political elite and the public concerning the receipt of new loans from the international and foreign creditors.

The foregoing leads to the conclusion on inherency of outer and inner sides to ideological functions of the Financial Law. The outer side is responsible for protecting and preserving national ideas in the field of public finances from external negative ideology forming factors, as well as for study and search for positive foreign experience with possible "cautious" gradual borrowing (sanctioning), the introduction of new guidelines by adapting them to the peculiarities of the national mentality, traditions, etc. The inner side of this function corresponds to "work" of the ideology with the internal aspects of the Financial Law functioning and the population of Ukraine.

At the end of this study we define the basic properties of the ideological function of the Financial Law. Based on the overall legal approach, one can define its following properties: this function is a reflection of a certain ideology of a particular society (class or nationwide) by the Financial Law. It promotes the law to fulfill its purpose more effectively, in particular to regulate social relations in the sphere of public financial activity and protect the financial and legal provisions. This function is always aimed at strengthening the ideology of the political forces in power, not only through financial and legal, but also through other views and ideas. Due to this function the Financial Law could be characterized as progressive or regressive ideological tool that promotes or retards the development of the financial system of the society. Its assignment to external functions of the financial law discloses the ability of Financial Law to implement external influence.

In addition, the considered function is characterized with specific features. Their expression is found in specific object of influence (the function doesn't affect the financial relationships directly, but it influences on the mind of individuals, their outlook, system of values, needs and interests, attitudes to taxes and culture and thus forms their motivational sphere. Besides, the implementation of this function is not directly related to the provision of subjective rights to the subjects of financial relationships and reliance on them legal obligations or legal liability. Instead, the function implementation is related to the propaganda popularization and regulatory fixing of certain set of social and spiritual values in the area of public finances.

CONCLUSIONS

We can summarize that the issue of the implementation of Financial Law functions is one of the fundamental in the mechanism of financial legal regulation.

A special and a decisive place belongs to the regulative function of Financial Law, the main purpose of which is to regulate financial legal relations. Therewith, forecasting and finding the most effective means of legal influence on such relations is also carried out as a result of the implementation of the regulative function of Financial Law.

The main direction of the protective function of Financial Law is to ensure the fulfillment of financial obligations of legal entities and individuals before the state and local authorities. Another aspect of this function implementation is to encourage the financial legal relations participants in order to comply with the requirements of financial legislation. In the system of remedies that facilitate the implementation of the protective function of Financial Law, a special place belongs to the public financial control mechanism and the mechanism of financial legal responsibility.

The ideological function is a reflection of a certain ideology of a particular society by the Financial Law. It promotes the law to fulfill its purpose more effectively, in particular to regulate social relations in the sphere of public financial activity and protect the financial and legal provisions. This function is always aimed at strengthening the ideology of the political forces in power, not only through financial and legal, but also through other views and ideas. Due to this function the financial law could be characterized as progressive or regressive ideological tool that promotes or retards the development of the financial system of the society. In addition, this function doesn’t affect the financial relationships directly, but it influences on the mind of individuals, their outlook, system of values, needs and interests, attitudes to taxes and culture and thus forms their motivational sphere. Besides, function implementation is related to the propaganda popularization and regulatory fixing of certain set of social and spiritual values in the area of public finances.

The effective implementation of Financial Law functions can be possible on condition of the accomplished formulation of the financial legal requirements, including the conceptual apparatus of Financial Law. In order to improve the implementation mechanism of the Financial Law functions, it is advisable, among other things, to make appropriate amendments to the financial legislation, to improve the both mechanisms of public control and

of financial legal responsibility, to form a doctrine and strategy for a development of financial legal culture. The provisions formulated in the Article can serve for the further scientific research of issues of implementing the functions of the Financial Law functions in general and separate.

SUMMARY

The update of legal democracy in Ukraine is one of the basic tasks facing both to national society and the international community. This task can be defined as the formation of a new ideology type that is uncharacteristic for Ukraine during the earlier stages of the state development. First of all, such an update requires a sphere of public finance, which serves as the economic basis of state governance. Adaptation of this sphere to the new conditions for the development of society should take place under the influence of various functions of financial law. However, in the theory of law the issue of the functions of Financial Law and the peculiarities of their implementation are poorly researched, which adversely affects the effectiveness of public finance management and their legal regulation.

The article defines the content of the regulative, protective and ideological functions of Financial Law. The emphasis is made on the features of their implementation under the modern conditions. The problems that affect the efficiency of the implementation of the above-mentioned functions of Financial Law are analyzed. Some ways of development of the regulative, protective and ideological functions implementation mechanism are proposed.

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MODERN WORLD: A NEW APPROACH TO THE LEGITIMACY OF PUBLIC FINANCE

Danil Getmantsev

INTRODUCTION

The crisis of the institute of a modern state is increasingly evident both on the international stage and within countries. Modern sovereign states differ from our conventional image of them, which has been formed during last 400 years of world history. This institute of power, which once superseded all the other centres of power that existed in the 16th and 17th centuries, which four hundred years ago used to have all of its effective instruments of managing society – from taxes to ideology – today fails to hold out modern challenges and is gradually taking a back seat.

We live in the era of the Great Transformation[1], which has led to turbulences of political, social and economic processes both at the international and national levels. Typical of the 20th century, the "Big Brother" states, aimed at coordinating actions between themselves, consolidating and multiplying their influence, have created a number of international institutions operating on supranational and cross-national levels, first on behalf and within the limits of the delegated legal capacity of the states, and later within their own autonomies, the frontiers of which are more and more determined by the political conceit, not their own charters. International relations have entered a brand new level, and though played an evil joke with their main subject – the state.

New, stronger players push aside the state as the subject of power, taking away its usual attributes. Despite ample powers of a state in the area of public finance, they have virtually no monopoly on the issue of money, which are now actively replaced by all sorts of cryptographic and monetary surrogates, actively used by multinational corporations. The state is gradually losing the monopoly of tax regulation – already in the process of charging taxes, and in the near future – in the area of establishing mandatory payments, which are actively supported by some modern experts (for example, environmental tax). In education, medicine, sports and other areas monopolized by the state four hundred years ago, there occurs an

[1] Polanyi K. The great transformation: the political and economic origins of our time. 2nd ed. Boston : Beacon Press, 2001. 318 p.

active process of denationalization. The state does not have the monopoly on violence that it had before (especially in Ukraine).

In constant strife and competition of systems, better-organized ones come on top. For rather long period of history, such a system was a national state, displacing or subjugating all those social institutions that existed before and in parallel with it. Many states have played the same role so far, only strengthening their power. However, the strengthening of the powers of Western democracies in the financial sphere in relation to society is in a dialectical relationship with the reverse trend – the weakening of the state, losing the monopoly on power in the interaction with other public institutions.

Thus, at the dawn of the New Age, national states, establishing the institute of citizenship, provided all (with known exceptions) their subjects the participation in the exercise of political domination, thereby legalizing themselves, uniting the society that represented itself through the state. For centuries later, the national state, taking over more and more powers, gaining independence from the society itself, the subjectivity and self-sufficiency, loses the originally acquired link with the source of its power (the people), wasting legitimacy, and as a result the power itself. The expansion of the legal powers of the sovereign paradoxically leads to their loss.

Jürgen Habermas pointed another side of this unavoidable historical process: "But with the recent trend toward the denationalization of the economy, national politics is gradually losing its influence over the conditions of production under which taxable income and profits are generated"[2].

The modern world dictates new rules and new players. International financial institutions, multinational corporations, local governments, public organizations at the national and supranational level, international organizations, engaging in relations with states, determine the world order. "Some are intergovernmental, others nongovernmental. Some are primarily political by nature, others dedicated to different ends such as making money, protecting the environment, spreading some religious message, or propagating some special cause, which may range from reducing pollution to animal rights… As a result, some of them are able to grow much richer than most states; or take over some of the latter's functions; or evade its control by establishing colonies and moving their resources outside its

[2] Habermas J. Faktizitat und Geltung, Beitrage zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats. *Jahrbuch Extremismus & Demokratie*. 1993. Vol. 5. P. 192–194.

borders; or influence the opinions of its citizens more than governments can; or (as in the case of numerous guerrilla and terrorist organizations) successfully resist it weapon in hand; or, not seldom, some combination of all these things"[3].

On the other hand, the post-war world clearly proved that the presence of a set of obligatory legal features of the state does not turn it into an independent subject of social relations in cases when it comes to satellite states, whose sovereignty is artificially created (preserved) by their "patrons". The possibility of obtaining sovereignty at the will of strong international players by such states as "semi-phantoms", in turn, discredits the idea of state sovereignty as such, undermining its legitimacy.

The essence of the struggle for power in society has also changed significantly, from the struggle for power in the state into the struggle for power both in the state and against the state.

The cognitive dissonance of our perception of a modern state is an objective manifestation of transformation from the old order to the new one. It led to the emergence of a new world, destroying the old forms. It is clear that one of the central issues arising in connection with the recognition of the new world order is the issue of legitimacy.

1. Legitimacy of the new order

The matter of legitimacy was always relevant to any society. Legitimacy is "a desire to comply and, therefore, external and internal interest in obedience"[4]. Legitimacy is honouring the existing political institutions most acceptable, regardless of the opinion of specific people in power. This is a binding or exemplary order for subordinates in a domination relationship.

Legitimacy, as underlined by Pierre Bourdieu, is political capital based on faith and acknowledgment, a one-sided obedience, but the bureaucratic authority will never – even when backed up by scientific authorities – be able to achieve absolute control and ultimate right to form and impose legitimacy view of social reality. Pierre Bourdieu believed that legitimate power was a power given by the one who obeys it to the one who exercises it[5].

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[3] Van Creveld M. The Rise and Decline of the State. Cambridge : Cambridge University Press, 1999. P. 417.

[4] Weber M. Economy and Society: An Outline of Interpretive Sociology. Berkeley : University of California Press, 1978. 1470 p.

[5] Bourdieu P. Social Space and Symbolic Power. *Sociological Theory*. 1989. Vol. 7. № 1. P. 14–25.

As noted by L.S. Frank, any system arises from faith in it and holds on as long as this faith persists at least in the minority of its participants, as long as there are at least a relatively small number of "righteous" (in the subjective sense of the word) who selflessly believe in it and serve[6].

Obviously, a legitimate law is a fair law. What is more, a legitimate law is a law that is believed to be fair by the society, which includes the origin of the law from the person authorized to accept it, in accordance with the established procedure. Regarding the law as legitimate, we agree with it and accept it as a mandatory rule of conduct. At the same time, even breaking the law, but hiding its violation, we thereby emphasize its legitimacy. As J. Habermas once said, "tax law is legitimate when it is socially accepted"[7], i. e. when it gained its legitimacy from democratic procedures, public discussions, dissent and compromise in parliament in the context of political pluralism[8].

However, what will (is there already?) the conception of legitimacy of traditional institutes within the multipolarity of the subjects of power look in the modern world and in the near future? Legitimacy is a characteristic of a power relationship. Relations between two parties, one of which has the right (supported or not by the possibility of violence), and the other recognizes this right. Thomas Hobbes said that reputation of power is power[9], and Blaise Pascal shared many of his ideas.

In such sense, the power brings unity to the society, ties together group as such.

Legitimacy of the postmodern state is undermined by the state itself, as we will not actually claim that taxpayers or favourite illusion of democrats – "people as the source of power" – define or at least consent to imposition, change or cancelation of taxes. Transformation of many contemporary states from tax into debt ones[10] further breaks the

[6] Lossky N.O. S.L. Frank. *History of Russian Philosophy*. London : International Universities Press Inc., 1952. P. 266–292.

[7] Habermas J. The Inclusion of the Other: Studies in Political Theory. Cambridge, Mass : MIT Press, 1998. P. 122.

[8] Dourado A.P. No taxation without Representation in the European Union: Democracy, Patriotism and Taxes. *Principles of Law: Function, Status and Impact in EU Tax Law* / C. Brokeland (ed.). Amsterdam : IBDF, 2014. P. 205–234.

[9] Hobbes T. Leviathan or The Matter, Forme and Power of a Common-Wealth Ecclesiasticall and Civil. London : Penguin Books, 1981. 736 p.

[10] Streeck W. Buying Time: The Delayed Crisis of Democratic Capitalism. Second Edition. With a New Preface. London ; New York : Verso, 2017. 350 p.

relationship between the will (consent) of the society and the decision on its (society) taxation, levelling both no taxation without representation principle and popular sovereignty as such. The debt state, which lends money from foreign creditors represented by international organizations (International Monetary Fund, European Bank for Reconstruction and Development, Economic and Monetary Union, World Bank, etc.), in fact, is controlled not by the voter, but by the creditors. The state receives credits, and then uses taxes to cover interest and the body of debt. Thus, the relationship between the voter (taxpayer) and the financial sovereignty of the state is not just broken, but levelling the very idea of the meaning of taxation as such. In such case, tax patriotism turns its antipode, "tax exile", and the legitimacy of tax law seems more than doubtful.

On the other hand, states, as if recognizing their limitations, act on the financial field like ordinary commercial corporations, fighting for the "client" (taxpayer) regardless of their national origin and citizenship, creating a "tax law market"[11] and actively competing.

Even if we leave out of the discussion the illusory existence of this legal phantom of authorship of Jean-Jacques Rousseau, the people, as subjects of political relations, it is obvious that taxation issues are resolved without the will or even the consciousness of the majority of voters, not only being a matter difficult to comprehend without special education or sufficient civic competence (Robert Dahl), but a sphere whose management with participation of citizens (even nominal) is limited.

Taxation is just one illustrative example of the overall trend. Bruno Leoni, describing the representation of the people as the main myth of his time, said that the more people the legislator tries to "represent" in the legislative process, and on the more matters he tries to represent them, the less the word "representation" relates to the will of real people, and not with the will of people who are called their "representatives"[12].

On the other hand, modern legal systems are complemented by new norms contained in sources of law that were not previously characteristic of them. These norms, sanctioned by the state indirectly or not at all sanctioned by the state, are miraculously applied and are an obligatory regulator of social relations.

[11] Schön W. Playing different games? Regulatory competition in tax and company law compared. *Common Market Law Review*. 2005. Vol. 42. Issue 2. P. 331–365.

[12] Leoni B. Freedom and the law. Indianapolis : Liberty Fund, 1961. 274 p.

Supranational juridical institute rulemaking should assume more and more importance in the new world. Courts, which deal with disputes between states and individuals, are of great importance. The condition of the legitimacy of their decisions is the recognition of the jurisdiction of the court by the states as subjects of relations. On the other hand, the individual recognizes the jurisdiction of the court, appealing to it with a claim. It is highly desirable that the decisions of supranational courts have the value of sources of law in states. This will avoid disputes regarding the applicability of precedents and will provide greater opportunities for national courts (primarily for administrative and fiscal courts) to protect the rights and legitimate interests of individuals in their disputes with the state.

It is through "judicial law-making" that a whole layer of so-called soft law penetrates into the legal system. Soft law is the rules of various international organizations and customs, not sanctioned by the state, but actually accepted by the parties and international commercial arbitration, as mandatory rules of conduct in relations between them. Take, for example, Basel, the blacklists of FATF, the EU Code of Conduct for Business Taxation, the G20 recommendations and thousands of other documents created by international organizations.

It is obvious that the legitimacy of the state and its institutions, including legislation, requires a new reading, though sharpening the previously hidden contradictions.

2. Legality vs Legitimacy

These include the ratio between the categories of legality and legitimacy. Although legitimacy provides for legality, both concepts, nevertheless, are in a dialectical unity, an opposition. A legitimate act does not always have to be legal. The victorious revolution produces acts that completely contradict the existing order, but completely or partially abolish it. What gives power to such acts? Not the state will, but the consent of the majority, recognition by the majority of the binding force of the act. Abbot Sieyes in 1789 called such a power constituent, separating it (and actually opposing to) from the established authority.

On the other hand, a legal act is not always legitimate. The act adopted by the government within its authority, however, in violation of (1) the goals of law-making, (2) principles of law, (3) universal human values is legal, but not legitimate.

Thus, the legitimacy of the act is the relationship of the act with the principles of law adopted in a given society and the goals of law making. Accordingly, the legitimacy of the act is (according to Radbruch) a combination, at a minimum, of justice, stability and expediency of law.

Legitimacy and legality entail the obligation of an act only if they coincide. If not, the ratio of political forces in society at the decisive moment (the moment when the act is issued, became known, or is (not) accepted) determines whether the act will be mandatory. Sometimes the support of the majority is not important, as the support of an aggressive minority is sufficient, which, however, does not make the act legal (if it is legitimate, but not legal) or legitimate (if it is legal, but not legitimate), but at the same time ensures its execution. On the other hand, the majority cannot always legitimize the rule, because even formal correct decisions of the majority, which display only fears for their status and reflexes of self-actualization of the middle class, undermine the legitimacy of the procedures and institutions.

For the same reason, we cannot agree with Carl Schmitt's statement: "what nation desires is virtuous because nation desires it"[13].

The relationship between legality and legitimacy occurs at the level of the principles of law. In essence, for a legal significance, a legitimate act may not comply with the law, but must comply with the rule of law.

Thus, the matter of the legitimacy of modern taxation is solved not only and not so much purely within the legal framework (material and procedural legitimacy). The matter of legitimacy is also, and above all, a matter of morality to the extent that moral makes law possible[14].

Principles of law, as its moral basis, being sources of law, conflict with laws that do not correspond to them. Thus, the mere disagreement of society with the law is not enough for it to become illegitimate. It will become illegitimate only when such disagreement is based on the principles of law adopted in it.

The revolt of the English colonists in the 18th century against the English crown arose as a response to a long series of abuses on the part of the metropolis, the main of which was a violation of the principle of "no taxation without consent" – denial of full representation of Americans in government, involving collection of taxes, i. e. an illegitimate intrusion

[13] Schmitt C. Verfass Ungleichheit (1928). Berlin, 1983. 228 p.

[14] Fuller L.L. The morality of law. Storrs Lectures on Jurisprudence Yale Law Scholl. Yale : Yale University Press, 1969. 262 p.

into their private property. This kind of "tyranny" of the metropolis undermined not only the legitimacy of taxation, but also the legitimacy of the interaction between the metropolis and its colonies, which existed at that time in the empire, which caused the people's right to rebel[15], described by John Locke. Thus, the American Revolution itself is a legal act – a legitimate, though not legal, act of the constituent power of the people. By the way, the war for the independence of the United States forever changed the policy of England regarding the taxation of its colonies, forcing to abandon the practice of taxation without consent.

On the other hand, people opposing the law should be guided by morality based on justice. Disagreement of the majority of society with the law based on unjust motives will not entail the illegitimacy of the law. The judge's highest mission is to make a legitimate decision based not on a popular, but a fair, therefore legitimate law, in times of public madness, contrary to public opinion, sometimes at the cost of its own life.

A lawyer should take public opinion, this demon of manipulation, into account only when it is based on the principles of law, based on justice and morality.

Consequently, legitimacy is inherent only for the community, which accepts the principles of law as the basis of its activity.

Legitimacy assumes legality, existence of legal system in accordance with legally established law and order. Nevertheless, legitimacy also provides for a basis (justification) for legality, surrounded by the aura of authority. This is a form of special expertise, which is added to the powers implemented by the state in the name of law[16].

Our understanding of legitimacy is that states are connected and subject to the rule of law in the broad sense, as well as other subjects of legal relations. And the fact that the state in public relations is authorized to manage other subjects does not exempt it from the rule of law, does not give absolute power, but limits the scope of the state imperative in influencing social relations.

[15] Locke J. Two Treatises of. Government. Works in 3 vols. Moscow : Mysl, 1988. 393 p.

[16] Gribnau J. Legitimacy of the Judiciary. Netherlands Reports to the Sixteenth *International Congress of Comparative Law* / E. Hondius, C. Joustra (ed.). Antwerpen ; Oxford ; New York : Intersentia, 2002. P. 29.

3. New public finances

The new world order will affect (or already affecting) the entire human civilization and every social institution, for obvious reasons, as well as financial aspects of social relations, most susceptible to social change. How, in what form and quality will public finances exist? What will determine the legitimacy of financial and legal norms and institutions tomorrow or even tonight? It is obvious that the new polysubject of international relations, as well as relations within countries, dictates new grounds of legitimacy.

Obviously, the tax in its modern sense (elements, essence and functions) is a product and an integral element of the national states of the new time. This was not always the case. Just 400 years ago, taxation assumed retribution and a plurality of entities with the authority to tax. Even in the late Middle Ages in Europe, church tithe easily coexisted with payments (*corvée*) to the secular power, which, in turn, could be represented by both the overlord and the power of local feudal lords. At the same time, the nature of payments was rather private than public. Various port, road, bridge, gateways, etc. charges to one or another power subject of feudal society were perceived by taxpayers reasonably and were fair in the context of public relations in which they were charged.

Jean Bodin in Six Books of the Republic[17] did not mention tax (except duty) as a source of filling the sovereign's treasury, arguing that the Christian sovereign should avoid taxation as much as possible. The principle of "no taxation without consent", universally accepted, but perverted by states over time beyond recognition, also has its origins in the medieval concept of tax, when it was understood quite unequivocally and literally as a payment for something without parliament mediation.

For example, another familiar figure, Bishop of Winchester, was declared not guilty by the Crown Court in 1217 (two years after John Lackland had signed the Magna Carta) justified on charges of tax evasion because of his absence from the Great Council of Barons at the time of deciding whether to accept the tax, and the relationship of representation in these matters was unacceptable[18]. Obviously, at the time of Magna Carta (which, by the way, partially operates today), the principle of no taxation without consent was understood as the literal consent of every taxpayer to be taxed.

[17] Bodin J. Les Six livres de la République, morceaux choisis. Paris : Confluences, 1999. 77 p.

[18] Adams C. Fight. Flight. Fraud. The Story of Taxation. Curacao : Euro-Dutch Publishers, 1982. P. 121.

Of course, this example can be contested by the argument about the special status of the accused, which is hardly comparable to the status of the peasants who actually belonged to the bishop, and in this connection the "consent to taxation" of the "commoner" in the 21st century is incomparable to his right to take part in tax matters in the 18th century, even though the election mechanism. However, it is obvious that the nature of the tax in the Middle Ages proceeded from the reciprocity of the rights and obligations of the suzerain and the vassal, and the right to establish a tax was of a limited, feudal, private law nature. It is also clear that from the point of morality, and from the point of the right, obligatory payments levied before the final approval of the sovereignty of the states in Europe, in accordance with feudal law, were more than legitimate.

European civilization has lived in the multiplicity of the centres of power of the Dark Ages for a thousand years. It would be naive to consider eternal the New Age, which arose on the ruins of the Middle Ages. On the contrary, the generally accepted social relations for the New Age exhausted itself, while the postmodern world dictates new norms and fills the institutions we know with new meaning and content. Jean-François Lyotard said that the West was the civilization that would question the essence of its civility. Peculiarity of western civilization was hidden in this question. With a repeated gesture, the West stockpiles with ideals, asks them questions, throws them away… The West knows that civilizations are mortal. However, the fact that it knows this is enough to make it immortal. The West lives at the expense of the death of civilizations, as well as of its own. The West into a museum of the world. Thus ceases to be a civilization. The West becomes a culture[19].

Thus, along with other categories of financial law, tax is a historical category that should be perceived in the context of certain social relations. The historical context dictates the understanding of the legitimacy of both individual legal categories and sources of financial law.

It is obvious that changes are generated not at the national level, but *ab extra*, and international relations, where states give up part of their legal personality in favour of other players, giving rise to a "society of states and individuals" are sources of new approaches to the legal regulation of public finances[20]. Jürgen Habermas stated: "If not only the nation-state has run its

[19] Lyotard J.-F. Anima Minima. *The Aesthetic Unconscious* / J. Rancier. Sankt-Petersburg : Machina, 2012. P. 85–86.

[20] Peters C. The Faltering Legitimacy of International Tax Law. Tilburg : CentER ; Center for Economic Research, 2013. P. 54.

course but along with it all forms of political integration, then individual citizens are abandoned to a world of anonymously interconnected networks in which they must choose between systemically generated options in accordance with their preferences. In this post political world, the multinational corporation becomes the model for all conduct… Its vanishing point is a completely decentred world society that splinters into a disordered mass of self-reproducing and self-steering functional systems"[21].

Documents classified as "soft law", which are not directly government-mandated, are nevertheless applicable by the parties to legal relationships and courts, used as financial relationships regulator at international and nationwide scale, and therefore are source of law. What is their secret?

In its decision dated 7 September 1927, the Permanent Court of International Justice states: "International law governs relations between independent States. The rule of law binding upon States, therefore, emanates from their own free will as expressed in conventions or by usages generally accepted"[22]. This concept of state sovereignty is generally accepted to this day.

Four hundred years of monopoly of states on rule making does not allow us to legitimize legal norms with ease, except for state ones or those sanctioned by the state. It would seem that this is contrary to logic and even common sense. However, if the state recognizes cryptocurrencies as legal, or at least does not prohibit their use, will the rules for the issue and circulation of such currencies established by non-state subjects be mandatory for the parties to comply with cryptocurrency circulation relations and courts considering relevant disputes? In our opinion, yes.

Norms of this kind are most difficult to perceive within the framework of financial law, in the public sector, since in this case the state is always an obligatory subject of legal relations. The state as the carrier of power regulates social relations. Moreover, here we cannot perceive "legal pluralism", especially characteristic of private international law. Without a corresponding "blessing" by the state, the Model Convention and other acts of the OSCE, the G20, structures operating within the framework of the UN and other organizations will not be sources of law. On the other hand, the state can no longer engage in norm setting without regard to international

[21] Habermas J. Faktizitat und Geltung, Beitrage zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats. *Jahrbuch Extremismus & Demokratie*. 1993. Vol. 5. P. 192–194.

[22] France v. Turkey: Judgment. Permanent Court of International Justice (Twelfth (Ordinary) Session): The Case of the S.S. Lotus. URL: http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm.

acts, not even sanctioned by it. A simple example is the BEPS actions, documents developed by a non-governmental organization, which in fact is a guide for amending national legal systems, as well as a deterrent when adopting norms that contradict them. Thus, we can ascertain the actual limitation of the sovereignty of the state.

The EU has already formed and successfully applies national regulatory body system, which produces secondary law. *De facto*, European Court of Justice engages in law making on supranational level. That said, the common trend of polysubjectivity of international relations does not exist only in the context of the EU, but it exists in all countries. Norms (rules of conduct) laid down by non-governmental bodies are not arbitrary i. e. not rules that arose out of nowhere. Their legitimacy depends on compatibility with universal source above them. However, if this source is not a state, then what is the source for non-governmental legal rules' legitimacy and binding nature? The answer is obvious.

Legal rules are derived from law principles – the main ideas that capture their essence. Declared in constitutions and international legal acts, they "live their own life", independently from state's will, evolving, being reinterpreted, reflected in judicial trials and doctrines. Infringement of law principles by the government act incurs illegality of act despite the absolute of state sovereignty that was universally accepted until recently. Here we cannot agree with Hobbes's or Schmitt's understanding of sovereignty as discretion of emergency, right to act above law. Theory of constitutional law forms a hierarchy where legal acts of state's constitution are placed above international acts. Perhaps this makes sense in the context of bilateral agreement. However, can a constitution cancel the supremacy of law principle or at least change one element of it? Can a constitution cancel human or citizen's rights enshrined in the European Convention on Human Rights? We believe so. However, will it preserve legitimacy in doing so? Of course, no!

Law principles are those statutory bases, on which state builds its law making, to which state should correspond. In particular, international tax law principles (if take them for granted) are regulators, they define both states and other subjects' behaviour. Prohibition of tax rules retroactivity, taxation neutrality, balance between private and public interest, prevention of double taxation and many other principles, being manifestation of general taxation equity principle, are already bases for legal norms. As Kemmeren wrote in

2001, a bilateral double tax convention should primarily oblige tax jurisdictions to be found on the principle of equity[23].

Thus, the rules governing social relations, and those not originating from the state, can also be legal rules only because they comply with generally accepted principles of law. In other words, state authorization is not a prerequisite for the validity or binding nature of the norms.

Moreover, the courts play an extremely important role. Let us take the European Court of Human Rights, which based on general norms of an international act, using the principles of law, creates the law, recognizing and accepting "objectively existing rules" in court precedents. The precedents of the ECHR are obligatory for our state not only by virtue of the norms of the relevant national legislation, but by virtue of the binding nature of the European Convention on Human Rights. At the same time, Ukraine's recognition of judgments of the ECHR as a source of law, on the one hand, legitimizes an already existing fact, but on the other, is another source for its own legitimization, including the law enforcement practice of a supranational court in its legal system.

Being bound by legal principles, international judicial precedents and other sources of law, the state loses the status of a "tax state", a characteristic of the second half of the 20th century. The state should take into account both international and legal principles declared by it in its activities. After all, it is obvious that the act of the state on the introduction of tax in violation of the principles of law (both special and general) is illegitimate, and only because of a contradiction to the principle of law should be recognized by the court as unlawful.

If we apply this approach to the national tax law of Ukraine, then it reveals a new justification for the illegitimacy of taxation laws adopted in violation of Art. 4 of the Tax Code of Ukraine. After all, a law adopted in December of the current year and entered into force in January of the next year violates the principle of stability of taxation (p. 4.1.9 article 4 of the Tax Code of Ukraine) (Article 8 of the Constitution of Ukraine[24]), violating the legitimate expectations of taxpayers, thereby violating the principle of the rule of law, enshrined at the level of the Constitution, and therefore is unconstitutional. We consider this logic justifiable.

[23] Kemmeren E. Source of income in globalizing economies: overview of the issues and a plea for an origin-based approach. *Bulletin for International Taxation*. 2006. Vol. 60. № 11. P. 430–452.

[24] Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

4. National level

Polysubjectivity of world order extends not only to international relationships, but also to internal relations within the state. Today, legitimacy of tax relations is achieved by combining three interrelated factors: legality, proper administration, and proper relations between taxpayers and tax administration[25].

Moreover, future of tax relations depends on how consistent and clear we are in our requirement for the state to actualize generally accepted worldwide norms of communication with citizens in financial and other kinds of relationships. After all, tax equity is not a question of amount of money alienated to state, it is a matter of social structure equity inside the country, as well as on international scale. The condition for the existence of a society of states and individuals is the proactive position of the individual in relations with other subjects[26].

The essence of the new European state is a tool of representation, i. e. converting multiplicity into a unity. However, the emphasis on the concept of unity does not mean that this unity is successful, absolute. It is the union, the process, the power, the power of unity. If unity were relevant, we would merge into one mass and there would be no state[27].

It is known that a whole does not narrow down to aggregation of its parts, and one does not belong to a number sequence. According to Émile Durkheim, modern society, alongside with high rate of integration, produces also loneliness in form of social relations decay and of its overpressure – "Anomie"[28]. Thus, associative and dissociative powers coexist in society, forming usual for people associative sociality. "A man has a tendency to enter the social state, combined with a perpetual resistance to that tendency which is continually threatening to dissolve it"[29]. Thus, centrifugal tendencies are at the very core of the state as union of peoples.

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[25] Gribnau J. Legitimacy of the Judiciary. Netherlands Reports to the Sixteenth *International Congress of Comparative Law* / E. Hondius, C. Joustra (ed.). Antwerpen ; Oxford ; New York : Intersentia, 2002. P. 29.

[26] Guéhenno J.-M. Das Ende der Demokratie. München : Artemis, 1994. 280 p.

[27] Magun A. Unity and Solitude: The Course of Political Philosophy in the Modern Age. Moscow : New literary review, 2011. P. 135.

[28] Durkheim É. Suicide: A Study in Sociology. Glencoe, III. New York : Free Press, 1951. 405 p.

[29] Kant I. Idea for a Universal History from a Cosmopolitan Point of View (1784). New York ; Indianapolis : The Bobbs-Merrill Co., 1963. 200 p.

At the same time, the modern state itself, having emerged from the institution of a medieval corporation, initially built its sovereignty as anti-sovereignty, affirming itself in opposition to the power of God and the Pope, as well as other sovereign states. Not surprisingly, now they are trying to build and protect organizations and capitalist corporations with the same roots as their anti-sovereignty.

Another concept explaining the processes taking place today is the concept of representation. Representation is the reduction of many people to their unity. This reduction is carried out, firstly, in the living figure of the corporation and the personality of the sovereign, and secondly, it involves a whole system of legal fictions and symbolic correspondences... Representation is a form of collective subjectivity, that is, building a collective that controls itself, knows itself and manifests itself.

A certain duality of state has always been presumed. On the one hand, the state as an institution that unites society, and on the other – as an institution of governance, which includes only a small part of it. The state, as an apparatus, being an independent subject, actually pursues its goals as a subject of relations, including with society, and not the interests of the society by which it was created. Sometimes the interests of the state and society may coincide (as in the case of external aggression), but most of them do not. The controversy is most obvious in public finances, where the interests of society and the state collide around the redistribution of property. On the one hand, the society is interested in fair redistribution of wealth through tax mechanisms, on the other hand, the state is interested in the state itself receiving the largest amount of funds in the process of such redistribution, developing its structure and expanding its powers. Speech in this case is not about corruption or the interests of specific officials. The state, as an apparatus, is not a collection of officials; it is a new quality, having its own will and intelligence, like any relatively stable organization.

Have you ever wondered why any reduction of the state apparatus leads to its expansion over time? Perhaps because the subject cannot restrict himself and any politician who has come to the state through elections becomes its part... This perception of the state makes it possible to comprehend the nature and goals of financial decisions made by the state not in the interests of society as a whole, but because of a compromise with other subjects with domestic or international influence.

The crisis of national states raises doubts that the state, as an institution, in all cases is capable of positively influencing the development of society. It is not so much about the "leaky bucket" of the state budget, but about the fact that social relations in society are so complex that, on the one hand, it is extremely difficult to predict the consequences of multi-level government activity in various areas, where the actions of various bodies can be directed at different goals and contradict each other.

On the other hand, the number of unknowns that influence a positive result in the long term is so great that the most inadequate action or complete inaction of the government may end up with the greatest benefit to society. The chain from the decision to its implementation is very long, and is influenced by a number of different factors that distort the government's original intent. In addition, the understanding of the good of society itself is important. What is better: to privatize a state-owned film studio, than to attract private investment in the development of national cinema, or leave the studio under state ownership, having provided adequate funding for a unique material base for national cinema? Both the first and second decisions in the end may be equally correct or erroneous. Moreover, this decision will depend entirely on who will make the assessment. Thus, in the modern world (not in all, but in most countries), the situation is such that the best that a state can do for society is not to interfere.

Thus, the state from a sovereign in public relations within countries is transformed into one of the subjects of power, gradually losing its representativeness in its traditional sense. The state, on the one hand, pursuing its own interests, sometimes contradicting the interests of society, and on the other hand, for the most part, is unable to effectively manage public relations, it loses its role characteristic of the New Age. Time will tell what the new role of the state will be. However, it is obvious that for the modern era, the main role of the state is not to manage the economy and society, but to act as an arbiter of social relations. An entity that ensures the democracy and fairness of the procedures for establishing and implementing the law within the country, taking into account the legitimate interests and expectations of all members of society – individuals included in various social and economic groups and organizations, as well as the interests of these groups and organizations. However, we are not talking about the liberal ideal of the state – the night watchman, who has withdrawn himself from influencing certain areas of society (first, the economy). It is about the

state as the main, main in the society (country) forum, where individuals and their groups establish and execute the law and administer justice based on the principles of law.

Consequently, contemporary state is not a unity as a form of the whole (national unity), it is a unity in the meaning of one institution, equally ensuring private and public autonomy "as a member of an association of free and equal bearers of rights" by following democratic communicative procedures. This is the basis for continuity paraphernalia and guarantee, typical for the scandal in thinking policy that is nothing more than the rationality of disagreement[30].

Financial relations continue to be an important subject of state legal regulation. However, the role of the state in the financial sphere should also change. Of the entity that uses finance as an effective tool for managing society, the state should become an effective mechanism for redistribution of national wealth based on the agreement reached by individuals regarding the sources of accumulation of funds and the goals of their use based on the principles of law. We agree that a forum in which everyone could approve or reject the state budget for the next year is certainly unrealistic not due to technical impossibility (modern electronic technologies can allow implementing such a mechanism) and because most citizens lack the necessary knowledge in the financial sphere and due to their reluctance to engage in state issues. However, the same goal can be achieved by providing citizens with an opportunity to appeal against any decision taken at a democratic forum (through representatives or directly).

Moreover, here the role of the judicial system and especially administrative (fiscal) courts, resolving disputes between the state and the individual, is increasing. Considering disputes between the state and individuals or their groups, administrative courts should directly apply legal principles contained not only in the state constitution, but also in international legal acts, judicial precedents of supranational judicial institutions, as well as legal doctrine in its narrow and broad understanding. It must be possible for an independent court to promptly consider any decision of the state in the financial sphere (in both tax and budgetary relations) with the involvement of all interested parties. Thus, a mass (group) action in administrative proceedings becomes indispensable in any

[30] Ranciere J. Disagreement. Politics and Philosophy. Minneapolis ; London : University of Minnesota Press, 1999. 326 p.

legal system. The role of legal disputes between local governments among themselves and with the state, between other institutions of civil society and even between state bodies is growing. Administrative (fiscal) legal proceedings thus become one of the basic mechanisms for ensuring the guarantee of democracy in society, and the matter of the independence of administrative (fiscal) courts from the state and other subjects becomes a matter of democracy as such.

Of the managing entity that regulates social relations, including through finance, a democratic state should become an accountant mechanically redistributing national wealth by providing a procedure for accumulating funds in the form of democratically established taxes, distributing the funds collected for purposes defined in accordance with democratic procedures, as well as monitoring these processes. In changing the role of the state and ensuring (observing) the above procedures, there is a guarantee of the legitimacy of decisions, rules and regulations governing modern financial relations.

CONCLUSIONS

The article is aimed at disclosing the notion of legitimacy, as well as introducing new approach to legitimacy of public finance. In addition, a special consideration is given to some mechanisms for ensuring the legitimacy of financial and legal norms on a nationwide scale in the context of citizens' possibility to contest any decision made by the state in financial sector.

The results obtained stipulate that legitimacy may be defined as a desire to obey based on faith and acknowledgement. Legitimacy is a characteristic for relation of power, relations between two parties, one of which has the right and the other one recognizes the right. It must also be noted that legitimacy of modern state is undermined by the state itself, as issues of taxation are usually tackled unbeknown to the society; as a result, state is currently being transformed from tax into a debt one. Ukraine may be called a state one for the reasons provided below. This fact undermines legitimacy of law as act with which we agree and which we internally accept as obligatory rule of conduct.

Article also opposes the notions of legitimacy and legality. It is admitted that there is a difference and some interrelation between these. Legitimacy provides for legality; thus, these two notions exist in a dialectical unity, which provides for juxtaposition. However, legitimate act may not be legal,

and legal act, in turn, is not always legitimate. Moreover, legitimacy assumes legality, existence of legal system in accordance with legally established law and order. Nevertheless, legitimacy also provides for basis for legality, surrounded by the aura of authority. In turn, legal norms' legitimacy depends on their correspondence to a universal source one-step higher in hierarchy. A state cannot be such a source. Legal norms arise from legal principles, i. e. governing ideas that capture their essence. Principles of international tax law are regulators that define behaviour of a state and other subjects. Prohibition of tax rules retroactivity, taxation neutrality, balance between a private and a public interest, prevention of double taxation and many other principles, being manifestation of general taxation equity principle, have already become bases for legal norms.

There also exists the fact that new polysubjectivity of international relations, as well as domestic relations, dictates new bases for legitimacy. The EU has already formed and successfully applies national regulatory body system, which produces secondary law. Fundamentally, European Court of Justice engages it in law making on supranational level. In addition, the common trend of polysubjectivity of international relations does not exist only in the context of the EU, but it exists in all countries. Rulemaking of supranational juridical institute should assume more and more importance in the new world. Courts dealing with disputes between states and individuals are of great importance. Base for legitimacy of their decisions is a recognition of court's jurisdiction by states as subjects of relationships. On the other hand, by filing a lawsuit to it, individual recognizes court's jurisdiction. It is critical for supranational courts decisions to have influence as source of law in states, as in the case with Ukraine with respect to decisions of European Court of Human Rights. That will combat disputes related to the applicability of precedents and grant broader possibilities to national courts (mainly to administrative and fiscal ones) to protect rights and legal interests of individuals in their disputes with a state.

According to the above findings, one may conclude that the main guarantee of assurance of democracy is possibility for fast, public and effective review of any state's decision (in tax and budgetary relations) in financial area by independent judiciary with the involvement of all persons concerned. This way, mass appeal in administrative legal proceedings obtains an obligatory nature in any legal system. This makes administrative legal proceedings one of main mechanisms of ensuring democracy

in society, and question of administrative (fiscal) courts independence from state and other subjects – a question of democracy as such, a question of legitimacy or non-legitimacy of the state structure as a whole.

SUMMARY

The article addresses the notion of the contemporary state legitimacy. This issue is analysed in the context of financial relations at an international scale, as well as nationwide, against the background of the crisis of the institute of modern national state. Based on a brief historical journey in the era of the emergence of the modern-day states in comparison with the status of the state as an institution, the author finds that the traditional state is transformed into a new entity whose characteristics are determined by the author in the context of tax relations. In this regard, the author analyses the issue of the legitimacy of legal norms. This goal is best achieved in conjunction with the analysis of the principles of law, as well as the rule making of national, international and supranational judicial authorities. Finally, the author pays particular attention to the mechanisms of ensuring the legitimacy of financial and legal norms at the national level. This may be done in the context of the possibility of appealing to a citizen of any decisions made by the state in the financial sphere.

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PUBLIC INTEREST AND ITS REALISATION IN TAX LAW

Olena Hedziuk

Men are born and remain free and equal in respect of their rights;
social distinctions can only be based on public utility.
Declaration of the Rights of Man and the Citizen, 1789, article 1

INTRODUCTION

Roman lawyers laid the foundation for the law division into private and public. “Publicum ius est quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem” – public law relates to the position of the Roman state; private refers to the benefits of individuals. Investigating the category of “public interest” we should, first of all, examine the notion of “interest”.

The Constitutional Court of Ukraine, analysed the etymological definition of the word “interest”, noted that it includes: a) attention to someone, something, an interest in someone, something; curiosity, admiration; b) weight; value; c) what is the most interesting to anybody, that is the content of someone’s thoughts and concerns; d) desire, needs; e) something that goes in favor of someone, for some reason, corresponds to someone’s aspirations, needs; benefit, profit. In the general sociological sense, the category of “interest” is understood as an objectively existing and subjectively perceived social need, as a motive, an incentive, an agent, an incentive to act; in psychology – as the attitude of the person to the subject, as something worthy of it for something that attracts. In legal acts, the term “interest”, considering it as etymological as well as general sociological, psychological significance, is used in a broad or narrow sense as an independent object of legal relations, the implementation of which is satisfied or blocked by regulatory means[1].

The public interest of society is determined by its history of development, traditions, geographical location and ideology. The most important task of the state is to define the public interest, determine the ways of its

[1] Рішення Конституційного Суду України у справі за конституційним поданням 50 народних депутатів України щодо офіційного тлумачення окремих положень частини першої статті 4 Цивільного процесуального кодексу України (справа про охоронюваний законом інтерес) від 1 грудня 2004 р. № 18-рп/2004. URL: https://zakon.rada.gov.ua/laws/show/v018p710-04.

implementation and correctly distribute resources. The state needs to form funds for the ability to perform its duties. The tax system is the biggest creator of public treasury.

The public interest is connected with the common good. According to the Article 25 of Universal Declaration of Human Rights everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Public financial activity has a direct influence on the development of the social sphere, for example, through privileges, subsidies, financing social infrastructure, and an indirect influence, for example, tax system, currency regulation, other instruments that lead to improvement of the economic climate in the state.

1. General concept of public interest in law

Interest is a motive that impels subjects to certain actions or inactivity. This interest can be individual or collective (a certain group of individuals and the public).

The Constitutional Court of Ukraine has determined that the interest may be either protected by the law or illegal, that is not protected by the law. Illegal interest should not be satisfied or secured because such interest is aimed at infringing the rights and freedoms of others individuals, restricts the interests of society, state and "all compatriots" or such kind of interest is not in accordance with the Constitution or laws of Ukraine. The legislator does not always emphasize the "protection by law" or the legitimacy of interest, interest mentioned in the laws does not contradict the Constitution of Ukraine or derives from its content[2].

Article 12 of the Declaration of the Rights of Man and of the Citizen set by France's National Constituent Assembly in 1789, declare "The guarantee of the rights of man and of the citizen requires a public force: this force is

[2] Рішення Конституційного Суду України у справі за конституційним поданням 50 народних депутатів України щодо офіційного тлумачення окремих положень частини першої статті 4 Цивільного процесуального кодексу України (справа про охоронюваний законом інтерес) від 1 грудня 2004 р. № 18-рп/2004. URL: https://zakon.rada.gov.ua/laws/show/v018p710-04.

thus instituted for the benefit of all, and not for the particular utility of those to whom it is entrusted"[3].

Different groups of interests are introduced in the constitutions. In the following, we analyse various kinds of interest that can be found in the Constitution of Ukraine. One of the groups of interest is "***individual interest***". For example, the next articles: "Article 36. Citizens of Ukraine shall have the right to freedom of association into political parties and public organizations for exercising and protecting their rights and freedoms and for satisfying their *political, economic, social, cultural and other interests*, with the exception of restrictions established by law in the *interests of national security* and public order, protection of public health, or protection of rights and freedoms of other persons… Citizens shall have the right to take part in trade unions with the purpose of protecting their *labour and socio-economical rights and interests*. Trade unions shall be public organizations uniting citizens bound by *common interests* in accordance with the nature of their professional activity"; "Article 44. Those who are employed shall have the right to strike in order to protect their *economic and social interests*…"; "Article 54. Citizens shall be guaranteed the freedom of literary, artistic, scientific, and technical creative activities, protection of intellectual property, their copyright, moral and material *interests* arising in connection with various types of intellectual activity…"[4].

One group of interest is "***national security interests***". We have already mentioned one in article 36. As well as, the next articles determine this kind of interest "Article 32. No one shall be subjected to interference in his private life and family matters, except when such interference is stipulated by the Constitution of Ukraine. The collection, storage, use, and dissemination of confidential information about a person without his consent shall not be permitted, except for the cases determined by law and only in the *interests of national security*, economic welfare, and human rights"; "Article 34. Everyone shall be guaranteed the right to freedom of thought and speech, and to free expression of his views and beliefs. Everyone shall have the right to freely collect, store, use, and disseminate information by oral, written, or other means at his discretion. The exercise

[3] Déclaration des Droits de l'Homme et du Citoyen de 1789. URL: https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789.

[4] Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

of such rights may be restricted by law in the *interests of national security*, territorial integrity, or public order, for the purposes of preventing disturbances or crimes, protecting the health of the population, protecting the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice"; "Article 39. Citizens shall have the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations upon notifying executive or local self-government bodies in advance. Restrictions on the exercise of this right may be established by a court in accordance with law and only in the *interests of national security* and public order, for the purpose of prevention of disturbances or crimes, protection of the health of the population, or protection of the rights and freedoms of other persons"[5].

Also, the legislator is talking about "***interests of protection of the public order***". "Article 35. Everyone shall have the right to freedom of beliefs and religion. This right shall include the freedom to profess any religion or profess no religion, to freely practice religious rites and ceremonial rituals, alone or collectively, and to pursue religious activities. The exercise of this right may be restricted by law only in the *interests of protection of the public order*, health, and morality of the population, or protection of the rights and freedoms of other persons"[6].

Furthermore, the Constitution of Ukraine mentions "***the interests of society***". "Article 41 <…> The use of property shall not prejudice the rights, freedoms, and dignity of citizens, the *interests of societ*y or aggravate the environmental situation and the natural qualities of land".

Article 18 of the Constitution of Ukraine refers to "***national interests***". Article 18 "The foreign political activity of Ukraine shall be aimed at ensuring its *national interests* and security by maintaining peaceful and mutually beneficial co-operation with members of the international community in compliance with the generally acknowledged principles and norms of international law".

The oath of office of the people's deputies of Ukraine and the newly elected President of Ukraine contains an obligation to adhere to the Constitution of Ukraine and the laws of Ukraine, to fulfill their duties in the

[5] Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

[6] Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

"*interests of all compatriots*" (Articles 79 and 104 of the Constitution of Ukraine).

Article 89 establishes that the Verkhovna Rada of Ukraine shall set up temporary investigative commissions for conducting investigations on issues of *social interest* if at least one-third of the constitutional composition of the Verkhovna Rada of Ukraine has voted for it[7].

According to the article 131-1 the prosecutor's office in Ukraine represents the *interests of the state* in court in exceptional cases and in the manner prescribed by law[8].

Thus, the Constitution of Ukraine highlights a different kind of individual interests, common interests, interests of national security, interests of protection of the public order, interests of society, national interests, interests of all compatriots, social interest, interests of the state.

Category of "interest" is used in constitutions of other countries. For example, consider the Federal Constitution of the Swiss Confederation of April 18, 1999: part 2 article 5 "State activities must be conducted in the *public interest* and be proportionate to the ends sought"; part 1 article 28 "Employees, employers and their organizations have the right to join together in order to *protect their interests*, to form associations and to join or not to join such associations"; part 2 article 36 "Restrictions on fundamental rights must be justified in the *public interest* or for the protection of the fundamental rights of others"; part 3 article 48 "Agreements between Cantons must not be contrary to the law, to the *interests of the Confederation* or to the *rights of other Cantons*…"; part 2 article 69 "The Confederation may support cultural activities of *national interest* as well as art and music, in particular in the field of education"; part 1 article 55 "The Cantons shall be consulted on foreign policy decisions that affect their powers or their *essential interests*"; part 2 article 78 "In the fulfillment of its duties, the Confederation shall take account of concerns for the protection of natural and cultural heritage. It shall protect the countryside and places of *architectural, historical, natural or cultural interest*; it shall preserve such places intact if required to do so in the public interest"; article 94 "The Confederation and the Cantons shall abide by the principle of economic freedom. They shall safeguard the *interests of the Swiss*

[7] Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

[8] Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

economy as a whole and, together with the private sector, shall contribute to the welfare and economic security of the population"; part 2 article 99 "The Swiss National Bank, as an independent central bank, shall pursue a monetary policy that serves the overall *interests of the country*; it shall be administered with the cooperation and under the supervision of the Confederation"[9].

Basic Law for the Federal Republic of Germany: part 1 article 14 "Expropriation shall only be permissible for the *public good*. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable *balance between the public interest and the interests of those affected*. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts. Part 5 article 109 of this Law declares "Sanctions imposed by the European Community on the basis of the provisions of Article 104 of the Treaty Establishing the European Community in the *interest of maintaining budgetary discipline* shall be borne by the Federation and the Länder at a ratio of 65 to 35 percent…"[10].

As we can find legislatures use category of interest at the main laws very often and not just in the constitutions. In accordance with the Law of Ukraine "On National Security of Ukraine"[11] № 2469-VIII of June 21, 2018, the *national interests of Ukraine* are the vital interests of man, society and the state, the realization of which is ensured by the state sovereignty of Ukraine, its progressive democratic development, as well as safe living conditions and the welfare of its citizens. Fundamental national interests of Ukraine are: 1) state sovereignty and territorial integrity, democratic constitutional order, prevention of interference in internal affairs of Ukraine; 2) sustainable development of the national economy, civil society, and the state in order to ensure an increase in the level and quality of life of the population; 3) Ukraine's integration into European political, economic, security, legal space, membership of the European Union and the North Atlantic Treaty Organization, development of equal, mutually beneficial relations with other states.

[9] Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 1 January 2018). URL: https://www.admin.ch/opc/en/classified-compilation/19995395/201801010000/101.pdf.

[10] Basic Law for the Federal Republic of Germany. URL: https://www.btg-bestellservice.de/pdf/80201000.pdf.

[11] Про національну безпеку України : Закон України від 21 червня 2018 р. № 2469-VIII / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2469-19.

Interest corresponds to the spirit of law. Envisaging public interest, we are talking about such kind of interest in a democracy. The sixteenth president of the United States, Abraham Lincoln, defined the following definition of democracy "government of the people, by the people, for the people". Democracy is invoked to accommodate the interests of different groups and individuals to satisfy the common good.

In the work of the Italian scientist G. Compagnoni "Elementi di diritto costituzionale democratico", determined a detailed analysis of the signs of democracy and its values, among which are the following: law (law); freedom of expression of will; taking into account minority interests; skilled management; plurality of interests; social action and others[12].

J.A. Schumpeter at "Capitalism, Socialism and Democracy" says that there is also a Common Will of the people (=will of all reasonable individuals) that is exactly coterminous with the common good or interest or welfare or happiness. The only thing, barring stupidity and sinister interests, that can possibly bring in disagreement and account for the presence of an opposition is a difference of opinion as to the speed with which the goal, itself common to nearly all, is to be approached. Thus every member of the community, conscious of that goal, knowing his or her mind, discerning what is good and what is bad, takes part, actively and responsibly, in furthering the former and fighting the latter and all the members taken together control their public affairs[13].

Thinkers of the 20th century subtly noted the characteristic inability of politicians to merge personal and public interests in their doctrines and practical actions, to give public interests a function of generalized expression of personal, rather than narrow corporate, including party, interests[14].

In case if bureaucratic and political interests go contrary to the public interest, it has negative consequences for the whole state, because politicians make decisions based on their own party interests, but not on the interests of society. Also, the private interests of a state officer can encourage them to make decisions that are not aimed at satisfying the public interest. What is the private interest in such case? The answer can be given by the Law of

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[12] Латигіна Н.А. До визначення феномена демократії. *Політичний менеджмент*. 2004. № 3. С. 21.

[13] Schumpeter J.A. Capitalism, Socialism and Democracy. London ; New York, 1994. URL: https://eet.pixel-online.org/files/etranslation/original/Schumpeter,%20Capitalism,%20Socialism%20and%20Democracy.pdf.

[14] Тихомиров Ю.А. Публичное право : учебник. Москва : БЕК, 1995. С. 56.

Ukraine "On Prevention of Corruption"[15]. According to this Act private interest is any property or non-property interest of a person, including those caused by personal, family, friendly or other non-governmental relationships with individuals or legal entities, including those arising from membership or activity in public, political, religious or other organizations.

French philosopher Diderot noted that every person needs to give way a part of their natural independence and obey the will of the whole society[16].

The scientist Anatolii Venherov pointed out that such a sign of the rule of law as the interaction of a citizen and the state also "works" on civil society. Mutual rights and obligations of a citizen and state ensure compliance with both private interests and general (social, national, interests of large social groups, etc.)[17].

Public law protects the interests of society altogether, while private law defends an individual interest. The biggest problem is when the individual interest of the leaders of the state or the ruling party is called public interest. In undemocratic states, state-bureaucratic interest, not public, comes first. The public interest is not the state interest and not the interest of an individual body or social group, but it is the interest of the whole society. The state defines a public interest by the mean of law. One of the main state goals is the creation of conditions for public interests' satisfaction.

2. Public interests at tax law

The public interest is realized in many branches of life – economic, social, and political. The government uses power and subordination for the realization of public interest in finance. As we can see from the previous analysis of the Ukrainian Constitution, the state establishes some prohibitions of individual interest for the public interest satisfaction.

Public interests are connected with the state function in financial legal relations. A famous French researcher, Godme, noted that private finance is guided by profit, while state finances are aimed at satisfying a general interest.

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[15] Про запобігання корупції : Закон України від 14 жовтня 2014 р. № 1700-VII / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/1700-18.

[16] Политология : учебник для вузов / под ред. М.А. Василика. Москва : Гардарики, 1999. С. 139.

[17] Венгеров А.Б. Теория государства и права : учебник для юрид. вузов. 10-е изд., стереотип. Москва : Омега-Л, 2014. С. 603.

Thomas Piketty analyses the notion of capital in “Capital in the Twenty-First Century”, notes that capital can be owned by private individuals or by the government or government agencies. “There are also intermediate forms of collective property owned by “moral persons” (that is, entities such as foundations and churches) pursuing specific aims. The boundary between what private individuals can and cannot own has evolved considerably over time and around the world, as the extreme case of slavery indicates. The same is true of property in the atmosphere, the sea, mountains, historical monuments, and knowledge. Certain private interests would like to own these things, and sometimes they justify this desire on grounds of efficiency rather than mere self-interest. But there is no guarantee that this desire coincides with the general interest”[18].

Public interests are concretized by the various spheres of the state administration with special aspects in the financial sphere. In the financial sphere public interests are: 1) rational fiscal policy; 2) balance budgets and extra-budgetary funds; 3) optimization of state expenses; 4) organization of credit, settlement system and the development of the payment policy, also as the stability of the national currency; 5) assurance of ownership rights of the participants of economic relations by means of guarantee, insurance, control and law-enforcement practice in the financial sphere[19].

We agree with Yulia Gorosh who believes that a formation of “public finance”, their allocation and use are aimed at the realization of the following kinds of “public interests”: social “public interest” is providing social benefits, goods, and services in the sphere of healthcare, education, social security services, public transport, national defense and people’s safety, social allowances, grants and transfer payment for private actors by the state (i. e. fulfillment of the social function of the state); economic “public interest” is ensuring stable economic development of the state, growth of GDP and improving the people’s welfare (i.e. fulfillment of the economic function of the state); administrative “public interest” is providing for the efficient functioning of the system of public administration and

[18] Piketty T. Capital in the twenty-first century / transl. by A. Goldhammer. URL: https://dowbor.org/blog/wp-content/uploads/2014/06/14Thomas-Piketty.pdf.

[19] Публичный интерес в административном праве / под общ. ред. С.В. Запольского, Н.Г. Салищевой, В.В. Альхименко. Москва : Ин-т гос. и права РАН ; Академический правовой институт, 2015. С. 157.

the need for financing the expenditure related to public authorities, local self-government bodies and public corporations activity[20].

Public interest could be determined through the common good that does not always correspond to individual good. Person or groups of people have their own interests. Social interest is averaging of individual interests. When state use authority to exercise social interest the last one transforms to the public interest. Public interest is protected by the law.

One of the characteristics of civil society, according to Hegel, is a person, individual, who has his own goals. The second principle is the "correlation of individuals with each other", that is, the global issue of the interaction of individuals in society, the restriction of freedom of one individual freedom of another in society, the restriction of freedom of the individual freedom of society. This also refers to Hegel's remarks about the new problem that arose in connection with the functioning of the civil, bourgeois society – the problem of paying taxes. Individuals need to pay taxes; without it, the state would be so impoverished that members of civil society could not be able to suffice their needs at all[21].

Vladimir Babčák notes that the fiscal interest of the state, as well as the fiscal interest of self-government bodies, has priority among public interests of the state, although this fact is not often empathized. During the realization of the tax law relations and financial relations, the abovementioned fiscal interests are transformed / incorporated into specific economic policies of the state[22].

Financial law, as a public branch of law, contains imperatives that are mandatory for all parties of financial relations. The state is entitled to apply force in order to satisfy the general public interest. For example, the taxpayer does not pay taxes, consequently, the state has to bring an

[20] Gorosh Yu. Protection of public finance interests in terms of public finances management. *Optimization of organization and legal solutions concerning public revenues and expenditures in public interest* : conference proceedings / ed. : E. Lotko et al. Bialystok ; Vilnius, 2018. P. 101. URL: https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6913/1/Optimization%20of%20Organization%20and%20Legal%20Solutions.pdf.

[21] Венгеров А.Б. Теория государства и права : учебник для юрид. вузов. 10-е изд., стереотип. Москва : Омега-Л, 2014. С. 597–598.

[22] Babčák V. Public financial interest in Slovak Republic (certain reflection). *Optimization of organization and legal solutions concerning public revenues and expenditures in public interest* : conference proceedings / ed. : E. Lotko et al. Bialystok ; Vilnius, 2018. P. 26. URL: https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6913/1/Optimization%20of%20Organization%20and%20Legal%20Solutions.pdf.

offender to responsibility. Within the illegal private interests of a taxpayer who violates tax regulations, the last one wouldn't be satisfied, but the state must use force to fulfil a public interest. The state must use force in order to the proper function of the financial system and providing taxes to the budget.

At the tax relations, it is necessary to satisfy not only the interests of the state in filling the budget but also the interest of business entities and individuals. One of the principles established in Ukrainian tax legislation is social justice, meaning the establishment of taxes and fees in accordance with the solvency of taxpayers.

All changes in tax regulations should be caused by public interest. As the Constitutional Court of Ukraine has pointed out in case № 1-5/2010, one of the manifestations of the rule of law in the tax area is the creation of an effective tax system, which should be based on the balance of interests of the state, territorial communities and taxpayers (paragraph 3.5)[23].

Tax law instability, especially for business, goes against fiscal interest. Taxpayers are required to pay taxes even it goes contrary to their own interests. This creates tension between private interests of the taxpayers on the one hand and public interest of the state/municipalities[24]. We believe that the stability and clarity of tax laws are common interests of the taxpayer and the public.

Ewa Lotko analyzed the notion of public interest in the context of taxpayers' behaviors, defined three models in the professional literature: the theory of overriding public interest according to which public interest is superior in relation to the individual interest allowing elimination of minority interest in the process of defining public good; common interest theory assuming summing up all individual interests including minority interests; unitary conception assuming that the notion of public interest "is founded on the rivalry between competing claims, based however on certain

[23] Рішення Конституційного Суду України у справі за конституційним зверненням Акціонерного товариства «Страхова компанія «Аванте» щодо офіційного тлумачення положень частини другої статті 1 Закону України «Про систему оподаткування», статті 15 Закону України «Про оподаткування прибутку підприємств» від 16 лютого 2010 р. № 5-рп/2010. URL: https://zakon.rada.gov.ua/laws/show/v005p710-10/sp:max20.

[24] Babčák V. Public financial interest in Slovak Republic (certain reflection). *Optimization of organization and legal solutions concerning public revenues and expenditures in public interest* : conference proceedings / ed. : E. Lotko et al. Bialystok ; Vilnius, 2018. P. 34. URL: https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6913/1/Optimization%20of%20Organization%20and%20Legal%20Solutions.pdf.

common values accepted in society and constituting basis for a decision of public authority"[25].

The research of the balance between public and private interests is particularly relevant from the perspective of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights. Accordingly, Article 17 of the Law of Ukraine "On the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights"[26] the courts apply the Convention and the Court's practice as a source of law during the consideration of cases.

The European Court of Human Rights considers one of the main means to ensure the legitimacy of the relationship "person-state" is verification a fair balance between the individual interests and the general interests. Here are some illustrative instances. In the Soering v. United Kingdom in a judgment dated July 7, 1989 the Court noted that "<…> the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights"[27]. In the case of Rees v. United Kingdom, in its decision of October 17, 1986, stated that, "fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention"[28].

In the case of Ukraine-Tyumen v. Ukraine, The European Court of Human Rights reiterates that an interference with the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance

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[25] Lotko E. Tax motivation as an instrument protecting public financial interest. *Optimization of organization and legal solutions concerning public revenues and expenditures in public interest* : conference proceedings / ed. : E. Lotko et al. Bialystok ; Vilnius, 2018. P. 511. URL: https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6913/1/Optimization%20of%20Organization%20and%20Legal%20Solutions.pdf.

[26] Про виконання рішень та застосування практики Європейського суду з прав людини : Закон України від 23 лютого 2006 р. № 3477-IV / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/3477-15.

[27] Case "Soering v. United Kingdom". URL: http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CASE%20OF%20SOERING%20v.%20THE%20UNITED%20KINGDOM_0.doc.

[28] Case "Rees v. United Kingdom". URL: http://www.pfc.org.uk/caselaw/Rees%20vs%20The%20United%20Kingdom.pdf.

is reflected in the structure of Article 1 of Protocol № 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions[29].

Case of "Bulves" AD v. Bulgaria: "The Court considers that this amounted to an excessive individual burden on the applicant company which upset the fair balance that must be maintained between the demands of the general interest of the community and the requirements of the protection of the right of property. There has accordingly been a violation of Article 1 of Protocol № 1"[30].

The category of "interest" is used by Ukrainian courts in decisions too. For example, the Supreme Court in its judgement of November 5, 2018, in the case № 2a-9232/12/2670 noted that the plaintiff was aware that non-payment of tax liabilities would damage the public interest in the form of untimely receipt of the agreed amounts of tax liabilities to the budget and such damage is the result of the unlawful inaction of the plaintiff himself. Therefore, the state's interference with the imposition of penalties on such amounts of the tax debt is lawful and predictable for the plaintiff[31]. Similar legal argumentation was also set in the Supreme Court decision dated March 20, 2018, in the case № 812/8730/13-a (K/9901/4427/18)[32]. The court points out that non-payment of taxes causes harm to the public interest.

Leonard Etel and Mariusz Popławski have analysed the public interest in the polish tax law and they noted that the tax authority is obliged to not only establish if there occur premises of the taxpayer's important interest or the public interest, but it is also obliged to weigh the public interest with the individual interest of the party, since it is obliged to do so by Art. 2 of the Constitution of the Republic of Poland (Constitution of 2 April 1997)

[29] Case "Ukraine-Tyumen v. Ukraine". URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83421%22]}.

[30] Case "Bulves" AD v. Bulgaria". URL: http://hrlibrary.umn.edu/research/bulgaria/BULVES%20AD.pdf.

[31] Постанова Верховного Суду від 5 листопада 2018 р. в справі № 2а-9232/12/2670. *Єдиний державний реєстр судових рішень*. URL: http://reyestr.court.gov.ua/Review/77636278.

[32] Постанова Верховного Суду від 20 березня 2018 р. в справі № 812/8730/13-а. *Єдиний державний реєстр судових рішень*. URL: http://www.reyestr.court.gov.ua/Review/72901828.

in any case where a legal norm subordinating the settlement of the affair to the so-called administrative discretion is applicable (Highest Administrative Court in Wrocław: I SA/Wr 1458/2001). The rule of weighing interests has been expressed in judicial decisions not only directly but also indirectly. It results in the following questions. First, applying the rule of weighing interests, the tax authority should take into consideration various factors concerning the taxpayer, and also the tax creditor. Thus, it is emphasized that in the case of applying the regulations referring to reliefs in tax obligation payments, the authority may adopt different criteria of choice, for example, take into account social and economic circumstances, previous attitude of the taxpayer towards meeting taxation obligations, circumstances of the origins of tax arrears, etc. (Highest Administrative Court: II FSK 2474/2015)[33].

Thomas Piketty chronicles in "Capital in the Twenty-First Century" the simplest way to measure the change in the government's role in the economy and society is to look at the total amount of taxes relative to national income. French economist shows the historical trajectory of four countries (the United States, Britain, France, and Sweden) that are representative of what has happened in the rich countries. Thomas Piketty notes: "There are both striking similarities and important differences in the observed evolutions. The first similarity is that taxes consumed less than 10 percent of national income in all four countries during the nineteenth century and up to World War I. This reflects the fact that the state at that time had very little involvement in economic and social life. With 7–8 percent of national income, it is possible for a government to fulfill its central "regalian" functions (police, courts, army, foreign affairs, general administration, etc.) but not much more. After paying to maintain order, enforce property rights, and sustain the military, not much remained in the government's coffers. States in this period also paid for some roads and other infrastructure, as well as schools, universities, and hospitals, but most people had access only to fairly rudimentary educational and health services. Between 1920 and 1980, the share of national income that the wealthy countries chose to devote to social spending increased considerably.

[33] Etel L., Popławski M. Weighing the Interest of the Obliged and the Public Interest in the Polish Tax Law. *Optimization of organization and legal solutions concerning public revenues and expenditures in public interest* : conference proceedings / ed. : E. Lotko et al. Bialystok ; Vilnius, 2018. P. 425. URL: https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6913/1/Optimization%20of%20Organization%20and%20Legal%20Solutions.pdf.

In just half a century, the share of taxes in national income increased by a factor of at least 3 or 4 (and in the Nordic countries more than 5). Between 1980 and 2010, however, the tax share stabilized everywhere. This stabilization took place at different levels in each country… All the rich countries, without exception, went in the twentieth century from an equilibrium in which less than a tenth of their national income was consumed by taxes to a new equilibrium in which the figure rose to between a third and a half”[34].

French economist further explains in his research paper: “In the nineteenth century, governments were content to fulfill their “regalian” missions. Today these same functions command a little less than one-tenth of national income. The growing tax bite enabled governments to take on ever broader social functions, which now consume between a quarter and a third of national income, depending on the country. This can be broken down initially into two roughly equal halves: one half goes to health and education, the other to replacement incomes and transfer payments”[35].

We see the dependence between the satisfaction of private interest and the realization of public interests. With the increase of tax revenues to the budget, it is possible to suffice the private interests of citizens in the form of benefits that the state can provide them with.

CONCLUSIONS

The state creates the common good by means of public financial activity. According to article 67 of the Constitution of Ukraine everyone is obliged to pay taxes and levies in accordance with the procedure and in the extent established by law. All citizens annually file declarations with the tax inspection at their place of residence, on their property status and income for the previous year, by the procedure established by law.

Each member of society pays taxes and charges to the budget because of constitutional duty. The state accumulates mandatory payments, redistribute resources and direct it to the realization of public interest. Because of the importance of the financial mechanism functioning, the state uses an imperative method of regulating. Taxation is the condition of the state’s existence.

[34] Piketty T. Capital in the twenty-first century / transl. by A. Goldhammer. URL: https://dowbor.org/blog/wp-content/uploads/2014/06/14Thomas-Piketty.pdf.

[35] Piketty T. Capital in the twenty-first century / transl. by A. Goldhammer. URL: https://dowbor.org/blog/wp-content/uploads/2014/06/14Thomas-Piketty.pdf.

Having analysed public interest, the author comes to the following conclusion. The public interest is recognized by the state and law secured social interest. Satisfaction of public interest is a condition to the state development.

Different groups of people have their own interests. The interest of the person lies in the possibility of using the high-quality infrastructure, obtaining medical services and good quality education, the interests of worker is in timely obtaining salaries, the interests of taxpayers in a fair tax system, and the community's interest is in the developing their region etc. There are many different groups in society, each with its own interests. The state should determine the public interest that will be referred to as satisfying the interests of individuals and groups in society. At the same time, the state should not only direct its activities to meet the interests of all, because it is unrealistic to do this. The government should differentiate public interest in importance, depending on the vector of development of society, social and economic condition.

The main task and direction of the activities of a democratic, social and lawful state to guarantee human rights for life, health, dignity, labor, education, and other social benefits.

SUMMARY

The article deals with the category of "public interest". Different types of interests are distinguished. Public interest could be determined through the common good that does not always correspond to individual good. Person or groups of people have their own interests. Public interests are connected with the state function. The realization of public interest is one of the priorities of state policy. The government should differentiate public interest in importance, depending on social and economic condition.

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21. Case “Rees v. United Kingdom”. URL: http://www.pfc.org.uk/caselaw/Rees%20vs%20The%20United%20Kingdom.pdf.

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23. Case “Bulves” AD v. Bulgaria”. URL: http://hrlibrary.umn.edu/research/bulgaria/BULVES%20AD.pdf.

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LEGAL CONTENT OF THE CONCEPT "PUBLIC FUND OF MEANS"

Nataliia Iakymchuk

INTRODUCTION

The legal category "public fund of means" is one of the central, determinative when describing the subject of financial law legal regulation and the actual definition of the concept of "financial law". The content of the concept "public fund of means" is the subject of modern financial and legal research, but the approaches to its characteristics are constantly changing in the light of approaches transformation to the concept of "state", "public interest", "publicity", "financial system", "finances" etc. Also transforming the approaches as for characteristics of interaction between public actors and civil society, in particular of non-governmental organizations, are intercomplementary to private and public law in the regulation of social relations that arise between the funds, created by them. In general, rethinking the concept of "social needs" in the field of public life, political and social, as well as the principles of interaction between public and private actors, whose activities are aimed at their provision, in particular, through the funds mobilized by them, cause a sharp need to rethink many problems of financial and legal science, the central place among which is taking the category "public fund of means".

Despite the fact that to find out the content of the designated category such scholars put efforts as O.M. Ashmarina, L.K. Voronova, O.O. Dmytryk, T.S. Ermakova, S.V. Zapolsky, M.V. Karaseva, O.A. Lukashev, O.V. Makush, A.A. Nechay, Y.A. Rovinsky, as well as the author of this article and other scholars, now there is a need for additional study of the legal category "public fund of means" due to the rapid development of legislation, the need to understand, on the one hand, the compliance of legislative changes with the fundamental basis of financial-legal science and, on the other hand, the correspondence of the established approaches when characterizing the basic categories of financial and legal science renewed with legal science views.

1. Public fund of means as a “fund” to which financial resources are mobilized

In general, the concept “fund” in the legislation applies to: 1) denotation: a) separate accumulation of monetary or other financial resources, separated by the owner with defining the purpose of its use; b) organizational-legal form of legal entity; 2) characterize the structural components of the system, which acts as a fund of means (for example, the State Budget of Ukraine consists of general and special funds, which in turn include special budget funds).

The word “fund” (from fr. *fond* from Latin *fundus* – basis, base, foundation) determine, as: 1) a set of certain natural stocks or resources, material and monetary capital accumulation; 2) funds or other tangible assets accumulated for a certain purpose and used for their intended purpose in accordance with the procedure established by law; 3) a non-profit organization or institution with the rights of a legal entity created in accordance with the procedure established by law for servicing the relevant fund, promoting and supporting certain types of activity or individual social groups that may function in particular as a specialized state institution (the Pension Fund of Ukraine, the Fund for the Deposit Guarantee of Individuals in Banks)[1]. In civil law, the concept of a fund is used to characterize a subject – primarily a legal entity in the organizational and legal form of an institution, and as an object – a fund of means, financial resources created for a certain purpose. It should be noted that in the Civil Code of Ukraine there is no definition of the concept “fund”, however, the terms are used with the use of such a word.

The concept “fund” is widely used in financial legislation and science of financial law to characterize the object of law as pooling of funds or other types of financial resources.

The word “resources” comes from the French “ressource”, which means – an ancillary means, that is something that can be used from a certain source (stocks, funds, materials, etc.) for certain purposes[2]. In economic theory, resources are divided into four groups: natural, material, labour, finance[3].

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[1] Великий енциклопедичний юридичний словник / за ред. Ю.С. Шемшученка. Київ : Юридична думка, 2007. С. 945.

[2] Зятковський І.В. Теоретичні засади фінансів підприємств. *Фінанси України*. 2000. № 4. С. 21–29.

[3] Полінкевич О.М., Іванова А.Л. Суть та роль фінансових ресурсів підприємств у новій економіці. *Економічний форум*. 2015. № 2. С. 308–313.

In modern period, the list includes non-property resources – informational, in particular intellectual (objects of intellectual property). In particular, in Art. 47 of the Commercial Code of Ukraine talks about the material, technical, financial, labour, informational, natural and other resources of entrepreneurs[4].

The concept “fund of means” and “financial resources” relates as a form and content. The term “financial resources” in the legislation is not defined, however, in Art. 7 of the Law of Ukraine, dated September 10, 1991 № 1540-XII, such property objects of Ukraine as “property complexes” and “financial resources” are contrasted. However, strengthening has received the term “currency values”, which is used as identical to the first one. In Art. 193 of the Civil Code of Ukraine defined that types of property that are considered as currency values, and the procedure for committing transactions with them shall be established by law. If in the Article 1 of the Law of Ukraine “On Currency and Currency Transactions” dated June 21, 2018, № 2473-VIII, currency values are defined as “national currency (hryvnia), foreign currency and bank metals”, then in Part 4 of Art. 1 of the Customs Code of Ukraine, in addition to the said financial resources, the currency values include “payment documents and securities (stocks, bonds, coupons, bills (drafts), receipts, letters of credit, checks, bank orders, certificates of deposit, other financial and banking documents), expressed in the currency of Ukraine, in foreign currency or banking metals”. In addition to the above, in par. 3 Article 1 of the Law of Ukraine “On Foreign Economic Activity” currency valuables include “precious stones”. For funds whose object of mobilization are financial resources other than money (national and foreign currency), should be attributed the State Fund for Precious Metals and Precious Stones of Ukraine, whose functioning is stipulated in Art. 245 of the Customs Code of Ukraine.

Despite that the Law of Ukraine “On Financial Services and the Market of Financial Services” establishes the legal framework for the entities providing financial services for transactions with currency values without defining the content of such a concept, it is in that Law that the notion “financial assets” is defined as “securities, debentures and debt claims that are not attributed to securities”. Accordingly, we associate the notion of “financial resources” and “financial assets” as general and partial,

[4] Господарський кодекс України : Закон України від 16 січня 2003 р. № 436-IV / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/436-15.

since, firstly, financial resources do not include such resources as banking metals and precious stones, and, secondly, we refer to financial resources such resources, the value of which is determined in the currency (in cash), which can be secured by the owner on the property right for the organization he formed or transferred to trust management of another authorized entity.

Consequently, we believe that the category "financial resources" is the basic criterion for distinguishing public funds from other types of funds resource (property, informational, natural, labour, etc.), at the expense of which a certain goal is achieved, and their value is determined in cash (both in national, and in foreign currency).

The term "funds" in the academic explanatory dictionary is interpreted as "money, capital, material assets"[5]. M.I. Petyk notes that "identifying financial resources with money is significantly reducing the concept of "financial resources", because they include not only available, but also potential money. But the difference in the category of "financial resources" from the category of "money" is that "financial resources" mediate the financial relations that arise in the process of distributing the product produced by economic entities"[6].

But it is also wrong to state that financial resources are only monetary, since they have a monetary expression (valued in monetary terms), as they can have another form – banking metals, precious stones, and securities. Consequently, the concept of "public funds of means" in terms of content is wider than the concept of "public funds of means" and should be clearly distinguished, taking into account their relevant content.

2. Public fund of means as a material expression of public finances

In the 20th century, took place the transformation of public finances into the public domain, the finances of local self-government (municipalities) were singled out and therefore the term "public finances" was more widely

[5] Словник української мови : в 11 т. / за ред. І.К. Білодіда. Київ : Наукова думка, 1973. Т. 4. С. 317.

[6] Петик М.І. Економічна суть і призначення фінансових ресурсів у забезпеченні господарської діяльності суб'єкта господарювання. *Актуальні проблеми розвитку економіки регіону* : наук. зб. / за ред. І.Г.Ткачук. Івано-Франківськ : ВДВ ЦІТ Прикарпатського національного університету імені Василя Стефаника, 2008. Вип. IV. Т. 1. С. 198–204. URL: http://base.dnsgb.com.ua/files/journal/Aktualni-problemy-rozvytku-ekonomiky-regionu/2008_4_1/35.pdf.

described, which more accurately is characterizing a new model of finance, in which a large part is under the control of public legal entities and other subjects, whose activities are aimed at providing general social needs and common interest. However, as S.M. Klimova correctly noted, the lack of clear position of the legislator on the model of public finances adversely affected the development of financial and civil law[7].

The main points are the following views on the property content of public finances:

1) stock, in which the material expression of public finance is recognized by public funds. The widespread definition is that "public finances are monetary funds that are formed by financial relations, which are necessary for the existence of public bodies and the financing of their functions"[8]. The L.V. Fokshi's definition is broader: "The system of public finance is represented as a set of centralized and decentralized funds that are closely interrelated, while retaining relative autonomy"[9]. E.M. Shaffigullin points out that public funds as a financial category "represent a set of monetary distributive relations, which, as a result of which insurance funds and other incomes form the state funds of financial resources intended to carry out the most important government expenditures, which are not included in the budget"[10]. The general disadvantage of this approach is that there is an identification of public finances and public funds, while finance is a concept that characterizes the movement of funds (financial resources) between funds, that is, economic relations, and funds – the sustainable formation in the corresponding organizational and legal form with the right or without the right of a legal entity. They note that the stock doctrine of finance in financial law is not methodologically complete in its development. In addition, its representatives are trying to substantiate the fundamental concepts of law not in the law, but through concepts from other sciences,

[7] Клімова С.М. Реформування публічних фінансів України на шляху розбудови правової держави. *Актуальні проблеми державного управління*. 2009. № 2. С. 353. URL: http://nbuv.gov.ua/UJRN/apdy_2009_2_46.

[8] Воронова Л.К. Фінансове право України : підручник. Київ : Прецедент ; Моя книга, 2006. С. 10.

[9] Фокша Л.В. Публічні фонди: поняття, ознаки та правова природа. *Науковий вісник Міжнародного гуманітарного університету. Серія «Юриспруденція»*. 2014. № 10-1. С. 164. URL: http://nbuv.gov.ua/UJRN/Nvmgu_jur_2014_10-1%281%29__45.

[10] Шафигуллин Э.Н. Финансово-правовые основы обязательного пенсионного страхования. *Российская юстиция*. 2010. № 5. С. 12.

in particular, from the economic one. This can be explained by the contradictory wording that it met when describing finances[11];

2) functional, in which the material expression of public finances is the financial resources of funds (property rights on them), the movement of which is taking place in the form of financial relations. O.Y. Grachova is noting that "finance is not the money itself, but the relationship between people about the creation, redistribution and use of monetary funds"[12]. So, O.P. Orlyuk, is defining public finances of the state and local communities as "economic relations in mobilizing, distributing, redistributing and spending of public funds of a state and local government funds to ensure expanded reproduction, decent living standards, socio-cultural needs, that is, public needs of society"[13].

The second question is the volume of financial relations that belong to public finances for their material expression, that is, depending on the type of financial resource. As noting E.V. Ryabova "the field of public finance is regulated by financial law, which traditionally includes only monetary relations and does not include relations related to the management of state property. Meanwhile, the line between money management and asset management is very thin and not always feasible to carry it out"[14]. In addition, M.P. Kazantsev deduces the legal doctrine of finance as being formed and in circulation, as well as the accounted rights in the form of money, that is, the rights to values, and defines finances as "forms, rules and relations of formation, payment, exchange, circulation, accumulation, implementation and control the observance of the rights of measured value, but not necessarily liquid ones"[15]. Thus, it is emphasized that financial resources are the object of financial relations (mainly cash), and the legal aspect of these relations is the property rights for such values. According to Art. 177 of the Civil Code of Ukraine, money and securities are a kind of

[11] Финансовое право : учебник для академического бакалавриата / под общ. ред. С.В. Запольского. 3-е изд., перераб. и доп. Москва : Юрайт, 2015. С. 28.

[12] Финансовое право : учебник / под ред. Е.Ю. Грачевой, Г.П. Толстопятенко. Москва : Проспект, 2004. С. 6.

[13] Орлюк О.П. Фінансове право. Академічний курс : підручник. Київ : Юрінком Інтер, 2010. С. 8, 24.

[14] Рябова Е.В. Понятие и система публичных финансов в свете проблемы дифференциации публичных и частных финансов. *Вестник университета имени О.Е. Кутафина.* 2018. № 9. С. 22–23. DOI: 10.17803/2311-5998.2018.49.9.021-028.

[15] Финансовое право : учебник для академического бакалавриата / под общ. ред. С.В. Запольского. 3-е изд., перераб. и доп. Москва : Юрайт, 2015. С. 29.

property, which, as well as property rights, are generally matters. Money is at the same time the title of universal rights of measured value to any rights that are in circulation, as well as titles of property rights to the values or titles of universal rights of ownership of the measured value[16].

Accordingly, financial resources are the subject of property rights belonging to a wide range of participants in financial relations, both in the field of private and public finance. Given this view on the finances of popularity becomes their characteristic as the amount of rights in monetary terms[17], and the subject of financial law, in particular Y.A. Crokhina defines as a set of homogeneous property and associated non-property social relations between the state (municipal entities) and other entities regarding the accumulation, distribution and use of public funds of means, exercising financial control and prosecution for committing a financial offense[18]. With a broad approach to public finances characteristics, they include financial relations, and public funds, funds that meet the criterion of "publicity". In this regard, Y.V. Onyshchik notes, as soon as private finance "finds" state power, they "turn" into public finances, and therefore, fall into the field of financial and legal regulation[19]. In general, *such an opinion can be accepted, but should not be taken globally, as the manifestation of state power is the legal regulation of different types funds functioning, which is not a criterion for the recognition of such funds as public, as such legal regulation can be as civil law (economic and legal), and financial and legal. Only compliance with publicity criteria makes it possible to attribute this or that fund to public funds.*

3. Public fund of means as an element of the state financial system

They note that financial system is an internal structure of finance, a set of homogeneous financial relations, regulated by the rules of financial law,

[16] Финансовое право : учебник для академического бакалавриата / под общ. ред. С.В. Запольского. 3-е изд., перераб. и доп. Москва : Юрайт, 2015. С. 39.

[17] Финансовое право : учебник для академического бакалавриата / под общ. ред. С.В. Запольского. 3-е изд., перераб. и доп. Москва : Юрайт, 2015. С. 28.

[18] Крохина Ю.А. Современные вопросы предмета финансового права. *Финансовое право*. 2012. № 1(19). С. 5.

[19] Оніщик Ю.В. Конструкція «фінансова діяльність»: співвідношення публічного та приватного інтересу при її здійсненні. *Держава і право*. 2010. Вип. 48. С. 422.

each of which is contributing to the formation, distribution and use of means of the respective funds[20].

It should be noted that current legislation of Ukraine does not contain the definition "financial system". This term was used in the legislation of Ukraine earlier, in particular in Part 1 of Art. 5 of the Law "On the economic independence of the Ukrainian SSR", it was established that "Ukrainian SSR has its own financial system"[21]. Characterizing the financial system of L.K. Voronova is defining it as a set of financial links (institutions) united on the basis of the commonality of forms and methods of organization, distribution and use of funds and on the basis of their legal regulation[22].

To date, several approaches have been worked out to characterize the components of the financial system of Ukraine, in particular:

1) stock theory – an integral element of financial system of any state are funds of means[23]. Accordingly, it is determined that "the material expression of the links (institutions) of the financial system consists of monetary funds – budgetary, extrabudgetary, etc."[24] or "accumulation of state money funds"[25]. However, in the modern period, leading scientists and lawyers and financiers are justifying the transition from the decisive value of the criterion of ownership of the fund of means to the criterion of publicity;

2) economic (functional) theory – the content of the financial system notion is highlighted through an analysis of the essence and interaction of the financial institution(s) that are represented by a set of financial relations that have their own specifics and peculiarities. Economic theory has received the largest number of supporters, each of which is focusing on certain financial system features. Financial system is the object of research

[20] Макух О.В. Динаміка фінансових правовідносин: методологічний аспект : автореф дис. … докт. юрид. наук : 12.00.07 «Адміністративне право і процес; фінансове право; інформаційне право». Запоріжжя : Запорізький національний університет, 2017. С. 12.

[21] Про економічну самостійність Української РСР : Закон Української РСР від 3 серпня 1990 р. № 142-XII / Верховна Рада Української РСР. *Відомості Верховної Ради УРСР*. 1990. № 34. Ст. 499.

[22] Фінансове право : навчальний посібник / Л.К. Воронова, Н.Ю. Пришва, Н.Я. Якимчук та ін. ; за заг. ред. Н.Ю. Пришви. Київ : Ліра-К, 2018. С. 21.

[23] Ритікова К.А., Кривоберець Б.І. Принципи формування цільових бюджетних фондів. *Економіка: проблеми теорії та практики* : зб. наук. праць : у 5 т. Дніпропетровськ : ДНУ, 2008. Т. 4. С. 1086–1095.

[24] Финансовое право Российской Федерации : учебник / отв. ред. М.В. Карасева. Москва : Юристъ, 2004. 576 с.

[25] Худяков А.И. Финансовое право Республики Казахстан (Общая часть). Алматы : Каржы-каражат, 1995. С. 12.

of various scientific fields representatives: economists, financiers, lawyers, political scientists, managers. That is why the positions of scientists in relation to the links (institutes) and in general its structure differs considerably. The main links of the financial system are recognized: a) the budget system; b) the credit system; c) compulsory state insurance; d) finances of enterprises[26], as well as other components of it, there are discussions. It is the content of public relations, within which the flow of financial resources takes place, their public or private nature is the criterion for delineation of individual segments of finance, as a functional component of the financial system, to the public and private parts of the financial system of Ukraine. So, O.V. Makukh notes that "depending on the public attribute, which traces the purpose of legal regulation, the financial system includes public and private components (public financial system, private financial system)"[27];

3) an institutional theory, the representatives of which are unequivocally identifying the system of regulation (administration) of the financial system links with the financial system itself. In particular, according to S.L. Londar the financial system includes financial management, financial and credit institutions, financial resources, laws, rules, norms governing financial activities[28];

4) systematic approach, which in our opinion, based on the stock theory, allows us to interpret the financial system from the point of the systems theory view as a combination of its internal construction, that is, the structure is represented by funds of means and their interaction (finance), that is, social relations, within which is the flow of financial resources is carried out. Representatives of the systemic approach can be attributed A.I. Khudiakov, who noted that "in the economic sense, each fund is mediated by the financial and economic institution, which represents a set of relations in the formation, distribution and organization of the monetary fund use"[29]. V.M. Fomin is also noting that from the position

[26] Воронова Л.К., Кучерявенко Н.П. Финансовое право : учебное пособие для студ. юрид. вузов и ф-тов. Харьков : Легас, 2003. С. 10–11.

[27] Макух О.В. Динаміка фінансових правовідносин: методологічний аспект : автореф дис. … докт. юрид. наук : 12.00.07 «Адміністративне право і процес; фінансове право; інформаційне право». Запоріжжя : Запорізький національний університет, 2017. С. 12.

[28] Лондар С.Л. Входження України у світовий економічний простір та трансформація фінансових визначень. *Фінанси України*. 2006. № 5. С. 46.

[29] Худяков А.И. Финансовое право Республики Казахстан (Общая часть). Алматы : Каржы-каражат, 1995. С. 12.

of management functions, the financial system is examined through the prism of the system approach provisions[30]. It is also noted that the financial system is a coherent system that has the same quality as self-government, and includes other systems: budget, tax, banking[31].

Foreign experts are also considering the financial system from different points of view, emphasizing the importance of the "financial structure", which is an important factor determining the effectiveness and stability of the financial system as a whole and the directions under which monetary policy is implemented[32].

Consequently, the inalienable static element of the financial system structure is precisely the funds of means, the legal regime of which allows us to distinguish them from public and private, which directly affects the content of financial relations that is taking place between them, and the dynamic element – financial relations (that is, finances), united according to their content and legal nature into separate branches (institutions), which in turn are subjected to public or private law regulation.

4. Criteria to recognize fund of means as public

The question of signs (criteria) of public fund means is the subject of research of a number of scholars. Well-known researcher of public funds' means A.A. Nechay is distinguishing the following criteria for delineating public and private funds: 1) ownership; 2) nature of interest; 3) purpose relationship occurrence; 4) method of legal regulation; 5) form of distribution and form of funds use (when the individual person cannot independently satisfy his interest)[33].

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[30] Фомин В.Н. О категориях «целостность», «устойчивость» и «стабильность» применительно к финансовому рынку, обеспечиваемых правовыми средствами режима противодействия «отмыванию» денежных средств. *Трансформация социально-гуманитарного знания в условиях цифрового общества* : сб. науч. трудов по матер. Междунар. науч.-практ. конф., 31 октября 2018 г. В 2 ч. Белгород : ООО «Агентство перспективных научных исследований», 2018. Ч. 2. С. 84–96. URL: http://issledo.ru/wp-content/uploads/2018/11/Sb_k-2-31.10.18.pdf#page=85.

[31] Правовое регулирование финансового контроля в Российской Федерации: проблемы и перспективы : монография / отв. ред. Е.Ю. Грачева. Москва : НОРМА – ИНФРА-М, 2013. С. 60.

[32] Allen F., Chui M.K.F., Maddaloni A. Financial systems in Europe, The USA and Asia. *Oxford Review of Economic Policy*. 2004. Vol. 20. № 4. P. 490.

[33] Нечай А.А. Квазипубличные фонды: определение, классификация и правовое регулирование. *Финансовое право: прошлое, настоящее, будущее* : сб. ст. по матер. Междунар. науч.-практ. конф., посвящ. 85-летию Н.И. Химичевой. Саратов, 2014. С. 199–200.

Developing this approach, E.V. Ryabova to the membership criteria of a monetary fund as a public include: 1) criterion of public ownership; 2) criterion of public interest; 3) criterion of formation by the subject of law – a potential object of the state (municipal) financial control (criterion of an independent object of state (municipal) financial control); 4) criterion of centralization; 5) criterion of autonomy of legal regulation[34].

The aforementioned researchers point out that these criteria are not specific to all public funds. Accordingly, it is necessary to differentiate the criteria (obligatory signs) of public funds separation from private funds and their additional (optional) attributes.

So, continuing the above-mentioned approach we will analyse the following criteria:

1. *Criterion of public ownership*, the form of money ownership (financial resources): for public funds characterized by public ownership (state, property autonomy, territorial communities (municipal entities), etc., their common property) or, as noted by A.A. Nechay, "private property subject to imperative legislative regulation of the formation, distribution, management and use of such funds"[35]. So, it is sufficiently substantiated to public funds of means N.G. Kravchenko refers to funds of means that are privately owned, but "they are subject to a special procedure for mobilizing funds, their distribution and use, and they satisfy public interests recognized by the state"[36] and refers to them, in particular, bank reserves (reserve funds (or statutory reserve), funds of mandatory reserve banks, insurance reserves under active operations of banks). A.A. Nechay attributed to such funds non-state pension insurance funds (accumulative pension funds of the third-tier pension system of the states), but later suggested that they be classified as "quasi-public funds"[37].

On the contrary, not all funds of means that are in public domain, in our opinion, can be classified as public. In particular, O.V. Ryabova, like most researchers – representatives of financial law science, attributes these funds

[34] Рябова Е.В. Публичные финансы: концептуальный взгляд на содержание. *Вестник университета имени О.Е. Кутафина*. 2017. № 8. С. 34–41. DOI: 10.17803/2311-5998.2017.36.8.034-041.

[35] Нечай А.А. Правові питання визначення, класифікації та регулювання квазіпублічних грошових фондів. *Право України*. 2016. № 3. С. 238.

[36] Кравченко Н.Г. Банківська система як предмет правових досліджень. *Адміністративне право і процес*. 2014. № 1(7). С. 123–124.

[37] Нечай А.А. Правові питання визначення, класифікації та регулювання квазіпублічних грошових фондів. *Право України*. 2016. № 3. С. 238.

to public (finance)[38], which, in her opinion, is due to "autonomous legal regulation, separated from civil law, as well as the appointment of these funds (financial support for the activities of state corporations, state and public-law companies created in the interests of the state and society, directly enshrined in the relevant federal laws)".

Thus, the overwhelming majority of financiers and lawyers since the Soviet era does not question the thesis that all funds created by the state and in state ownership form are its centralized or decentralized state funds and automatically, they all belong to the public. This concept was extended to centralized and decentralized funds of territorial communities, in particular utility companies. However, this is not the case if we analyse current approaches to the content of such a criterion as "publicity", as well as differences in the ways in which the bodies of the state, the ARC and local self-government of legal entities are created or their participation in the number of its founders (participants). If a state (communal) enterprise is created of an unincorporated type, then it has property, including financial resources, on the right of economic management or operational management, and if a company of a corporate type is formed then the property is secured by the right of ownership. In such a case, public creation has corporate rights in relation to such a legal entity, but the funds of such entity cannot be considered as being in state or communal ownership, even if the enterprise meets the criteria established in the law for recognition of it by the state or communal. In this case, the fund of a corporate type enterprise, the founder (participant) of which is the state, territorial community or ARC in whole or in part, not meeting the criterion of staying in public ownership, may meet other criteria for its recognition as public. Consequently, the criterion of staying in a public form of ownership may be attributed to additional (optional).

It should be noted that corporate enterprises, where the state, the ARC or the territorial community are the parties, can function as commercial and non-commercial (non-profit, non-entrepreneurial), and therefore act as carriers of private or public interest. However, all funds of legal entities established in the form of legal entities under the public law are public, because they are non-profit organizations and their activities are aimed at

[38] Рябова Е.В. Публичные финансы: концептуальный взгляд на содержание. *Вестник университета имени О.Е. Кутафина*. 2017. № 8. С. 35. DOI: 10.17803/2311-5998.2017.36.8.034-041.

fulfilment of the functions of the state, the ARC or the respective territorial communities and the achievement of a common interest. Consequently, the criteria of public interest and non-profit must be classified as basic.

2. *Criterion of public interest (publicity).* So, A.A. Nechay notes that public funds are characterized by satisfaction of one of the three types of public interest, namely: state, territorial and/or public interest, recognized by the state or local self-government bodies[39], aimed at satisfaction of general (common) social needs of individuals, achievement of the general social interest, provision of public order, performance of the state functions (local self-government) of non-productive character, state (financial, environmental, etc.) safety, stability of banking system and solvency of financial institutions, etc.).

The scholar S.V. Ochkurenko rightly points out that in the science of financial law the transition from defining value of ownership criterion of the cash fund to the criterion of publicity of the relevant monetary fund for determining the legal regime for its functioning is justified, as well as the fact that publicity as a feature of a cash fund is not always associated with its direct use for financing public expenditures[40].

For example, a state-owned (communal) unitary commercial enterprise of a corporate or non-corporative type, which is fully functioning under conditions of economic activity in a market-oriented relationship, aimed at profit making and in competitive conditions, is not classified as the one that cannot be privatized and whose functioning does not pursue a clearly defined general (public) goal or does not meet the goal of ensuring financial or state security, in our opinion, cannot be classified as public only because it is in full, and even more so if it is partly (in the case of societies), in state or communal ownership. Conversely, if the fund of means is created not on the basis of state or communal property, but by virtue of the law, with a special legal regime, the spending of which is targeted and is from public financial control, the introduction of which is intended to satisfy the common (general) public financial interest and funds which cannot be divided between the founders (participants), but only transferred to successors – organizations of a similar type, or to the state or local budget, it

[39] Нечай А.А. Правові питання визначення, класифікації та регулювання квазіпублічних грошових фондів. *Право України*. 2016. № 3. С. 238.

[40] Очкуренко С.В. Юридическая природа отношений, возникающих в процессе денежного обращения и регулирования деятельности финансовых учреждений. *Norwegian Journal of development of the International Science.* 2017. № 7. P. 6.

should be the attained to the public funds cost, and relations with the mobilization of funds to it, as notes A.M. Chernoverhsky, and their use – to public finances[41]. To the signs of "publicity" of relations, connected with public money funds, he refers, first of all: 1) the relations orientation on national compulsory social programs implementation; 2) the presence and prevalence of public interest legal relations; 3) the purpose of the establishment of relations is to meet the needs of a society, state or territorial entities; 4) the method of legal regulation of relations is the establishment of regulations as for mobilization, allocation and use of assets of funds of means. So, the criterion of public interest in the functioning of funds, we refer to the main features of their publicity.

3. *The purpose criterion of the monetary fund emergence.* Public funds of means are characterized by their non-profitability, their focus on meeting the needs of a society in general (in particular, the State Budget of Ukraine), individual needs (in particular, the National Fund for Researches of Ukraine[42]) or certain groups (in particular, the Fund for Social Protection of Disabled Persons[43]) or financial support for the implementation of certain functions of the state (local government) (for example, the State Fund for Regional Development[44], Kyiv City Environmental Fund[45]). Accordingly, public funds are grouped into general (universal) funds (in particular, general budget funds of the budgetary system of Ukraine, etc.) and special funds (in particular budget target, extrabudgetary, etc.). Thus, when creating a public fund, the purpose of their functioning is immediately determined, aimed at achieving a certain type of public interest, which stipulates further

[41] Черноверхский А.М. Роль негосударственных пенсионных фондов в осуществлении публичных расходов в социальной сфере. *Право и государство: теория и практика*. 2010. № 6(66). С. 89.

[42] Про Національний фонд досліджень України : Постанова Кабінету Міністрів України від 4 липня 2018 р. № 528 / Кабінет Міністрів України. URL: https://zakon.rada.gov.ua/laws/show/ru/528-2018-%D0%BF.

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[44] Бюджетний кодекс України : Закон України від 8 липня 2010 р. № 2456-VI / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2456-17.

[45] Про нову редакцію Положення про Київський міський фонд охорони навколишнього природного середовища, затвердженого рішенням Київради від 24 вересня 1998 р. № 10/11 : Рішення Київської міської ради від 26 лютого 2010 р. № 18/3456 / Київська міська рада. URL: http://kmr.ligazakon.ua/SITE2/l_docki2.nsf/alldocWWW/26156F90B0D95BCBC225770300687232?OpenDocument.

compliance with the legislative requirement for the targeted use of their funds. On this occasion, O.S. Vysotska, on the basis of analysis of funds of state corporations, which concentrate within the framework of a non-state form of ownership of the financial resources belonging to the state with financial and controlling state participation, notes that "the degree of state regulation of decentralized finance depends on a clear definition of the purpose nature of the monetary fund use formed as a result of holding political, administrative and fiscal decentralization", and "the criterion of ownership in this case is not decisive"[46]. Accordingly, the criterion of foundation purpose, we refer to as the main.

4. *The imperative method criterion of legal regulation of social relations in the functioning of the monetary fund* (formation, distribution, management and use of its funds). In our opinion, more successful title of such a criterion is the established by law public-legal regime of functioning of funds, as it is the compliance with certain features (criteria) of the fund publicity as the basis for spreading on public relations with functioning of a certain fund according to the rules of public law based on the imperative method of legal regulation. That is, the effect of the rules of public (financial) law on public fund means is the consequence, but not the reason for the fund creation. In our opinion, the reason is that at the level of the law there are established requirements for creation and the special public-legal regime of functioning of the corresponding fund means. If a fund of means, which is functions to provide common needs (for a public purpose), in order to achieve public (common) interest, is created by a private owner the discretionary method of legal regulation is working only until the moment of creation and registration of a public fund of means, because the subject must manifest its will about its creation. However, since the funds have been transferred to such a fund, all its activities fall under public-law regulation, while the fund management of the entity has discretionary powers (operational management) regarding the selection of more urgent uses of funds, adhering to clear indications of the legislator on the ratio of the volume of functional and managerial costs, use of public procurement procedures or other special procurement procedures, an exclusive list of costs, disclosure of information on expenditures, ect. To such funds we can

[46] Высоцкая О.С. Финансово-правовое регулирование публичных фондов денежных средств : автореф. дисс. … канд. юрид. наук : 12.00.14 «Административное право; финансовое право; информационное право». Москва, 2011. 19 с. URL: https://dlib.rsl.ru/viewer/01004845540#?page=6.

include reserve funds of banks, charitable foundations, funds of public organizations, etc. The criterion of the autonomy of legal regulation, which distinguishes O.V. Ryabova as a compensator of funds mismatch criterion of public ownership[47]. However, the specified name of the criterion is also questionable. So, we consider the criterion of the public-legal regime established by law for the fund of means functioning as one of the main ones.

5. *The criterion of formation by the subject of law* – the potential object of public (state, municipal) financial control (criterion of an independent object of state (municipal) financial control. In general, all elements of the financial system are under financial control by the state. However, dissemination on the fund of means functioning of the public law norms, namely, financial and legal, the nature of which determine the norms of volume, target use, planning, types of income and expenditure, the order of use, as well as the fact that such funds are created by public entities (state, ARC or local self-government bodies), public associations (in particular, charitable foundations, funds of political parties receiving funding from the State Budget of Ukraine, election funds formed for account of statutory sources of funding and used for their intended purpose, etc.) and are often registered as non-profit (non-commercial) organizations, which leads to their recognition as special objects of financial control depending on their type or sets special demands on the treasury or banking system to serve such assets. Consequently, this criterion belongs to the main ones.

6. *The criterion of the distribution form and the form of the monetary fund use*: the state regulates at the level of the law not only issues of creation, sources of income, opening peculiarities of the fund accounts, formation of its revenues, their distribution, and the use of financial resources of such a fund (in particular, managing them, etc.). This criterion belongs to the main ones.

7. *The criterion of centralization* which is made by O.V. Ryabova in order to illustrate the loss of the theoretical and practical relevance of the finance classification (funds of means) on centralized and decentralized[48], with the feature of a centralized fund, the scholar considers the existence of a single

[47] Рябова Е.В. Публичные финансы: концептуальный взгляд на содержание. *Вестник университета имени О.Е. Кутафина*. 2017. № 8. С. 39. DOI: 10.17803/2311-5998.2017.36.8.034-041.

[48] Рябова Е.В. Публичные финансы: концептуальный взгляд на содержание. *Вестник университета имени О.Е. Кутафина*. 2017. № 8. С. 39. DOI: 10.17803/2311-5998.2017.36.8.034-041.

management center and, as a sign of decentralized funds, its absence. However, in our opinion, the feature of centralized funds is that the fund of means is in direct management of the owner, and decentralized ones – what they create in the form of a separate legal entity or is fixed by a legal entity on the right of operational management or economic management or transferred to trust management of an authorized legal entity. Consequently, this criterion should be attributed to the optional, such as which are characterizing certain features of a public fund of means.

CONCLUSIONS

So, the public fund of means is a fund of financial resources expressed in the monetary form, made in the form of a delimited by the owner accumulation of financial resources (in particular in the form of a bank account) or in the organizational and legal form of a legal entity that has a definite place in the structure of the financial system of Ukraine, and public relations on mobilization and use of funds belong to the sphere of public finance, the mandatory establishment of which is provided for by law or the establishment of which stipulates the public order of their activities (use of means) the operation of which is non-commercial and aimed at achieving public interest, a common goal and ensuring public needs, in accordance with the established public-legal regime, namely at the expense of the sources of revenue determined by law and for observance of statutory procedures for the use of funds under public control and enhanced with legal responsibility.

The mandatory criteria for publicity of the fund include: 1) public interest; 2) common (general) purpose of functioning; 3) non-profit; 4) the statutory public-legal regime for the fund of means operation; 5) forming a potential object of public financial control; 6) outlined by law sources of income, forms of distribution and forms of the monetary fund use.

The additional, optional elements of public funds of means that make it possible to classify them include: 1) the form of ownership, in which there are financial resources of the public fund of means (the state, the Autonomous Republic of Crimea, territorial communities, people of Ukraine (public), private, different combination of these forms); 2) the type of owner’s property rights regarding the fund as a single complex (centralized, decentralized); 3) belonging to the budget system (budget, extrabudgetary); 4) detailing the public purpose of functioning (general, target); 5) type of financial resources (monetary (in national or foreign

currency), bank metals, precious stones, securities, their combination); 6) sphere of public interest; 7) the type of social needs for which the resources of the fund are directed; 8) territoriality (national, local, etc.); etc.

Consequently, the category of “public fund of means” is transformed depending of the review in the theory of right of the circle of actors – carriers of public interests, subjects of providing common needs, forms of interaction between the state and civil society, and the statement of the loss of state monopoly on public activities for the provision of public needs. Importantly, there is the theoretical justification for establishing the legal framework for the functioning of public funds of means that are not based on state or communal property so that the state cannot exert excessive pressure on civil society, in particular on non-governmental organizations, but effectively cooperated with them, providing the purpose and transparency of their functioning in the common interest.

SUMMARY

The article deals with the legal content of the category “public fund of means”. The approaches to the definition of “financial resources” and the relation of this legal category with such categories as “resources”, “means”, “currency values”, “funds” are analyzed. Public funds of financial resources should be included in public funds. The approaches to the property content of public finance (stock and functional) are investigated. Priority is assigned to the Functional, in which the material expression of public finances is the financial resources of funds, the movement of which takes place in the form of financial relations. The concept of a public fund of means as an element of the financial system of the state is researched. The main approaches to the characteristics of the components of the financial system of Ukraine are analyzed. The author’s definition of the concept of “public fund of funds” was proposed.

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PROCEDURAL NORMS IN THE FINANCIALLY-LEGAL REGULATION

Liubov Kasianenko, Tamara Latkovska

INTRODUCTION

Widely used notion of procedural norms cannot be considered to have been finally formed, as it has invested quite different content, calling these norms processual, procedural, procedurally-processual, organizationally-processual etc. It should be mentioned that scholars underestimate procedural norms despite the social significance of them, although they play an important role in providing optimal conditions of legal regulation, bearing the main burden of the normative way of strengthening the rule of law, ensuring the rights and freedoms of citizens.

Significant attention was paid to the study of legal norms in the works of M. Aleksandrova, S. Alekseeva, M. Baitina, V. Baranova, P. Nedbaila, I. Seniakina, A. Shebanova and others. As one of the fundamental problems of the processual law, the processual rules were studied by V. Gorshenyov, I. Diuriagin, N. Zemchenko, L. Koval, K. Komisarov, A. Melnykov, A. Pigolkin, N. Chechyna, R. Shagieva and others. Some aspects of the implementation of procedural norms of financial law were investigated by A. Ivans'kyi, E. Dmytrenko, M. Kucheriavenko, I. Krynyts'kyi, E. Kuznechenkova, O. Paul, N. Pryshva and others.

It should be noted that the problem of legal norms has been studied by scientists for a long time. The notion "norm" has begun to be used in the ancient period. At each stage of its development it acquired different meanings. The term "norm" (from the Latin "norma" – "rule", "exemplar", "a guiding beginning", "sample", "measure", in turn, this term also originates from the Greek and means "high scale", "rule") has begun to be used in the construction as "the justice of the triangle" for the first time. Such an interpretation of the notion of "norma" also spread to the sphere of spiritual and practical activity of a person, in particular, moral and ethical relations. Cicero took the term of "norma" along with the concept of "regula" in the philosophy of law, defining the notion of "law" by means of a metaphor borrowed from the constructional sphere, that is, as "the scale of law or lawlessness"[1]. And Ulpian derived a

[1] Єрмоленко А.М. Норма : філософський енциклопедичний словник. Київ : Абрис, 2002. С. 433.

legal formula on the rules of law: the rights are not set for individuals, but in general terms. One can conclude that the norm of law is a unique example of relations, the observance of which in practice leads to the construction of relationships necessary for life, after analyzing the heritage of outstanding ancient Roman lawyers.

In the Ruska Pravda, first of all in the Prostorova Pravda, the norms of procedural law were determined, as well as those that have been formed by legislators and have been known to practice during several previous centuries. Thus, some of the procedural norms of the Ruska Pravda has become the result of the transformation of customs that were used in the early period of Kyivan Rus. For a long time, lawyers have been forming the concept of "norm of law" and have identified a number of its features. At the same time, new features and properties have been acquired by modern concept in legal practice, although today's scholars have different views on this issue. The later development of the procedural norms of financial law and, as a consequence, the pursuit of scientific developments in this sphere should not reduce the autonomy and the meaning of the procedural norms of financial law.

1. The features of financially-procedural norms

To understand the provisions of any procedural norms, their distinction from the material norms, first of all it is necessary to become aware of the history of their origin, to find out those social needs that have caused them to live. In the opinion of A. Kim, V. Osnovin[2], the participants of the state-legal relations are authorized with the rights and freedoms by the material norms, the procedure of legal norms' enforcement in organizational activities is determined by the procedural norms. More than that, the state of legitimacy mostly depends on procedural forms of their enforcement – timeliness of prescribtion, completeness and perfection of procedural norms.

The procedural norms of various branches of law have: organizationally-procedural character (to emphasize the sphere of their influence only by management or law enforcement activity is not possible, as their influence is wider, different-sided); a specific subject of legal regulation; dependence on material norms.

It should be noted that: the process of formation, distribution (redistribution), use of financial resources of the state and bodies of local self-government, the

[2] Ким А.И., Основин В.С. Государственно-правовые процессуальные нормы и их особенности. *Правоведение*. 1967. № 4. С. 42–44.

circulation of securities and foreign currency in the territory of Ukraine; state and local revenues and expenses, and also financial providing of state and local enterprises, institutions and organizations; public and local debt and also activity of National bank and others financial institutions; state social insurance, obligatory insurance; financial control and others are regulated by the norms of financial law. Norms of the financial law, as well as any other branch of law, are obligatory rules of subjects' conduct of the public relations, are established by the state and provided with its compulsory force. Common features of legal norm are inherent to them, namely: they are the rule of subjects' conduct, the authoritative instruction of the state and have regulatory, formally determined and obligatory character. At the same time, they are inherent of the particular qualities of this particular activity, which are determined by the specific subject of legal regulation: their content is the participants' conduct of a special kind of social relations in the process of financial activity of the state and local self-government bodies. These rules are expressed in granting the subjects of such relations the subjective legal rights and obligations, which implementation provides systematic mobilization, distribution and use of centralized and decentralized funds of financial resources respectively to the needs and the interests of the state and society. But the fact that they are established or authorized by the state is invariable, are obligatory for all participants of the regulated public relations, if necessary are provided with the compulsory force of the state.

The subject of regulation of procedural norms are the relations that were created in the process of organizationally-legal forms of activities for application material norms on regulation of the relations in the sphere of financial activity of the state. Financial scholars note that the prescriptions contained in the norm and are officially enforced must be carried out by each subject, if it is in the conditions stipulated by the rule. Each legal norm is formulated by the state, clearly contains certain legal rules and obligations. If the rule, which is contained in the norm, is not carried out voluntarily, the state forces to abide it by the measures that are provided by the sanctions. N.Y. Pryshva[3] notes that the financially-legal norms combine both material and procedural. In modern conditions procedural norms of other branches of law cannot satisfy fully "the needs" of the financial law

[3] Пришва Н.Ю. Правові проблеми регулювання обов'язкових платежів : автореф. дис. … докт. юрид. наук : 12.00.07 ; Київський нац. ун-т ім. Тараса Шевченка. Київ, 2004. С. 27.

in regulation of procedural relations that arise in the sphere of accumulation of assets to state and local funds.

Considerable attention to the formation of procedural norms is given in the Budget Code of Ukraine. The state needs financial resources to execute the functions and tasks, as such resources are always limited, it is necessary to distribute them. All this can be made through the budget which needs to be made, discussed, approved and executed. These norms are also procedural. It is impossible to apply material-legal norms without observance of the procedural order established by the legislation. The efficiency of the budgetary process at the nation and local levels depends on observance of the procedural norms by all participants of the budgetary process. Annual passing of the legislative procedure of the state budget's adoption is one of the most difficult tasks among those which public authorities should solve.

Most of scientists, investigating the budgetary process draw to a conclusion, that in the financial law norms that have procedural character belong to procedural: a) define the list of participants of this or that activity; b) fix types of necessary actions and their obligatory sequence; c) predict an organizational form of each action; d) establish the rights and obligations of participants of the activity; e) define a decision-making order. In the fiscal law norms are procedural: about an order of carrying out a tax accounting of taxpayers, providing the tax declaration by them, the procedure of tax calculation, a control procedure for payment of taxes, application of enforcement measures etc. M.P. Kucheriavenko[4] refers such features to the tax-legal norms: tax-legal norm is a conduct form in the form of the state authoritative instruction; it is protected and provided with the force of the state enforcement; it is the obligatory rule of conduct; differs in concreteness, subject specification, individual orientation, categoriality in a regulation of participants' conduct of the tax relations at implementation of a tax liability; tax-legal norms not only fix a circle of participants of the tax relations, but also provide them with appropriate subjective rights, and impose on them with subjective legal obligations; they are characterized by systemacity. We consider that the specifics of tax legal relations caused the necessity to interpret tax process in a broad sense. In our opinion, tax process has to cover all relations regulating the established order of realization of a tax debt by the taxpayer, an order of calculation, payment,

[4] Кучерявенко Н.П. Налоговый процесс : учебное пособие. Киев : Алерта, 2010. С. 27–28.

tax reports, tax control and collecting payments and also settlement of the tax conflicts and disputes. The specifics of tax legal relations allow to speak about tax process in the broadest sense, which include all procedural relations connected with ensuring the right of the state to a part of property of the taxpayer in the form of a tax payment in the corresponding budget, and in narrow, – understanding only those procedural legal relationships connected with tax offense proceedings.

L.K. Voronova[5] considered that procedural financially-legal norms "define a procedure of activity of bodies of the state for mobilization of funds in the centralized and decentralized funds and an order of realization of obligations for introduction of funds and their expenditure from other party of financial legal relationship – legal entities and individuals".

Financially-procedural norms are legal norms to which all qualities of legal norm are peculiar, and at the same time they have also special qualities, which are characteristic only for financially-procedural norms. There a lot of financially-procedural norms needs more accurate legislative regulation in Ukraine. They are rules of collecting taxes and other payments, their administration, accumulation and use of budgetary funds, creation and distribution of credit resources and insurance funds, functioning of the financial market etc. The high level of development and accurate observance of procedural financially-legal norms will promote the efficiency of use of public finance, will serve as an important guarantee of legality, it is a necessary condition of formation of the legal state.

The analysis of the financial legislation confirms close interrelation of financial material and procedural norms though it is impossible to tell that they are equivalent behind the structure and contents. The content of financially-legal norms is establishment of rules of the participants' conduct of the public relations of a special type – the financial and economic relations that is always connected with distribution or redistribution of certain financial resources by the state in its interests. Norms which provide implementation of financial operations, accounting of budget revenues and expenditures, an order of execution of documentation on monetary operations, enactment of the operative-statistical and accounting reports in financial institutions, monetary documents management etc. are belong to procedural financially-legal standards of the general character. Not all

[5] Воронова Л.К., Кучерявенко Н.П. Финансовое право : учебное пособие для студентов юрид. вузов и фак-тов. Харьков : Легас, 2003. С. 69–70.

technical and legal norms which mediate financial activity of the state, and only those of them which directly related with formation, change and the termination of financially-legal relationships belong to particular (special) financially-procedural norms.

The ratio question between procedural and material norms of the financial law can be determined by the relation of a content and a form. The essence of financially-procedural norms consists of that they always regulate an order, forms, a method of implementation of norms of the financial material law. The state has to provide them adequate forms beforehand: to establish payments, an order and terms of their return in the relevant public funds, to define forms and the directions of use of the mobilized financial resources, etc. The content of financially-legal norms is establishment of rules of the participants' conduct of the public relations of a special type – the financial relations that is always connected with distribution or redistribution of certain financial resources by the state in its interests. Material financially-legal norms enshrine types and the amount of funds which has to return to the centralized and decentralized funds from legal entities and individuals, volumes of expenses etc., and procedural financially-legal norms establish an order of realization of material financially-legal norms.

In our opinion, the specifics of financially-legal norms are as follows: they differ from material norms in the purpose. Procedural norms regulate an order, the procedure of realization of these rights and obligations and answer a question how to do it; procedural norms are derivative in relation to material. It means that they arise and exist only if needed to realize the material norms; financially-procedural norms are means of realization not of all material norms. The need for financially-procedural norms arises only when the special procedure is necessary for the solution of a concrete question; it is impossible to construct a self-contained construction in which only two norms would interact: on the one hand – material, on the other hand – procedural, that is a construction in which the procedural norm would be defined only for one material norm and would provide its realization in full volume. As a rule, a single procedural norm serves several material norms, but never provides their realization up to the end. In turn, a single material norm needs to interact with the whole group of the procedural norms for full realization. Therefore, the minority of procedural norms concerning material norms does not mean that the material norm

generates procedural; financially-procedural norms provide realization of material norms of the financial law.

It is necessary to develop their classification for formation of a complete picture of any phenomena. It is possible to consider a research object from different positions, to make the correct idea of its formation, existence and development by means of classification. Classification (Latin of *classic* – the category and *facere* – to do) – the special case of application of logical operation of distribution of concept's scope, represents itself a certain set of divisions (classes, types etc.). As A.E. Leist[6] noted, classification is a way of identification of essential qualities of the system's divisions on which others, derivative of them attributes of each of elements of division depend on.

The major task is to reflect essential properties of norms as the regulator of the public relations and to reveal their specific features and peculiarities of distribution on the basis of them. Some scientists divide norms of non-material character into organizational, procedural, informative, procedurally-processual etc. In our opinion, at the same time there is no general legal criterion of division into groups and simple transfer of such groups of non-material character does not bear any legal loading.

Any classification, if it is methodically correctly executed, only helps to study a problem profoundly. In our opinion, the only criteria on classification of procedural norms are absent now. We consider that it is necessary to carry out the classification of financially-legal norms and to define its criteria, as the research of this question is one of the directions of the development of financially-legal science connected with further drawing-up, improvement and codification of procedural norms of the financial law. Nowadays the important factor of ensuring legality, quality and efficiency of the state's financial activity will allow as much as possible to provide the guarantees of the implementation of the subjective procedural rights by the subjects of financially-legal process, to overcome gaps in use of procedural norms of the financial law, collisions and differences in the legal regulation of the public relations.

In our opinion, financially-procedural norms can be classified on:

1) types of legal activity of public authorities in the sphere of formation, distribution and use of the centralized and decentralized funds (law-making, law-enforcement, constituent, control);

[6] Лукьянова Е.Г. Теория процессуального права. Москва : Норма, 2003. С. 61.

2) types of financially-procedural proceedings. It is possible to single out types of financially-procedural norms that regulate proceedings, for example, for distribution of public financial resources; for accounting of financial resources; on implementation of control concerning formation, distribution and use of the public centralized and decentralized funds; financial examination; pretrial resolving of the financial conflicts; adjudication of financial disputes etc.;

3) legal force. By the legal force financially-procedural norms can be divided on norms which are in laws and subordinate acts. According to the Constitution of Ukraine: State budget of Ukraine and budgetary system of Ukraine; the system of taxation – taxes and fees; bases of creation and functioning of the financial, monetary, credit and investment markets; the status of national currency, and also the status of foreign currencies on the territory of Ukraine; an order of formation and repayment of the state internal and external debt; an order of issue and circulation of the government securities, their kinds and types are only established by laws of Ukraine. Any expenses of the state on the general social needs, the size and the target direction of these expenses are only defined by the law "On the State budget of Ukraine";

4) a circle of subjects of law, which extends the action of financially-procedural norms, it is appropriate to divide them into norms that establish: a) an order of activity of legislative body of the state, local councils and bodies of local self-government on enforcement of material legal norms of the financial law; b) an order of activity of executive bodies on enforcement of material legal norms of the financial law; c) an order of activities of managers of money on enforcement of material legal norms of the financial law; d) an order of participation in financially-legal process of other participants-legal entities; e) an order of participation of citizens of Ukraine in financially-legal process;

5) regulation volume. Norms that carry out legal regulation of financially-legal process in general are related to the general financially-procedural norms. Special financially-procedural norms are norms which regulate the general questions that are in separate types of proceedings of financially-legal process. It is necessary to refer norms to them that establish stages of separate types of financially-procedural proceedings;

6) a role of financially-procedural norms in regulation of the public relations. According to this criterion they need to be divided into regulatory

and security. It is necessary to refer to regulatory financially-procedural norms that establish the procedural rights and obligations of participants of financially-procedural legal relationship. Security financially-procedural norms are enforced in a case of illegal behavior and provide a measure of the state coercion;

7) action in space. It is necessary to distinguish financially-procedural norms that work within all the territory of Ukraine, and within a certain administrative-territorial unit;

8) action in time. Financially-procedural norms are divided into perpetual that act within the uncertain period, and urgent – with limited duration. For example, certain urgent norms are defined in the Budgetary code of Ukraine.

Of course, classification of financially-procedural norms does not exhaust all possible differentiations of procedural norms in general and does not apply for "ultimate truth". It can be carried out also on other criteria.

2. Financially-procedural norms in the mechanism of legal regulation

The mechanism of financially-procedural regulation is a dynamic system of legal means by means of which financial activity of authorized bodies and officials in process of mobilization, distribution and use of financial resources of the state and bodies of local self-government is ordered, and also during control of the movement of these funds. It is reached thanks to fixing the legal personality of participants of financially-legal process by the procedural-legal norms; separation of the legal facts that define the dynamics of financially-procedural legal relationship; separation of the special means, forms and ways of implementation of financial procedural activity; separation of competences of subjects of powers of authority which take participation in financially-legal process etc.

It should be noted that the importance of procedural norms in the mechanism of legal regulation consists in regulation of subjects' activity. In this case rules of subjects' conduct of financial legal relationship are defined by the procedural financially-legal norms. It is possible to reach an economic order in the public relations, to correct people's conduct according to requirements of economy, the authorities, all social life, having imperative character by means of certain rules. Norms can form the relations in which their participants enter. Procedural financially-legal norms play an important role in providing optimal conditions of legal regulation, bearing the main burden of a standard way of strengthening of legality.

The purposes and problems of a modern stage of development of Ukraine need active regulatory actions from the state, that is improvement of the directions, forms, methods and mechanisms of economic activity which important component is financial activity of the state and local governments. It is true that the relations between subjects concerning financial activity, which arise during the movement of public financial resources are subject of profound legal regulation. Firstly, it is about features of public-legal regulation, where a realization of public interests goes to the forefront. Secondly, in this case a realization of the state interests is connected with bases, vitally important for existence of the state, – formation of the financial bases of ensuring the state functions.

As A.P. Orliuk[7] notes, that the financially-legal norms fix the exhaustive list of participants of financially-legal relationship, to authorize them with subjective legal rights and assign to them subjective legal obligations which need to be observed. Their internal definiteness is expressed in the content, scope of the subjective rights and legal obligations of participants of financially-legal relationship which performance provides public financial activity, and also accurate definition of consequences of its violation; their external definiteness is that they have external textually-legal form of expression and at the same time is enshrined in normative legal acts. They are characterized by systemacity, that is shown in their structural construction. The main feature of financially-legal norms is that they have state-authoritative, imperative character. It should also be added that the financially-legal norms consist of written requirements, expressed in a categorical form, which does not allow to change them voluntarily, they must precisely and exhaustingly determine the scope of rights and obligations of financially-legal relations.

The analysis of specifics of legal regulation of the financial relations allows to draw a conclusion that they are always regulated with use of normative acts of the highest level of the public power. Formation and use of the state and local budgets promote formation of a large number of procedural financial legal relationship which legislators need to settle. Therefore, special attention is not accidentally paid to financial legal relationship in constitutions of many states, and in some countries (Belgium, Spain, Germany, Switzerland, Sweden etc.) the financial perspective is

[7] Орлюк О.П. Фінансове право. Академічний курс : підручник. Київ : Юрінком Інтер, 2010. С. 126.

allocated even in the independent section in the basic law. Ukraine needs also to borrow experience of our neighbors. The mechanism of legal regulation is shown in legal norms, in legal relationship, in acts of realization of the rights and obligations. Respectively, the main means of financially-legal regulations are norms of the financial law, financial legal relationship and financially-legal acts in which, to a regret, there is no clearness of statement of financial procedural norms. Actually, the mechanism of indisputable write-off of the budget funds and reimbursement of damages caused to the budget is put in Article 25 of the Budgetary code of Ukraine. So, this legal norm provided that managers of budgetary funds have to order the obligations, taking into account unconditional write-off of funds, and bring them into compliance with the budgetary purposes for the corresponding budget period within a month since time of carrying out of such operation, in case of write-off of funds with registration accounts of the budgetary institutions because of which there were corresponding obligations. Therefore, Article 25 of the Budgetary code of Ukraine concerns write-off of funds from accounts on which funds of the State budget of Ukraine and local budgets are considered. The treasury of Ukraine carries out indisputable write-off of funds on the basis of the judgment.

It should be noted that in the active legislation there is a duplication of procedural norms concerning responsibility for violation of the financial legislation. It is worth paying attention that the main rules, procedures, requirements and the recommendations about the organization and carrying out of efficiency use audit of public funds are defined by different normative-legal acts.

Action or inaction make the objective element of violation of the budgetary legislation, there are those its signs which characterize the participants' conduct of budgetary process. There are no instructions on the subjective element of violation of the budgetary legislation in Article 116 of the Budgetary code of Ukraine[8], first of all whether the existence of fault of the offender is obligatory, what its form (intent) or negligence. This article contains the general definition of law violation. However, the analysis of the following articles' contents of the Code, and also standards of other legislative acts allows to define types of concrete law violations: violations of the budgetary legislation, responsibility for which is

[8] Бюджетний кодекс України : Закон України від 8 липня 2010 р. № 2453-VI / Верховна Рада України. *Офіційний вісник України*. 2010. № 59. Ст. 2047.

provided by the Code of Ukraine of administrative violations (Article 164^{12}), violations, responsibility for which is provided by the Criminal code of Ukraine[9] (Articles 210, 211). Inappropriate use of the budgetary funds forms structure of the administrative offense provided by Article 164^{12} of the Code of Ukraine of administrative violations[10], and inappropriate use of the budgetary funds in a large volume (the sum that in one thousand and more time exceeds a free minimum of income of citizens) or especially big (the sum that in three thousand and more time exceeds a free minimum of income of citizens) sizes, – forms offence, provided by Article 210 of the Criminal code of Ukraine.

In a complex ensuring legality and financial discipline in the sphere of public finance is reached by means of a form of realization of security function of the financial law – legal responsibility, and means: implementation of financial control, financially-legal coercion and violation of the financial legislation proceedings. Characteristic features of security function of the financial law are described more accurately if to compare them to law-enforcement and control activity of the state. Their general purpose in the sphere of public finance comes down to ensuring steady execution of requirements of the law by participants of the financial relations, that is observance of the regime of financial discipline. It is reached by identification of financial offenses in process of implementation of financial control, their investigation, calling to account of guilty persons according to observance of certain procedures. It is possible to reach the purpose of legal regulation only when there is an established and provided order of implementation of substantive instructions.

So, it is possible to define the mechanism of financially-procedural regulation as the dynamic system of legal means, by means of which financial activity of the state and bodies of local self-government in process of formation, distribution and use of financial resources of the state and bodies of local self-government is ordered, and also during control of the movement of these funds. It is reached thanks to fixing the legal personality of participants of financially-legal process by the procedural-legal norms; separation of the legal facts that define the dynamics of financially-

[9] Кримінальний кодекс України : Закон України від 5 квітня 2001 р. № 2341-III / Верховна Рада України. *Відомості Верховної Ради України*. 2001. № 25–26. Ст. 131.

[10] Кодекс України про адміністративні правопорушення : Закон Української РСР від 7 грудня 1984 р. № 8073-X (зі змінами й доповненнями) / Верховна Рада України. *Відомості Верховної Ради Української РСР*. 1984. Додаток до № 51. Ст. 1122.

procedural legal relationship; separation of the special means, forms and ways of implementation of financial procedural activity; separation of competences of subjects of powers of authority which take participation in financially-legal process etc.

CONCLUSIONS

The analysis of specifics of legal regulation of the financial relations allows to draw a conclusion that they are always regulated with use of normative acts of the highest level of the public power. Formation and use of the state and local budgets promote formation of a large number of procedural financial legal relationship which legislators need to settle.

Special features of procedural norms are: financially-procedural norms provide realization of material norms of the financial law; they have a specific subject of legal regulation for formation, distribution and use of public financial resources of state and bodies of local self-government and implementation of control concerning this activity; they are conduct forms in the form of the state authoritative instruction for formation, distribution and use of public financial resources of state and bodies of local self-government; they are protected and provided with the force of the state enforcement and implementation of control concerning this activity; differ in concreteness, subject specification, individual orientation, categoriality in a regulation of participants' conduct of the relations; fix a circle of participants of the relations, but also provide them with appropriate subjective rights, and impose on them with subjective legal obligations; they are protected and provided with the force of the state enforcement, according to this the ratio question between procedural and material norms of the financial law can be determined.

The ratio question between procedural and material norms of the financial law can be determined by the specifics of financially-legal norms: they differ from material norms in the purpose. The essence of financially-procedural norms consists of that they always regulate an order, forms, a method of implementation of norms of the financial material law; procedural norms are derivative in relation to material; financially-procedural norms are means of realization not of all material norms. The need for financially-procedural norms arises only when the special procedure is necessary for the solution of a concrete question; it is impossible to construct a self-contained construction in which only two norms would interact: on the one hand – material, on the other hand – procedural, that is a construction in which the

procedural norm would be defined only for one material norm and would provide its realization in full volume. A single procedural norm serves several material norms, but never provides their realization up to the end. Financially-procedural norms provide realization of material norms of the financial law.

The high level of development and accurate observance of procedural financially-legal norms will promote the efficiency of use of public finance, will serve as an important guarantee of legality.

SUMMARY

It should be mentioned that scholars underestimate procedural norms despite the social significance of them, although they play an important role in providing optimal conditions of legal regulation, bearing the main burden of the normative way of strengthening the rule of law, ensuring the rights and freedoms of citizens. The essence of the financially-legal norms in a legal regulation is as follows: creation of favorable conditions and guarantees in the sphere of financial activity of the state; establishment of the corresponding procedural forms in activities for formation, distribution and use of financial resources of the state and bodies of local self-government and implementation of control. According to authors, the basic structural elements of the mechanism of legal regulation it is expedient to consider: financially-procedural norms; definition of the appropriate purpose in laws and other normative acts; support of positive participants' conduct of the public relations; financially-legal personality of participants of financially-legal process; financially-procedural legal relationship, for which legality and legal order in the sphere of public finance as a condition and result of financially-legal regulation etc.

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9. Кримінальний кодекс України : Закон України від 5 квітня 2001 р. № 2341-III / Верховна Рада України. *Відомості Верховної Ради України*. 2001. № 25–26. Ст. 131.
10. Кодекс України про адміністративні правопорушення : Закон Української РСР від 7 грудня 1984 р. № 8073-X (зі змінами й доповненнями) / Верховна Рада України. *Відомості Верховної Ради Української РСР*. 1984. Додаток до № 51. Ст. 1122.

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SPECIAL ASPECTS OF LEGAL STATUS OF STATE AUTHORITIES THAT PERFORM PUBLIC FINANCIAL ACTIVITY (KEY CHALLENGES AND THE WAYS TO ADDRESS THEM)

Nataliia Kovalko

INTRODUCTION

Currently, Ukraine undergoes dramatic economic and socio-political changes due to its integration into the European space as well as its desire to update itself to be at par with the other more developed European nations. In order to support and facilitate these processes, a number of important steps have been taken. Particularly, for the last few years, Ukrainian government has taken quite landmark decisions concerning the substantive property relations transformations, including the fundamental reorganization of the mechanism on economic management implementation and application of new market instruments. Within European framework, domestic legislation had gradually been establishing the conditions necessary for the liberalization of domestic economy from the effects of politics and its ideological dogmas. From this angle, State's financial activity, which inevitably includes public finance operation, is rightfully considered to be incredibly powerful catalyst to change all these processes.

Financial management, financial resources accumulation, namely, their redistribution and operation are one of the major areas of public authority activity. At the same time, the specific role of the State as an actor in financial and legal relations, its influence on other actors in terms of circular movement of public funds as well the urgent need to reach the accommodation of interests between the State and other key players have posed a number of real challenges needed to be addressed without any delays.

The main difficulty in the optimization of State's financial activity is predetermined mainly by its status, the availability of its functions, tasks and legislative powers (law-creation instrument of both general and individual levels), under which legal regulation of budgetary, tax and other forms of public financial activity takes place. Moreover, outlined topic is of particular relevance due to the lack of a comprehensive definition of the legal status of governmental authorities engaged in public financial activity, and the impact of their activities on legal relationships with private stakeholders (individuals and legal entities).

All this reasons specify the relevance of the present research, which is dedicated to the issues of clarification of the legal status of governmental authorities that perform public financial activity. Additionally, the importance of the outlined question stems from the necessity to reconceptualized existing in national jurisprudence theoretical and pragmatic approaches to the operation of such powers. In its turn, it will give a profound basis for the development of recommendations essential to legal regulation improvement.

1. Theoretically-legal approaches centered on conceptualization and determination the system of state bodies involved in public financial activity

In our opinion, before examining the system of state bodies that carry out public financial activity, it is crucial task to find out doctrinal approaches to the definition of public financial activity. This issue is especially important given the fact that legislation does not suggest any official definition of this category and as a logical result among legal thinkers there are still hard-hitting scholarly debates on the search of optimal definition that will be flexible and comprehensive for the law-making purposes.

Furthermore, the concept of "public financial activity" was recently introduced into the legal and financial vocabulary, which would explain the use of obsolete connotations for defining this phenomenon in the overwhelming majority of professional literature. Against this background, S.O. Nishchymna notes that since its emergence, this financial law category has evolved considerably – from purely economic to the complex legally-financial. For this reason, she identifies following stages of its "legally-semantic" formation:

1) XVIII century – first half of the XX century – the concept of "state financial economy" was actively used to denote financial management activities;

2) the middle of the XX century – the first half of the 90's – the category "state financial activity" was introduced, which become widely recognized and applied;

3) the second half of the 90's of XX century – early XXI century – the "state financial economy" as the key category of financial law was modified and further replaced by the term "financial activity of the state and local self-government authorities (or municipal formations)";

4) the beginning of the XXI century – a new key financial and legal category “public financial activity” has been introduced to the legal scholars and practitioners[1].

A broader understanding of the State’s financial activity is provided by D.A. Pashentsev, who defines it as the State’s activity focused on creation, redistribution and application of both centralized and decentralized monetary funds (financial resources) in order to fulfill its primary objectives[2].

In turn, the most comprehensive definition of the State’s financial activity which substantially differs from the other interpretations, is the understanding offered by L.K. Voronova. Specifically, she defines this concept as the based on the legal norms systematic process of managing public centralized and decentralized funds and monetary assets necessary to carry out the tasks and functions prescribed by the Constitution of Ukraine for the State, local governments and other public entities authorized by the State[3]. It is also argued that the financial activity of the State is manifested through the establishment of favorable conditions at the normative level and setting necessary permits and restrictions for the implementation of financial legal personality by all actors in financial legal relations[4].

Thus, based on the above definitions of financial active, we can conclude that such-like activity is related to the public finances management and carried out by public authorities. At the same time, it should also be borne in mind that the substantial content of the State’s financial activity can be revealed at its certain stages, one of which is the control over the monetary fund’s movement. Notably, it can be carried out both at each stage of the funds movement and as an autonomous stage.

More specifically, the definition of the State’s financial activity can be understood via the category of “public financial activity”, that is, public authorities’ (both higher and local level) activity authorized by law and aimed at creation, redistribution and use of public monetary funds necessary

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[1] Ніщимна С.О. Сутність публічної фінансової діяльності. *Evropsky politicky a pravni diskurz*. 2015. Vol. 2. Iss. 2. P. 141–147. URL: http://nbuv.gov.ua/UJRN/evrpol_2015_2_2_23.

[2] Пашенцев Д.А. Правовое регулирование финансовой деятельности в Российской империи (вторая половина XIX – начало XX века) : дисс. … докт. юрид. наук. Москва, 2005. С. 17–18.

[3] Воронова Л.К. Фінансове право України : підручник. Київ : Прецедент ; Моя книга, 2006. С. 21.

[4] Словник фінансово-правових термінів / за заг. ред. Л.К. Воронової. 2-ге вид., перероб. і доп. Київ : Алерта, 2011. С. 498.

to perform certain governmental functions, including monitoring the movement of these funds.

It must be separately noted that in modern jurisprudence there is a significant issue on the correlation of such concepts as “State’s financial activity” and “public financial management”. Such correlation is attributable mainly to the existence of a diametrically opposed conceptual apparatus existed in Soviet and post-Soviet times. In particular, in financial and legal literature following categories can be found: “financial management”, “public financial management”, “management in the banking and financial area”. Furthermore, some representatives of legal academia treat these concepts as the same[5]. Nevertheless, it is difficult to agree with such-like approach due to the fact that these two notions primarily differ in the subjective component (government and municipal enterprises do not carry out public financial activities, but rather manage public finances). Therefore, in this case, it would be better to refer to the correlation between the concepts of “public financial activity” and “management of public finances” as a whole and a part.

It is widely recognized that the key component that substantially reflects the essence of public financial activity is the category of common interest. In keeping with this approach, due to the public finances, the common interest of all citizens of the particular State is satisfied, while private finances are aimed mainly at meeting private interests of certain individuals or legal entities, which is directly carried out via profit-making.

Professional legal literature suggests following conceptual understanding of the public interest category:

1) the vital standing for large social groups (including community in general), the responsibility for the maintaining (achievement, development) of which lies with the State[6];

2) recognized by the State and legitimate interest of social community, the satisfaction of which serves as a guarantee of its existence and development[7].

Synthesizing the abovementioned interpretations, the concept of public activities within the framework of public financial activities can be

[5] Бельский К.С. Финансовое право : учебник. Москва : Юрист, 1994. С. 28.

[6] Тотьев К.Ю. Публичный интерес в правовой доктрине и законодательстве. *Государство и право*. 2002. № 9. С. 25.

[7] Тихомиров Ю.А. Публичное право : учебник для юрид. фак-тов и вузов. Москва : БЕК, 1995. С. 55.

understood in a following way: recognized by the State and thus legitimate interest in creation, redistribution and operation of public monetary funds, as well as control over the movement of these funds by government and local authorities with a view of ensuring the existence and development of certain social community.

It is arguable that public interest can be provided not only by the State itself, but also by territorial communities. Thus, it can be classified into two types: 1) State interest, which encompasses specific needs of the whole society as a single entity, and 2) municipal interest, particularly oriented on meeting the needs of the entities residing in a particular territory, taking into account the specific nature of the current stage in its development.

In accordance with the current legislation, regulation and management of public monetary funds (as well as the control over their movement) are exercised directly via the state or via its certain authorities granted with specific competence. In this regard, P.S. Patzurkivskyy, talking about the subjects of financial activity, deems them as the whole State or its relevant administrative agency, which shall act both on behalf of the State and on its own right (but upon the government instructions and in the state interests)[8]. L.K. Voronova rightly emphasized that the State directly or via certain authorized financial and banking authorities can mobilize, distribute and spends funds by financing the national economy, social and cultural institutions, defense area, maintaining order in the country, managing, creating material and financial reserves[9].

It follows that public financial activity of the State is carried out by all public authorities. But, their main difference lies in the scope and extent to which such authorities are involved. Therefore, the most common division of authorities engaged in public financial activities is their separation into the authorities with general and special competence.

The first group consists of the authorities that implement strategic, general financial management, the powers. Such competence in this area of activity is not principle for these regulatory bodies and essentially coexists along with the other types of powers. In particular, this group includes the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the President of Ukraine, etc.

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[8] Пацурківський П.С. Правові засади фінансової діяльності держави: проблеми методології. Чернівці : ЧДУ, 1997. С. 26.

[9] Фінансове право (за законодавством України) / за ред. Л.К. Воронової, Д.А. Бекерської. Київ : Вентурі, 1995. С. 6.

The second group includes public agencies that were created directly to ensure the organization of the operational management of public monetary funds. In contrast to previous, for this group financial activity is the major one. Primary, among such authorities are the Ministry of Finance of Ukraine, the State Treasury of Ukraine, the National Bank of Ukraine (hereinafter – the NBU), the Accounting Chamber of Ukraine, the State Fiscal Service of Ukraine, the State Audit Service of Ukraine, the National Commission for State Regulation of Financial Services Markets (hereinafter – National Commission), the State Commission for Securities and Stock Market (hereinafter referred to as the SCSSM) and others.

Among the public authorities, key role is played by the local self-government bodies and local State administrations which permanently established to address issues related with the socio-economic development of the territory concerned. Within their competence, they manage local finances accumulated in the local budget of the territory.

Looking at the system of public authorities engaged in public financial activities of the state, scientists are still discussing whether it is appropriate to include all governmental branches in its structure. For instance, E.D. Sokolova believes that this type of activity is carried out by state bodies, among which are all three branches of power: legislative, executive, judicial within the competence assigned to them[10].

Conversely, another legal scholar M.I. Damirchyyev, while disagreeing with above cited assertion, argues that the participation of certain public authorities in financial activities should also predetermine the appropriate procedure for the exercising powers related to such financial activities. In full obedience with another approach, he believes that the financial activity of the state empowers with special functions (in the financial sense) the representatives of the legislative and executive branches. And when it comes to the judiciary, it is important to understand that this is an independent branch of power and consider it as the subjects who have to collect funds, will destroy the basis of neutrality and impartiality when considering disputes[11].

P.M. Duravkin expresses a similar position, but points out that in regard to the legislative branch of power, it is not logical to talk about law-making

[10] Соколова Э.Д. Правовое регулирование финансовой деятельности государства и муниципальных образований. Москва : ИД «Юриспруденция», 2009. С. 47.

[11] Дамірчиєв М.І. Суб'єкти фінансової діяльності. *Вісник Національної академії правових наук України*. 2014. № 4(79). С. 151.

activities along with the accumulation, distribution and use of public monetary funds (which designs the financial activities framework). The scientist notes that it is necessary to distinguish the creation of financial system (definition of its elements via normative engineering, as well as the legal personality of those who will take part in relations that will consist of these elements) and its direct application (mobilization, distribution, operation of public funds). Accordingly, in the first case we are talking about the State's law-making activities, and in the second – about financial ones[12].

To refute the academics' approach, according to which public financial activities shall not be carried out by all three branches of government, it is quite important to make following two clarifications.

Firstly, one should distinguish the concepts of authorities engaged in public financial activity and the concept of financial authorities since they have different scope of financial activity and the level of their participation. Among other things, it is also should be taken into account the objectives and legal status of particular authority.

Secondly, in the area of financial activity, the State is facing the challenge not only to regulate and manage public funds in accordance with the current legislation (and in accordance with public needs), but also to monitor the movement of these funds, in order to ensure the legality of the corresponding collection, distribution and operation of resources.

Taking this into account, one of the main elements of the State's public financial activity is the judicial control. Via the relevant legal instruments, the judicial is empowered to identify and change the unlawful acts or decisions taken by other public authorities, as this can lead to the violation of the rights and interests of citizens.

Certainly, it is necessary to agree with the O.A. Myzuka-Stefanchuk's opinion, who notes that comprehensive control in the field of, for example, budgetary activity of public authorities, is carried out at all stages of public financial activity, thus involving a wide range of participants with financial control competence. Therein, such participants are well-organized and purposefully controlled, as everything that connected with public funds,

[12] Дуравкін П.М. Значення фінансової системи держави для здійснення фінансової діяльності держави. *Модернізація правових інститутів: вимоги часу* : матер. міжнар. юрид. наук.-практ. інтернет-конф., м. Київ, 8 грудня 2016 р. URL: http://www.legalactivity.com.ua/index.php?option=com_content&view=article&id=1366%3A161116-18&catid=167%3A2-1216&Itemid=208&lang=ru (дата звернення: 30.05.2018).

should remained under the strict control by both the authorities that directly manage them and special law enforcement institutions[13].

The investigation of the public financial activities tangible parameters and the system of authorities established to ensure its implementation, allows us to conclude that such-like activities can be carried out in the form of both direct (formation, distribution, operation of certain monetary funds) and indirect (adoption of particular regulatory acts related to this activity, and/or the performing certain acts, including supervisory) participation of the relevant authority.

To understand the role of a certain public authority in the system of public financial activities, as well as the nature of tasks it designed to perform to it, it is deemed indispensable to present classification previously suggested by A.M. Asadov, who distinguishes three groups of state authorities involved in public financial activities:

– the first group performs general activities in financial sphere, and it includes legislative and executive bodies which empowered with general competence, necessary for addressing the issues related to finance operation;

– the second group includes the authorities directly linked with financial activities;

– the third group encompasses the authorities specially established to perform State's financial activities; their main goal is to ensure the financial activities of the state in accordance with their competence[14].

Another scientific classification was offered by M.I. Damirchyyev. In relation to the level of participation in the process of state activity, academic identifies following groups of authorities:

1) authorities that exercise the power at the stage of law-making (governmental bodies with the authority to develop, provide legally binding provisions, guarantee the implementation of international legal norms into the domestic legislation);

2) authorities that exercise the power at the stage of law administration;

3) authorities that exercise the power at the stage of law enforcement (in terms of the finance control function at appropriate stage of public funds

[13] Музика-Стефанчук О.А. Органи публічної влади як суб'єкти бюджетних правовідносин : монографія. Хмельницький : Хмельницький університет управління та права, 2011. С. 198–199.

[14] Асадов А.М. Косвенные (опосредованные) правовые отношения: вопросы методологии и значение в финансовой деятельности государства : монография. Москва : Норма, 2013. С. 111.

movement: particularly, at the stage of public funds formation – fiscal authorities; at the stage of public funds distribution – bodies that perform treasury; at the stage of public funds expenditure – financial inspection bodies)[15].

Based on the analysis conducted above, summing up the theoretical and legal approaches to the understanding and definition of public financial activities, as well as the system of bodies, created to ensure its implementation, we have outlined the organizational and legal features of public financial activities, which is considered to be one of the crucial elements of the social management mechanism and financial resources direct operation:

1) public financial activity, in comparison with other types of public activity, has an multisectoral, general character, directly reflected in the operation of financial resources essential for all branches and spheres of public administration and control;

2) the public nature of financial activity is predetermined by the recognized by the State and legitimate interest in creation, redistribution and operation of public funds, as well as the control over the movement of these funds by state and local governments, which, it its turn, is motivated by the necessity to ensure the existence and development of social community;

3) public financial activity is carried out by authorities of all three branches of government, as well as local governments;

4) public financial activity is aimed not only at regulation and management of public finances, but also the control over the activities of other financial law actors.

2. Legislation on the status of state authorities that perform public financial activity (problems and thoughts on how to eliminate them)

To function as primary duty-bearer for the realization of the existing legislative provisions has been an essential aspect for each State, particularly, in order to ensure the effectiveness of public financial activity. This means that all public authorities should have a normatively regulated status, clearly defined functions and competence, by which they regulate and manage public funds, as well as perform control over their movement.

[15] Дамірчиєв М.І. Правове регулювання публічної фінансової діяльності: порівняльно-правовий аспект : дис. … докт. юрид. наук : 12.00.07 ; Нац. юрид. ун-т ім. Ярослава Мудрого. Харків, 2015. С. 197–201.

Considering this issue in the context of Ukrainian legislation, it is necessary to stress on pressing issues arisen from the absence of a clearly defined legal status of authorities involved in public financial activity. This, in turn, adversely affects the regulation of legal relations within participation of private legal entities.

Thus, as a result reforms that took place in 2014, have led to the revitalization of Ukrainian banking system, where most of them have been recognized as insolvent and are currently in liquidation under the direction of the Deposit Guarantee Fund (hereinafter – Fund).

According to the Article 3 (parts 1, 2) of the Law of Ukraine "On the System of Guaranteeing Deposits for Individuals" (hereinafter – Law № 4452-VI), the Fund is an institution that performs special functions in the field of private deposits guaranteeing, exit from the market by insolvent banks and their liquidating banks in cases prescribed by this Law. The Fund is a legal entity under public law, which possesses separate property that is covered by State ownership and is in its operational control. In accordance with the Article 6 of Law № 4452-VI, within its functions and competence, the Fund regulates the system of guaranteeing private deposits and performs the exit from the market by insolvent banks[16].

In view of the foregoing, we can conclude that the Fund by its very nature is not a public authority, but rather the entity subject to public law. According to the Article 6 of the national constitution, state power in Ukraine is exercised according to the principle of the separation of powers into legislative, executive and judicial authority. The legislative, executive and judicial authorities exercise their powers within the limits established by the Constitution and in accordance with the laws of Ukraine. In its Decision № 8-рп/2002 of May 7, 2002, the Constitutional Court of Ukraine observed that "state power is exercised on the basis of principle of power-sharing enshrined in the Constitution", which are independent and act as a check and balance upon each other (paragraph 4 of clause 3 of the reasoning part of decision)[17].

[16] Про систему гарантування вкладів фізичних осіб : Закон України від 23 лютого 2012 р. № 4452-VI / Верховна Рада України. *Відомості Верховної Ради України*. 2012. № 50. Ст. 564. URL: http://zakon.rada.gov.ua/laws/show/4452-17.

[17] Рішення Конституційного Суду України у справі за конституційним поданням Президента України щодо офіційного тлумачення положень частин другої, третьої статті 124 Конституції України (справа щодо підвідомчості актів про призначення або звільнення посадових осіб) від 7 травня 2002 р. № 8-рп/2002 (справа № 1-1/2002). *Офіційний вісник України*. 2002. № 20. Ст. 993. URL: http://zakon.rada.gov.ua/laws/show/v008p710-02.

Consequently, state authorities shall issue binding regulatory legal acts and ad hoc regulations, while legal entities of public law are not vested with such powers. But according to the prescriptions of Law № 4452-VI, the Fund nevertheless was vested by the legislator with powers that cannot belong to it due to the imperative requirements of constitutional legal prescriptions.

Furthermore, it is worth noting that, in compliance with Article 36 of Law № 4452-VI, from the day of withdrawal procedure initiated by Fund, it vested with all powers of the bank's governing bodies (general meeting, supervisory board and board (board of directors) as well as control bodies (audit commission and internal audit). The Fund acquires all the powers of the bank's management bodies and control bodies from the day the interim administration starts and till its final termination. For the period of the interim administration, all structural units, bodies and officials of the certain bank are subordinate in their activities to the Fund (or its authorized person) within the limits of authority determined by this law. Along with this, particular functions of bank's structural units may be delegated by the Fund (or its authorized person)[18].

Thus, the legal status of the Fund as a legal entity under public law, presupposes that it actually replaces the governing and supervisory bodies of the bank, which identified with the withdrawal procedure. On the other hand, Law № 4452-VI empowers the Fund with the competence for the exercise of its public-administrative management functions. Hence, the above provisions allow us to talk about Fund's dual legal nature and, as a result, the existing uncertainty in its legal status.

In judicial practice, the determination of the jurisdiction of disputes, in which the Fund is a party, given the duality of its legal nature, has led to the existence of various judicial approaches. This is particularly true for the disputes that arise between an individual who is depositor in bank and the Fund (or its authorized person) regarding the contract invalidity on the grounds specified in part 3 of the Article 38 of Law № 4452-VI. Within this situation, judges cannot find a unanimous position regarding the identification of category of cases. In other words should such cases refer to the public law disputes, which must be resolved in the framework of appealing against the Fund's (and its authorized persons) actions/omissions

[18] Про систему гарантування вкладів фізичних осіб : Закон України від 23 лютого 2012 р. № 4452-VI / Верховна Рада України. *Відомості Верховної Ради України*. 2012. № 50. Ст. 564. URL: http://zakon.rada.gov.ua/laws/show/4452-17.

in administrative court proceedings, or either to private law disputes, which must be resolved according to the civil proceedings commercial litigation.

Thus, the Supreme Administrative Court of Ukraine in the resolution of the Plenum "On the selected Issues regarding the Jurisdiction of Administrative Courts" № 8 of May 20, 2013 takes the position that since the Fund is a state specialized institution that performs the functions of state administration in the field of private deposits guaranteeing, the disputes arising within these legal relations, are in the public law framework and are subject to consideration in accordance with the rules of the Ukrainian Code of Administrative Procedure[19].

The Supreme Court of Ukraine in its rulings of February 16, 2016 on case № 21-4846a15 and on June 15, 2016 on case № 826/20410/14 had emphasized that the disputes arising during the liquidation (bankruptcy) stage of the bank are not subject to the administrative courts' jurisdiction[20].

At the same time, in the decision of November 9, 2016 in case № 6-2309цс16, the Supreme Court of Ukraine had presented another position, according to which the Fund's omission to act has to be challenged in administrative courts, and certain facilities must be collected from the Fund in civil proceedings[21].

Therefore, today, within domestic judicial practice, diametrically opposed approaches have emerged to address the issue of jurisdiction of cases, in which the Fund (or/and its authorized persons) act as a party. As a result, such cases are considered for several months or even years according to the rules of administrative proceeding, and then the court terminates the proceedings on the basis that the case should be considered according to the rules of another (civil) proceeding. It is worth noting that this is a direct cause of action by Ukrainian citizens to the European Court of Human Rights in connection with a violation of Article 6 of the Convention

[19] Про окремі питання юрисдикції адміністративних судів : Постанова Пленуму Вищого адміністративного суду України від 20 травня 2013 р. № 8 / Вищий адміністративний суд України. *Вісник Вищого адміністративного суду України*. 2013. № 2. URL: http://zakon.rada.gov.ua/laws/show/v0008760-13.

[20] Постанова Верховного Суду України від 16 лютого 2016 р. у справі № 21-4846а15. URL: http://www.viaduk.net/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/7d28019fb02c9a9cc2257f8c0023c8b0/$FILE/21-4846%D0%B015.doc.

Постанова Верховного Суду України від 15 червня 2016 р. у справі № 826/20410/14. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/VS160713.html.

[21] Постанова Верховного Суду України від 9 листопада 2016 р. у справі № 6-2309цс16. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/VS160996.html.

for Protection of Human Rights and Fundamental Freedoms (namely, the violation of reasonable terms for the consideration of a case). Additionally, such-like actions illustrate interference with the right of bank depositors to peaceful enjoyment of their property in accordance with the content of Article 1 of Protocol № 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The ECHR in its decision East/West Alliance Limited v. Ukraine of January 23, 2014, noted that the first and most important requirement in Article 1 of Protocol № 1 of the European Convention on Human Rights is that any interference made by public authority with the right to peaceful enjoyment of property must be legal. The requirement of legality according to the understanding of the European Convention on Human Rights requires compliance with the relevant provisions of domestic legislation and compliance with the rule of law principle, and, thus, implies freedom from arbitrariness. The ECHR also stresses that any interference by a state authority with the right to peaceful enjoyment of property should ensure a fair balance between the general interest of society and the requirements of protecting the fundamental rights of a particular person. The need to achieve this balance is generally reflected in the structure of Article 1 of Protocol № 1 to the European Convention on Human Rights. The necessary balance cannot be achieved if the State would place an unreasonable burden upon person. In other words, the proportional relationship between the means that are applied and the goal which is intended to be achieved must be justified[22].

The above provisions are of particular relevance in view of the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine "On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights" of February 23, 2006 № 3477-IV, according to which Ukrainian courts are obliged (as one of the regulators of the balance of public and private interests), to apply the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the practice of the European Court as a source of law in consideration of cases[23].

[22] «East/West Alliance Limited» проти України : Рішення Європейського суду з прав людини у справі від 23 січня 2014 (заява № 19336/04). URL: http://zakon.rada.gov.ua/laws/show/974_994.

[23] Про виконання рішень та застосування практики Європейського суду прав людини : Закон України від 23 лютого 2006 р. № 3477-IV / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/3477-15.

Nevertheless, consideration of a large number of disputes between private bank's depositor and the Fund was suspended pending resolution of the constitutionality issue of the Law of Ukraine "On the System of Guaranteeing Deposits for Individuals". The Supreme Court of Ukraine submitted a request to the Constitutional Court of Ukraine of July 8, 2015 № 201-2157/0/8-15 "On compliance (constitutionality) of the Law of Ukraine "On the System of Guaranteeing Deposits for Individuals" with the provisions of Article 6, part 1 of Article 8, part 4 of Article 13, Articles 21, 22, Parts 1, 4, 5 of Article 41 of the Constitution of Ukraine". In this request, the Supreme Court drew attention to the fact that the Fund acts as a subject and does not submit to any authority or institution, but only cooperates and coordinates its activities, in particular, with the NBU (Section IX of Law № 4452-VI), actually performing the functions of the latter. The above-mentioned gives solid ground to conclude that the provisions of Law № 4452-VI violate the principle of separation of powers, as defined in Article 6 of the Constitution of Ukraine, and the rule of law principle, which requires that laws and other legal acts be adopted on the basis of the Constitution of Ukraine and comply with its provisions[24].

There was a high hope that newly-reformed Supreme Court of Ukraine will find the solution of the outlined question. Namely, it tried to solve this problem in its rulings (for example, decision of December 4, 2018 in case № 820/11591/15)[25]. However, the existence of such a legal position does not guarantee that in the future the judges will not go back to look for new arguments necessary for the consideration of this category of cases within the framework of certain judicial procedure. Therefore, the question of jurisdiction determination, which is essential for the resolving a particular dispute with the Fund (or its authorized persons), requires its respective legislative definition. Conversely, now the result of each particular case depends mainly on the inner conviction of the judge who is considering the case. In turn, a proper resolution of this issue will allow private bank's depositors to protect their rights more effectively, without unnecessary

[24] Конституційне подання Верховного Суду України щодо відповідності (конституційності) Закону України «Про систему гарантування вкладів фізичних осіб» положенням статті 6, частини першої статті 8, частини четвертої статті 13, статей 21, 22, частин першої, четвертої, п'ятої статті 41 Конституції України від 8 липня 2015 р. № 201-2157/0/8-15. URL: https://ips.ligazakon.net/document/view/VSS00101?an=1.

[25] Постанова Верховного Суду від 12 квітня 2018 р. у справі № 820/11591/15. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/VS180626.html.

litigation, reduce the burden on judges as well as the number of violations that may be the reason for citizens to apply to the European Court of Human Rights.

This issue has retained its vitality and strong relevance also due to the fact that now a draft Law of Ukraine "On corporate recovery or liquidation of credit unions of Ukraine" (№ 9268) was submitted to the Verkhovna Rada of Ukraine. Specifically, it provides for the establishment of a similar government body in order to organize capacity procedure for credit union (in)solvency[26].

Draft Law № 9268 was designed with an aim to undertake the measures for the rehabilitation of credit unions, which during the period from 2010 to 2013 were on the brink of bankruptcy due to the imperfect domestic legislation, which also caused to a loss of access to the savings previously made by depositors. In pursuance of that objective, the Draft Law designates to establishment of a separate authorized agency, which, in accordance with its powers, will manage the processes of liquidation or corporate recovery of credit unions. The structure of the authorized agency, in accordance with the Draft Law's provision, includes representatives of the President of Ukraine, the Cabinet of Ministers of Ukraine, the Authorized agency for regulation of financial service markets, the NBU and representatives of other ministries and departments (on consensual basis).

The Draft Law nevertheless suffers from a number of weaknesses which are in need to be further re-defined. First of all, it does not establish the status of the Authorized agency mentioned above. Secondly, in accordance with the Paragraph 2 of Article 6 of the Constitution of Ukraine, the legislative, executive and judicial authorities exercise their powers within the limits established by this Constitution and in compliance with the laws of Ukraine. As provided by Paragraph 2 of Article 19 of the Constitution of Ukraine, state authorities and local governments as well as their officials are obliged to act only on the basis and within the powers and spheres of competence established by the Constitution and laws of Ukraine. And, finally, the document does not specify who will be the representatives of the President of Ukraine and the Cabinet of Ministers of Ukraine. Similar question arose in connection to the representatives of ministries and

[26] Про відновлення платоспроможності або ліквідацію кредитних спілок України : проект Закону України від 7 листопада 2018 р. № 9268 / Верховна Рада України. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64900.

departments: what governmental institutions should be involved and what number of representatives of such institutions shall be engaged. The final aspect is the issue regarding the funding of newly created agency.

Thuswise, in the light of the findings and observations detailed above (including existing gaps in the legislation regarding Fund's double legal status), Draft Law shall be amended and finalized in order to avoid numerous violations of the rights and interests of citizens that may take place in the future. It should be also noted that the submission to the Verkhovna Rada of Ukraine of the Draft Law № 9268 is also caused by the state governor underperformance – National Commission. Due to the improper performing of its function, more than 200 major credit unions disappeared from the State's view, the number of depositors had dropped to 48,00 (initially, from 164,00), which in turn caused substantial material damage to more than 100,000 Ukrainian citizens.

In Ukraine, the issue of liquidation of National Commission has been discussed for a long time. The issue encompasses not only debates regarding the quality and efficiency of this agency, but also the expertise of its workforce (employees who are uncompetitive in labor market), particularly, the lack of training and appropriate performance of certain functions. Thus, it was the main reason in July 2016 for Verkhovna Rada of Ukraine to adopt in first reading a Draft Law № 2413 "On amendments into some legislative acts of Ukraine regarding the consolidation of the functions for the state regulation of financial service market"[27]. This Draft Law provides for the distribution of its regulatory functions between the NBU and the SCSSM. In particular, this bill provides for the distribution of powers between the NBU and SCSSM. The competence in supervision and regulation of the market of insurance, functioning of leasing and factoring companies, credit unions, credit bureaus, pawnbroker's offices and other financial institutions is assigned to the NBU. Conversely, the SCSSM is vested with the power to regulate the non-state pension funds and building financing funds, as well as real estate funds. However, further promulgation of cited Draft Law has still not been approved.

Under those circumstances, it is important to note that reducing the number of government supervisors, deregulating and reduction in the

[27] Про внесення змін до деяких законодавчих актів України щодо консолідації функцій з державного регулювання ринків фінансових послуг : проект Закону України від 20 липня 2015 р. № 2413а / Верховна Рада України. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56124.

number of common points between business and the state envisaged by the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other. In addition, such priorities are defined by the Sustainable Development Strategy "Ukraine – 2020", approved by Decree of the President of Ukraine dated January 12, 2015 № 5 and the Program of Activities of the Cabinet of Ministers of Ukraine, approved by the Decree of the Verkhovna Rada of Ukraine of December 11, 2014 № 26. Therefore, taking into account the Draft Law № 2412 which is essential for the development of the country's financial system and the Ukrainian orientation on the fulfillment of its international commitments, its early consideration and adoption is extremely important.

However, the adoption of the Draft Law should not be limited only to the purely technical liquidation of National Commission and the delegation of its authority and functions to the newly created NBU and SCSSM departments. First of all, relevant changes should be reflected in the qualitative and not only quantitative indicators of authorities' organizational efficiency that will perform the functions of financial services market supervising.

Thus, in Ukraine the financial services market reformation should be accompanied by comprehensive measures that will provide both the setting of exhaustive list of regulators' powers and ensuring the clear delineation of regulator officials' competencies. Without a doubt, it guarantees that regulators' decisions will be based solely on law. In its decision, the European Court of Human Rights has repeatedly noted: "national legislation should provide an adequate legal protection against arbitrariness and, accordingly, with a sufficient precision limit the powers of public authorities as well as the way in which these powers are exercised" (the decision in the case of Zaichenko v. Ukraine (№ 2))[28].

The decisions of the Constitutional Court of Ukraine also indicated that among essential rule of law elements are the principles of legal certainty, clarity and unambiguity of the legal norm, as only those components ensure its uniform application. At the same time, their non-compliance has direct effect on unlimited interpretation in law enforcement practice and inevitably leads to arbitrariness (Paragraph 2 of Subparagraph 5.4, Clause 5

[28] Заїченко проти України (№ 2) : Рішення Європейського суду з прав людини у справі від 26 лютого 2015 р. (заява № 45797/09). URL: http://zakon3.rada.gov.ua/laws/show/974_a87.

of reasoning part of the Decision of the Constitutional Court of Ukraine № 5 of September 22, 2005)[29].

Thus, empirical material we have analyzed allows us to conclude that a significant part of the Ukrainian legislation on the legal status of government authorities engaged in public financial activities require its fix-term coordination with the provisions of the national Constitution and the other Laws of Ukraine. In its turn, a clearly defined legislation will become a required guarantee to ensure in the State the constitutional principle of the rule of law, which in turn would underpin the Ukraine as a law-bound State.

CONCLUSIONS

Taking into account all facts, it can be concluded that the importance of public financial activity lies in its nature. Practically, this phenomenon can be defined as public authorities' (both higher and local level) activity authorized by law and aimed at creation, redistribution and use of public monetary funds necessary to perform certain governmental functions, including monitoring the movement of these funds The main element that most fully reflects the essence of public financial activity is the category of public interest, that is, recognized by the State and thus legitimate interest in creation, redistribution and operation of public monetary funds, as well as control over the movement of these funds by government and local authorities with a view of ensuring the existence and development of certain social community.

Public financial activity of the state is carried out by all public authorities. But, their main difference lies in the scope and extent to which those authorities are involved in such-like activity. The most common division of authorities engaged in public financial activities is their separation into the authorities with general and special competence. The investigation of the public financial activities tangible parameters and the system of authorities established to ensure its implementation, allows us to conclude that such-like activities can be carried out in the form of both direct (formation, distribution, operation of certain monetary funds) and indirect

[29] Рішення Конституційного Суду України у справі за конституційним поданням 51 народного депутата України щодо відповідності Конституції України (конституційності) положень статті 92, пункту 6 розділу X «Перехідні положення» Земельного кодексу України (справа про постійне користування земельними ділянками) від 22 вересня 2005 р. № 5-рп/2005 (справа № 1-17/2005). *Офіційний вісник України*. 2005. № 39. С. 95. URL: http://zakon.rada.gov.ua/laws/show/v005p710-05.

(adoption of particular regulatory acts related to this activity, and/or the performing certain acts, including supervisory) participation of the certain authority.

To function as primary duty-bearer for the realization of the existing legislative provisions has been an essential aspect for each State, particularly, in order to ensure the effectiveness of public financial activity. It provides for a clearly regulated legal status of public authorities, as well as well-defined functions and powers in accordance with which they regulate and manage public funds (and perform the control over the movement of these funds). The study of the same issue in the context of Ukraine's legislation made it possible to identify a number of challenges that arise from legal uncertainty and ambiguity of existing legal norms. This, in turn, affects legal relationships with the private actors' participation and leads to numerous violations of citizens' rights and interests.

For this reason, it is a current priority for Ukrainian State to eliminate in the near future the existing gaps in the legislation, taking into account the comments made in the article. Only via harmonization of domestic legislative basis and bringing those into compliance with the Constitution and laws of Ukraine, as well as substantial drafts amendments will allow Ukraine to fulfill international commitments and become closer to European standards.

SUMMARY

The author reveals in present article the nature of public financial activity in Ukraine, its organizational and legal features as one of the main elements of social management mechanism. The paper analyzes both theoretical and legal approaches suggested by domestic scholarship to understanding and defining the system of authorities engaged in public financial activity. Also their classification is given, and the specifics of their activities are identified comprehensively. Particular attention is devoted to the study of the public interest category, specifically, its connection with the state and municipal interest.

The article also analyzes a number of provisions stipulated in Constitution of Ukraine and other legislative acts regulating public financial activity of the state. Against this background, the status of the relevant authorities that perform such activity is determined. The paper raises the issue regarding the certain challenges caused by the absence of a

clearly defined legal status of authorities engaged in public financial activity. This, in turn, has a negative impact on legal relations involving private entities. Within the framework of presented research, it was justified the need to amend existing national legislation for ensuring Ukraine's adherence to international obligations undertaken in that regard, particularly in the rule of law field.

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THE FINANCIAL NEXUS BETWEEN AN INDIVIDUAL AND A STATE

Yevhen Marynchak

INTRODUCTION

The sovereignty of a state is a public law category, which broadly defines the exclusive right of the state, as a special political legal entity, for independent internal and external activities. Therefore, the internal and external forms of the state sovereignty are the adoption of norms of the national legislation and participation in international relations. The essence of the sovereignty is the sovereign right of the state to extend its power to all relations occurring in the state and to create new ones by the adoption of normative legal acts.

However, such sovereign right is limited by the territory and the people. Henceforth, we have such legal categories as "territorial" and "extraterritorial" jurisdictions of the state in the public legal conceptual system. In the former case, the state authority extends to the entire internationally recognized territory of the state, in the latter case – to individuals and legal entities with legally defined relationships with the state. That is to say, the territorial jurisdiction is absolute – the state has the right to use all the means to have an influence on relationships within its sovereign territory. Extraterritorial jurisdiction of the state is limited by the influence of personal jurisdiction of other states on individuals and legal entities. The exclusive right of the state to establish and collect taxes also works in two ways: on the territory of the state and on the persons. In the first case, depending on the territorial arrangement, the state on its territory determines one or more tax jurisdictions. In the second case, the state defines personal tax jurisdictions over individuals and legal entities. It is precisely the influence of the two extraterritorial jurisdictions of the two countries which is determined by the degree of political or financial legal connection of individuals with a certain state.

The political legal relation between the individual and the state is characterized on the one hand by constitutional rights, freedoms and their protection by the state, on the other hand by duties before the state, regardless of the individual's residence. The external manifestation of such a relationship is the citizenship of the individual. Financial legal relations

among individuals in the second half of the nineteenth century emerged from the political and legal relations and were characterized by the property nature of the relations between the individuals with a certain tax jurisdiction. The external manifestation of such a relationship is the residence of a person. The evolution of this relations between individuals with a tax jurisdiction has more than one hundred years in development. The scientific rationale of the need for such a link enabled to build the modern financial mechanism for mobilizing funds into centralized reserves.

In the modern world, the financial and legal relationship of an individual is connected more to a state with a certain tax jurisdiction. Various political and legal societal formations have created four types of tax jurisdictions: interstate, state, local and tax jurisdictions with a special status. Each of them provides a mobilization function to the corresponding budget levels. Questions of the financial and legal relationship of an individual taxpayer are inextricably linked to its tax law status because of the presence of the main element – the liability to pay tax. Tax liability is the starting point through which the degree of financial and legal connection of an individual with a certain tax jurisdiction is determined. Financial and legal ties require research, first of all, because of its main constituent elements – the state, tax jurisdictions, individuals and legal norms, which combine these elements into a single mechanism of relations.

1. The legal nature of fiscal sovereignty and the jurisdiction of sovereign political legal entities

One of the main features of a modern state, along with the territory, population and public authority, is the ability to generate financial legal relations. The fiscal sovereignty of the state is an internationally recognized exclusive right of the state to create relations, tax relations including, on its territory. After all, the modern financial system of the state is based not on revenues from public funds, from the sales of raw materials or revenues from domains or regalia, but on taxation – all the state institutions are provided with financial resources from centralized reserves which are formed from taxes and fees.

To thoroughly understand the legal category of “sovereignty”, one should pay attention to the constitutional provisions. The bearer of sovereignty and the only source of power in the modern rule of law are the people – the people of the state, which exercise power directly and through bodies

of the state power and local self-government. This is followed by a direct and immediate political legal relation between individuals and the state. The state is a special political and legal form of the societal organization, created to ensure the proper level of its existence and development through the functioning of the relevant social institutions. In other words, the first source and the supreme authority on the territory of the state are the people.

However, the people, as a bearer of sovereignty of the state, are limited the right to directly influence public finances. If we proceed from the constitutional provisions, one can conclude that the bearer of state sovereignty are the people who are endowed with full supreme, exclusive and direct right to regulate any relations in the state, except for the tax and budget relations.

Considering the two antagonistic positions regarding the supreme power in the state, there is a conflict of the national and state sovereignty, in particular with regard to public finances. The fiscal sovereignty is the exclusive competence of the highest state authorities to mobilize, distribute and use the financial resources of the state to secure its existence and create proper conditions for the development of the society. Fiscal sovereignty is the potential opportunity for a sovereign entity to generate tax relations, create public funds and allocate them to certain areas of state and social development.

At the same time, jurisdiction is the sphere of the volitional influence of the state on the relations that take place or are about to take place at the will of the state. Jurisdiction is the original legal phenomenon of the sovereignty of the state, which is the ability of the state to distribute property influence on individuals and legal entities which are directly related to the state. Fiscal jurisdiction is created by the state authority in the form of mandatory acts of direct action in order to guarantee the functioning of state institutions. The term “fiscal jurisdiction” in its inherent content includes a wide range of legal relations; for this research we are only interested in its mobilizing function, that is, the “tax jurisdiction”. The tax jurisdiction of the state extends to the two levels: territorial and personal. The territorial level is the distribution of tax jurisdiction to the territory of the state, which includes all its geophysical and digital space, namely: land, inland waters, exclusive maritime economic zone, airspace, digital space, sea and air vehicles. Personal level is the distribution of the tax jurisdiction of the state to the individuals and legal entities that have a financial and legal relationship with the state.

Thus, the tax jurisdiction is the actual realization of the state fiscal sovereignty regarding the establishment, modification and termination of the relevant legal relations within the sovereign territory of the state and the persons connected with the state by financial and legal ties.

It should be noted that the current tax jurisdiction of the state is not limited to the national level of taxation. In states, within the sovereign territory, tax jurisdictions are created at different levels: national, regional, local. A rather common phenomenon is the creation of special tax jurisdictions – onshore/ offshore tax jurisdictions, export, scientific and technological zones etc.

Particular attention needs to be given to relations in international economic unions. With the deepening of intergovernmental economic cooperation, the tendency emerged towards harmonization of tax legislation of states, within economic unions[1]. In the seventies of the last century, the EU received its own financial resources in the form of customs duties, farm duties and the percentage of harmonized tax base of value added tax in the member states. The national contributions financed by public funds of the EU, immediately after its foundation in 1957, temporarily were abandoned.

However, now national contributions, again, amount to 85% of the EU budget. In 2010, the European Commission proposed the following taxes for the financing of the EU budget: 1) taxation of the financial sector; 2) income from the auctions within the greenhouse gas emission trading system; 3) charges related to air transport; 4) value added tax; 5) energy tax; 6) corporate profit tax. In its latest statement in 2011, the European Commission proposed only two taxes: the European value added tax and the tax on financial transactions. The problem of establishing supranational taxation is twofold: the need for the formation of public reserves and limitation of the fiscal sovereignty of member states. To talk about the absolute or partial loss of fiscal sovereignty is premature. Member States do not lose anything irretrievably – they receive back the funding in accordance with approved programs. The classical concept of the absolute state tax sovereignty can no longer be adequate for relations within EU[2].

[1] Removing cross-border tax obstacles Organisation and practices in Member States' tax administrations Specific Contract № 10 TAXUD/DE/337 based on Framework Contract № TAXUD/2012/CC/117 Final Report. URL: https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/study_cross_border_tax_obstacles_final_report.pdf.

[2] Leen A.R. An European tax the fiscal sovereignty of the member states vs. the autonomy of the European Union. URL: https://openaccess.leidenuniv.nl/bitstream/handle/1887/19409/al_2012_04.pdf?sequence=1.

The European Commission issues policy recommendations in the sphere of taxation that are implemented by the member states in the form of relevant legal provisions. Also, national governments have the right to develop their own tax rules if they are in line with fundamental principles such as non-discrimination and respect for the free movement of goods and services within the EU internal market. The coexistence of 28 national tax systems one way or another leads to double taxation and tax competition[3].

In this regard, the acute problem was the elimination of double taxation within the EU and the harmonization of the tax legislation – harmonization of tax rates and tax bases. To this end, in 2010, the European Commission approved the Europe 2020 Strategy[4]. The main objective of the Strategy is the social and economic development of the EU, one of the instruments of which is the harmonization of the tax laws of the member states. Tax harmonization is the adjustment and reconciliation of the tax rules between the member states in order to eliminate the competition between the tax systems, which is a negative factor for the internal EU market.

Summing up, one can see that the fiscal sovereignty is the exclusive right of the state to build its own financial system. The tax jurisdiction is an integral part of the fiscal sovereignty, which is characterized by the actual distribution of mandatory tax regulations, both on the state territory and on the population. In the modern world, fiscal sovereignty of an individual state may be limited by the extension of supranational tax jurisdiction, a striking example of this is the tax relationship in the European Union. During the process of tax harmonization within the EU member states, qualitative changes that are based on the EU principles and objectives and meet the current conditions of a free market, are taking place. At the same time, each European Union entity retains its sovereign right to establish, within its territory and the population, its own tax jurisdiction.

2. General provisions on the legal status of a taxpayer

Economic processes occurring in a society are always primary in relation to public financial. It is difficult to even approximate the number of existing economic theories of taxation, examining the reasons for the introduction

[3] Strategic Plan 2016–2020. URL: https://ec.europa.eu/info/sites/info/files/strategic-plan-2016-2020-dg-taxud_march2016_en.pdf.

[4] EUROPE 2020: A strategy for smart, sustainable and inclusive growth (COM/2010/2020 final). URL: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52010DC2020.

of the tax institution, the tax rates necessary to ensure sufficient level of existence and development of the state.

In the early stages of the historical development of the direct taxation of population, scholars investigated it from the standpoint of private law relations. Already at the beginning of the nineteenth century, the scientific understanding of the tax and tax liability as a public law category began to emerge. As a result of the emergence of constitutional rights of individuals, appeared the institute of citizenship, which can be characterized as a political and legal relationship between an individual and a state. The content of this relation are the rights, freedoms and responsibilities of the citizen. Citizen's rights included the right for protection by the state of the citizen's rights and freedoms. Obligations of a citizen were divided into tax duties and compulsory service. The first is material (payment of taxes, fees, etc.), the second is intangible (labour duty, military duty, etc.). For the nineteenth century society, citizenship (nationality) and duty to pay taxes were inseparable concepts, since the former stipulated the latter, and the latter could not exist without the former. The relationship between constitutional rights and responsibilities determined the legal status of a citizen.

In the first half of the nineteenth century the legal status of the taxpayer was based on the citizenship of the person and was determined by the citizen's duty to pay taxes and the duty of the state to protect both the citizen and his property. Considering this interconnection, the tax legislation of states with the continental law, the citizens were regarded as the subjects of taxation, and income and property – as the objects of taxation. Citizens (subjects) paid taxes from all sources of income, and citizens (subjects) of other states – only from incomes originating from the territory of the state. Considering the above-mentioned, the principle of territoriality in the tax legislation of the states with the continental law system, is an integral part of the principle of citizenship and determines the right of the state to collect taxes on objects of taxation, the source of which is the territory of the state. The legal influence of the state is directed at the object of taxation that arose or is located on the territory of the state, since the material representation of the object of taxation – cash or other equivalents are considered as a certain state property or as, conventionally speaking, material goods that are subject to sovereignty of the state Taking into account that the person receiving the income may be outside the legal

influence of the state, taxation is carried out at the source of income origin, that is, on the territory of the state. The principle of territoriality is aimed at the object of taxation.

Actually, among the most famous economic theories explaining the relationship between an individual and a state through the institute of taxation, three theories can be distinguished: The protection theory of Adam Smith's, The economic relations theory of Georg von Schanz and The benefit theory of Knuth Wicksell and Eric Lindall. A brief description of the aforementioned theories can be summarized as follows. According to the Protection theory, all subjects of the monarch or citizens of the state are obliged to pay part of their income in the form of tax to public reserves, in order to cover the state's expenses to protect both citizens taxpayers and their property. The Economic relations theory emphasizes the fact that not only citizens, but also all persons permanently staying in the territory of the state or whose property is on the territory of this state need the state's protection. In this case, the political and legal relationship of an individual with the state gives way to the financial and legal, that is, any person who is economically connected with the state enjoys state protection and is obliged to pay taxes. The theory of public benefit broadens the position of the previous theories and proceeds from the fact that all persons on the territory of the state not only enjoy the protection of the state and economically associated with it, but also receive some public benefit: road transport infrastructure, the law-enforcement system, medical provision, education, etc. All this public benefit is received not by a single identified individual, the taxpayer, but by the whole society, so every member of the society is obliged within their own income to take part in the formation of public funds.

These theories are important not only because they include the economic foundation for building a modern tax system, but also because they enable us to trace the financial and economic connections between individuals with sovereign political and legal entities, which with time has been transformed into compulsory rules of conduct – legal norms, that is the financial and legal relations. In other words, the economic content of the ownership of a certain capital envisages the right for the accumulation of the capital to meet its owner's needs, while the obligation to pay mandatory payments in the form of taxes and fees envisages satisfying public needs – protection of property rights, development of social institutions, providing a balance between the interests of taxpayers and the state.

There is obligation in the financial law to pay a certain tax, and, as the corresponding right derived from it, the right for the tax deduction, the privilege, the right for the tax payments instalment etc. Tax legislation of any state comes from the imperative nature of tax law. The main element of the legal status of the taxpayer are the obligation to pay tax and the corresponding rights, derived from this obligation. That is, the obligation generates the tax rights. Taxpayers are individuals with obligation according to the tax law, so responsibilities determine the limits of their proper conduct, while the rights determine the limits of possible actions of taxpayers. The obligation to pay the tax liability arises only with the presence of the tax object and the relevant tax rate.

The prerequisite for the emergence and one of the main features of tax relations is the subjects of such legal relationships have the tax legal personality as an independent element of the legal status of taxpayers, the essence of which is the obligation to pay taxes and other mandatory duties. However, since such a duty arises only if such an individual has an object of taxation, which, in turn arises as a result of the implementation of the civil legal personality, it can be concluded that the civil legal personality, in turn, is a prerequisite for the emergence of the taxpayer's tax personality. This relationship is explained by the property nature of both civil (private law) and tax (public legal) relationships.

The public nature of the tax legal personality is associated with its binding features within the framework of the mobilization, distribution and use of centralized funds in the fulfilment by the individuals of their tax liabilities. At the same time, one cannot ignore the natural and legal nature of the rights and freedoms of the person both in public and in private law, since it is the human rights and freedoms that are inalienable, inviolable and inexhaustible. Considering the above-mentioned, it is necessary to distinguish between public and private in the legal nature of tax legal personality.

At the level of financial and legal doctrine, the structural elements of tax legal personality have legal capacity and capacity to act. These elements are interconnected and complement each other. Legal capacity is the ability of a person to have the rights and duties to pay taxes established by the law, and the content of capacity to act is the ability to actually exercise these rights and obligations through the direct participation by these taxpayers in tax relations. The prerequisites for the emergence and termination of tax legal capacity and capacity to act of taxpayers are related to civil legal

personality, because as a result of the implementation of civil legal personality, the person receives objects of civil rights, which conditionally become the object of taxation, the presence of which leads to the appearance of tax liability – the main element of the tax legal capacity, which in turn can usually be implemented only through the capacity to act of the taxpayer. In the scope of tax legal personality is largely consistent with civil legal personality, which is traced through the content of legal capacity and capacity to act.

Thus, the legal status of the taxpayer depends on the private law and public legal relationships in which the person is involved. This thesis should be understood as follows: in order to obtain certain material benefits, a person enters a range of private law relations, and the consequence of the appearance of the material wealth is the emergence of a liability to pay taxes – the main element of the legal status of the taxpayer. In turn, the amount of tax liability depends on the degree of financial tie of the person with the state or a certain tax jurisdiction.

3. Mechanisms for realizing the financial connection of a person with tax jurisdiction

According to the classical principle of citizenship, foreign citizens, regardless of the of a permanent residence or actual presence in the state, pay taxes only on income, the source of which is in this state. This was since the “state protection”, paid by the taxes, was used only by citizens of the state, and the same protection was used by objects of taxation, the source of which was on the territory of the state. Consequently, it can be argued that at that time the legal status of taxpayers was determined by the principles of citizenship and territorial origin of income.

Due to socio-political changes in Europe and the deepening of economic relations at the beginning of the last century, citizenship as a political and legal relation between a person and a state has lost its influence on tax liabilities and legal status of the taxpayers. The transformation of this classical principle of citizenship into the principle of residency took place in two stages: as a result of the influence of the theory of economic ties on tax legislation, all persons who “use the services” of the state were subjects of taxation, in this connection, the classical principle of citizenship was supplemented by an attachment to the existence of a permanent residence or before the actual stay in the state. According to this “hybrid” principle

of citizenship-residence, citizens of the state having a permanent residence, foreign citizens with permanent place of residence, foreign citizens permanently staying in the territory of the state – were recognized as taxpayers from all sources of income. The income taxpayers whose income source is in the state are recognized: citizens of the state without a permanent residence and foreign citizens, who do not have a permanent residence. The legal status of citizens taxpayers differed from foreign citizens taxpayers by tax preferences in the form of tax rates, benefits, etc. It should be noted that at this stage, the legal status of taxpayers, the principle of territoriality of the origin of income is no longer at the same level, as was the principle of citizenship, but is an integral part of the principle of residence. At this intermediate stage of transformation, at the same time, two theories were influenced by the legal definition of the legal status of taxpayers: the old Protection theory and a new Economic relations theory.

Since citizens objected to taxation in two or more tax jurisdictions, such a phenomenon arose as double taxation. It should be noted that the double taxation has two forms: external – interstate double taxation and internal – double taxation of subjects of the federation or the confederation of citizens (subjects) of the states – parts of the union. In order to avoid this negative phenomenon, the citizenship of a person, as the main condition for determining the legal status of the taxpayer, was limited to a permanent place of residence. That is, the principle of residence was initiated, according to which all individuals (citizens and non-citizens) who were permanently resident in the territory of a certain tax jurisdiction had a duty to pay taxes from all sources of the income origin. It should be noted that the very term “citizenship” in the tax legislation of the countries of the continental legal system was used, but the legal status of taxpayers depended not on citizenship, but on the permanent residence of citizens – from their “residence”. Along with the introduction of the principle of residence, rules have been defined with which one could determine the resident status of the taxpayer in the absence of a permanent residence or in the case of two or more permanent residences. The foregoing suggests that the principle of residence in the countries of the continental legal system was introduced in order to differentiate the personal tax jurisdiction of the states and, accordingly, to avoid double taxation.

In the first half of the last century, considering the significant number of bilateral interstate agreements on the double taxation avoidance, the rules

for determining the status of a resident were significantly different, which created conflicts between rules, which determined the legal status of the taxpayers. So, the process of developing a single model tax agreement with the harmonized rules of international taxation has begun, which ended in the second half of the twentieth century by adopting the OECD Model Tax Convention on Income and Capital, which is applicable in the present time. In accordance with clause 1 of Art. 4 of the Model Convention, the term "the resident of a contracting state" means any person who, under the laws of that state, is liable to tax therein in connection with his domicile, habitual residence, place of management or other similar criterion and covers that state and any of its administrative territorial units or local authorities. This term does not include any person subject to taxation in a state solely in respect of income derived from that state or in respect of property in which it is located[5].

Since then, the principle of citizenship and, together with it, political and legal connection, has finally lost its relevance, since the legal status of taxpayers depended solely on the residence of individuals, and citizenship was considered only as one of the criteria for determining the status of a resident. An additional reason for the loss of relevance for determining the legal status of taxpayers, based on their political and legal relationship with a particular state, is the entry into force in 1965 of the European Social Charter dated October 18, 1961, signed by the member states of the Council of Europe in order to promote economic and social progress, in particular, the protection and further fulfilment of human rights and fundamental freedoms; the exercise of social rights must be secured without discrimination, in particular on the basis of nationality. Provisions of the Art. 18 of this international treaty recognizes the right of citizens of any contracting state to engage in employment and receive income from such activities in the territory of another contracting state under the same conditions as nationals of the state[6]. That is, the taxation of income from labour should not be differentiated depending on the civic identity of the person.

The modern principle of the residence of an individual, in addition to the internal essence, has an external form – a set of criteria (rules), by which the

[5] Model Tax Convention on Income and on Capital 2014 (Full Version) / OECD, 2015. URL: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/model-tax-convention-on-income-and-on-capital-2015-full-version_9789264239081-en#page1.

[6] European Social Charter (ETS № 035). URL: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035.

degree of financial and legal connection of an individual with two or more states is determined in order to determine the closer links of an individual with a certain one tax jurisdiction (state), before which such person will have the liability to pay taxes from all sources of income. The degree of the financial legal relation of a person is determined primarily by the place of residence of the person in a tax jurisdiction, and in case when it is impossible to determine the relation with this criterion, then additional legislative rules are applied. In contrast to the principle of citizenship (political and legal ties of a person with a state), which is tied to the taxpayer's place of residence and sources of income, the principle of residence is based solely on the financial and legal ties of an individual with a certain tax jurisdiction and is manifested because of the duties of such a person before the tax jurisdiction, and not the state, the citizen of which is the tax payer. The main features of this principle are: the legal personality of the taxpayer is always special and arises on the basis of duty; the duty arises not primarily before the state, but before the tax jurisdiction (interstate, national, regional, special, etc.); the political and legal ties of a person (citizenship) with a certain state does not directly affect the duty to pay taxes, but is only one of the criteria for determining the resident status of a person; in financial and legal ties, in the person, there are duties only in relation to the payment of taxes – other material obligations, such as military duty, depend on the citizenship.

To summarize, it should be noted that the financial ties of the person with the tax jurisdiction arose evolutionarily through the scientific substantiation and implementation on two levels simultaneously: at the state level – in order to determine the amount of tax liability and interstate level – in order to avoid double taxation. In the modern world, this is the only mechanism by which it is possible to differentiate the personal tax jurisdiction of different states, and at the same time, to determine the degree of economic attachment of a person to a certain sovereign entity.

CONCLUSIONS

Considering the above-mentioned, the following conclusions can be drawn. At present social development the state is the main bearer of the sovereignty of the people, an integral part of which is the fiscal sovereignty, that is, the exclusive competence of the highest state authorities to mobilize, distribute and use the state's financial resources to guarantee its existence

and create the proper conditions for the development for the society. In order to mobilize funds to public reserves, the state generates tax relations within its territory and persons permanently staying in this territory, i. e. distributes fiscal jurisdiction. Given the different legal forms of sovereign entities, fiscal jurisdiction exists at different levels – interstate, state, regional, special economic zones etc.

At the same time, individuals who have tax liabilities mainly from objects of property rights, which they receive either from the territory of a certain tax jurisdiction or in the case of close connection with a certain tax jurisdiction. From a retrospective point of view, in states with a continental law, the legal status of taxpayers was in continuous development in connection with the influence of scientific theories, constitutional rights and responsibilities, intergovernmental relations and economic integration. For the society of the past century, citizenship and duty to pay taxes were inseparable concepts, since the former provided for a latter, and the latter could not exist without the former. The relation between constitutional rights and responsibilities determined the legal status of a citizen. The citizenship principle defined the citizens as taxpayers. Foreign citizens paid tax, from the sources which are on the state's territory only, because the "state protection" for which taxes should be paid were used only by citizens of the state, and the same protection was used by tax objects, the source of which was the territory of the state. This political and legal ties between a person and a state was not limited solely to the duty to pay taxes, it also included other duties, such as military or labor, in the event of the introduction of martial law.

At the present stage of development, states do not limit the effect of tax jurisdiction only to their own territory and citizens. In contrast to citizenship – the political and legal ties of an individual with the state, in the modern world tax relations are based on the principle of residence – the financial and legal ties of an individual with a certain tax jurisdiction. According to the principle of residence, taxpayers from all sources of income are recognized residents, that is, all-natural persons who have a permanent residence or who can be recognized as residents by other relevant criteria. Only taxpayers whose source of origin is the tax jurisdiction is recognized non-residents, that is, all persons who do not fall under the definition of residents.

Thus, the financial ties of a person with tax jurisdiction is the degree of economic attachment of a person to a certain level of tax jurisdiction of a sovereign entity with feedback in the form of a public benefit that is characterized by an appropriate amount of tax duties before him, and derivatives from and, at the same time, the limit of dividing the tax jurisdiction of two different sovereign entities.

SUMMARY

The article is about the relationship of a physical person with a sovereign political and legal entity through its participation in public financial relations arising from the mobilization, distribution and use of centralized reserves. Definitions of public law categories of fiscal sovereignty and tax jurisdiction were given. Yes, fiscal sovereignty is a potential opportunity for a sovereign formation to generate tax relations, create public funds and allocate them to certain areas of state and social development.

At the same time the tax jurisdiction is the actual realization of the state fiscal sovereignty regarding the establishment, modification and termination of the relevant legal relations within the sovereign territory of the state and persons connected with the state by financial and legal ties. The levels of tax jurisdiction of sovereign entities are analyzed.

Particular attention is paid to the legal status of the taxpayer, its nature and the principles on which it is built. The influence of economic theories of taxation on changes in the legal status of the taxpayer is studied. The principle of citizenship – the political and legal ties between a person and the state and the principle of residence – the financial and legal ties of a person with tax jurisdiction is analysed. The reasons and stages of the transformation of the political-legal connection in the financial-legal connection are studied.

The author’s conclusions about the legal nature of the financial connection of a person with tax jurisdiction are given, that the financial connection is a degree of social and economic attachment of a person to a certain level of fiscal jurisdiction of a sovereign entity, characterized by the corresponding tax liabilities of the person, and the rights deriving from these liabilities, and, at the same time, the division of the tax jurisdiction of two different sovereign entities.

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6. European Social Charter (ETS № 035). URL: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035.

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GENERAL PRINCIPLES OF FINANCIAL LAW

Svitlana Nischymna

INTRODUCTION

Financial law as a branch of law is characterized by definite principles. There are lots of definitions in legal science to denote the term “principles of law”. One of those is provided by the Russian researches with the reference to different sources of the past: principles are basic or key ideas, requirements (fundamentals, rules, regulations) which reflect major peculiarities and the purpose, objective norms, which define the whole system of law, sphere of law, institute or sub-institute of law[1]. Most of soviet scientists characterized the principles as a set of ideas which define the contents of the legal norms[2] or the part of legal awareness[3].

The principles of law are considered to reflect both – the nature of law in general as well as all its spheres. Thus, financial law is not an exception. Principles of law in this sphere compose a unified system being one of the elements of legal regulation of social relations in the field of public finances. Basic principles of law are reflected and specified within the principles of financial law, taking into account the peculiarities of its legal regulation. Alongside with the principles of financial law, there are also the principles of its sub-branches and institutes which have their own peculiarities.

Principles of financial law are spread within different codes or other regulations which predetermine splitting of financial-law principles into separate groups of sub-branches and institutes of financial law. Nowadays there is an urgent need in Ukraine to establish a single codifying statute, for example Financial code of Ukraine, which would provide the regulative basics in the sphere of public financial activity and support the principles of financial branch law.

The principles of financial law must correspond to the following requirements:

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[1] Тадеев А.А., Парыгина А.А. К вопросу о некоторых принципах финансового права: принцип прозрачности (открытости) бюджетной деятельности. *Налоги*. 2010. № 1. URL: https://www.lawmix.ru/bux/15961/ (дата обращения: 12.11.2018).

[2] Алексеев С.С. Общая теория права : в 2 т. Москва : Юридическая литература, 1981. Т. 1. С. 261.

[3] Явич Л.С. Право развитого социалистического общества. Сущность и принципы. Москва : Юридическая литература, 1978. С. 17.

– completeness – the unity of principles must compose a definite system which includes maximum of spheres of public financial activity;

– high level of generalization which must be combined with definite sphere;

– practical implementation – considering definite key ideas in definite legal relations.

General principles in financial law can be divided into two groups: 1) general principles of law (with consideration of specific sphere) and 2) general principles of financial law.

General principles which are the basis for financial legal relations are the matter of the general part of financial law. They are the basis of legal regulation of social relations in the field of public finances.

However, legal regulations within specific spheres cannot be performed just on the basis of general principles. Thus, there is a need of specific sphere and cross sphere principles.

1. General legal principles in financial law

General legal principles are "the general principles of the Law in their international understanding which are worldwide and generally excepted; they are fundamental for all the legal systems of the same historic type; for legal sub-systems (parties) of definite legal system of the same society; for all the spheres of legal system of definite society and the state"[4].

According to O.F. Skakun, the following principles are considered to be basic general principles of law: principle of freedom, principle of justice, principle of equality, humanism, democracy and law[5]. *However, general legal principles and general social principles are mixed in this list.*

S.D. Dmytriev states that general legal principles are the result of the general practice of legal affairs solving which provides the transition from the abstract legal norm to the definite subjective law.

The general legal principles will be discussed further.

Principle of law. Keeping to the law in public financial activity depends on the level of financial discipline in the state and functioning of active mechanisms to control responsibility in case of violating financial or other law by the subjects of such activity.

[4] Колодій А.М. Принципи права України : монографія. Київ : Юрінком Інтер, 1998. С. 108–109.

[5] Скакун О.Ф. Теория государства и права : учебник. Харьков : Консум, 2000. С. 240–245.

Law reflects the legal character of social and political life organization, communication of law and governance, law and the state, law and the society. The requirement to follow the law principle concerns the supreme bodies of governance, other governmental bodies issuing by-law regulations (sphere of law making), executers of the law – official bodies as well as public organizations, commercial organizations, citizens (sphere of law enforcement).

Principle of law is a fundamental and central principle of governmental activity and thus, all the subject of public financial activity.

Constitutional propositions define basic principles, rules and directions of public financial activity and are the basis of the whole financial legislation.

The principle of law, in our opinion, means: 1) strict following all the law requirements by all the subjects of financial law; 2) brining to reasonable responsibility for law violation.

Different approaches of legality understanding as a category of law, make it vivid that the principle of law is a key and the basic notion of law in general, and financial law, in particular.

Principle of law introduces the legal activity from the point of practical realization of law.

Legality state is a certain quality index of governmental and official bodies' activity. Thus, the urgent and important task is specification of subjects of legality – whether those are all subjects of law or only persons in charge. Legality in its broad meaning is a requirement to obey the law by all subjects of law. In its narrow meaning, it is obeying the law by persons in charge, in particular.

The principle of law is common for all the subjects of financial law. Its implementation means that all public financial activity is regulated with the norms of financial law, following of which is provided, in case of necessity, by the governmental force. Financial and legal responsibility is one of the forms of such force which is found in financial legal relations.

Principle of law presupposes financial activity at all the stages of funds flow on condition of their regulation by the norms of financial law and possibility of official enforcement[6].

The principle of law realization in financial law requires correspondent legislation. For the laws, regulations and norms to be more effective,

[6] Фінансове право України : навчальний посібник / Л.К. Воронова, М.П. Кучерявенко, Н.Ю. Пришва та ін. Київ : Правова єдність, 2009. С. 46.

financial legislation must be clear and stable. Unfortunately, these features only partly characterize domestic financial law.

Thus, the principle of law presupposes the leading role of law in financial relations which appear and develop within governmental (official) bodies and citizens.

In financial law the principle of law means that the requirements of financial laws and by-law regulations are obligatory to all the subjects of financial law: state and local governmental bodies, official bodies, enterprises of any form of ownership, public organizations and citizens. The principle of law states that everyone must obey financial law and first of all – financial bodies and their officials who are in charge for execution of state public financial activity.

All the public financial activity in financial law or financial process must be in compliance with the principle of law.

Principle of social justice is closely connected with the principle of law though sometimes it is referred to as a component of legality. This principle belongs to moral and legal principles, which is described in p. 1 art. 95 of the Constitution of Ukraine. It is stated that the budget system of Ukraine is founded on fair and impartial division of the social wealth among citizens and territorial communities. In our opinion, the principle of social justice in financial law doesn't have a vivid general description as it is really hard to observe its realization within relations of dual legal nature (private and public). For example those are bank, insurance, money and credit relations. On the other hand, the implementation of this principle in budget and tax legal relations is quite vivid and supported by law.

Principe of social freedom. Social justice is a pre-condition of the principle of social freedom. The examples of this principle realization in financial law are as following: citizens (representative official bodies) and territorial communities have a right to participate in distribution of social wealth; the right to receive compensation from the public monetary funds (state social insurance funds, in particular) in case of correspondent insurance accidents; the right of physical persons and legal entities to manage their incomes after payment of all obligatory taxes and fees.

Principle of supremacy of law is predetermined by the art.8 Constitution of Ukraine and belongs to the general legal principles being implemented in financial law, accordingly. In the Resolution of Constitutional Court of

Ukraine as of November 2, 2004 № 15рп/2004 (case on lenient sentencing)[7] it is stated that the supremacy of law is a rule of law in society. The supremacy of law requires its implementation in law-making and law-enforcement process so that the laws would contain the ideas of social justice, freedom and equality, etc. One of the elements of law supremacy is a principle of proportion which in the sphere of social protection means that the measures presupposed by regulations must be focused on reaching legitimate aim and must correspond to it.

Principle of law supremacy means that it is not a state that creates law: the law is a basis for state organization and functioning represented by official bodies and other organizations. Thus, it is not the state which restricts the rights and freedoms of people: it is people who create the law to restrict state government.

The supremacy of law is expressed first of all, with the rule of law and regulation of urgent social relations by means of laws.

In financial law, the principle of supremacy of law means that the whole public financial activity is regulated by the legal norms which establish not only financial powers of state-governmental subjects but also the limits of public government.

Principle of democracy. Constitution of Ukraine declares our country a sovereign and independent, democratic, social state of law (art. 1). The principle of democracy is an essential part of any state of law. It is expressed by the regulations which provide the order of organization and functioning of governmental bodies, define the legal position of a person and his relations with the state. In our opinion, special (specific) use of this principle in the financial law is not observed as well as the principle of "*ignorance of the law is no excuse*".

Principle of humanism. Elements of humanism are considered to be the features of all civilized legal systems displaying one of the most important characteristics of the law. In financial law, this general legal principle is mainly expressed in cross-sphere relations. Thus, any person – subject of financial legal relations not possessing governing authorities has a right for protection of her violated financial rights and fair court procedure.

[7] Рішення Конституційного Суду України у справі за конституційним поданням Верховного Суду України щодо відповідності Конституції України (конституційності) положень статті 69 Кримінального кодексу України (справа про призначення судом більш м'якого покарання) від 2 листопада 2004 р. № 15-рп/2004. *Офіційний вісник України*. 2004. № 45. Ст. 2975.

Principle of equality or equal protection of the law means the existence of single legislation to all the subjects of financial legal relations. An outstanding political figure of the ancient Rome, orator, philosopher and literary man Mark Tulii Cicero stressed that everyone must fall within the scope of the law. Later, this thought was transformed into the principle of equality. The principle is grounded on the rule of the article 21 of the Constitution of Ukraine on equality: "All people are free and equal in their dignity and rights. The rights and freedoms of a person cannot be violated".

Principle of responsibility for guilt. The essence of this general legal principle is the following: penalties of financial (financial-legal) responsibility are imposed only to the person guilty of violating correspondent regulations. In financial law, both – a legal entity and physical person who acted for legal entity interests can be held liable for one violation of the law.

This principle is considered to be an important constitutional principle of government legitimacy. It provides the growth of confidence to the public government and the state, in general.

Principle of equality of all the forms of ownership. The ownership of public financial resources in our state used to be state property only for the long time period. The rapid development of communal (municipal) ownership right determined specification of this principle within the system of general legal principles. In financial law this principle means that public financial resources can be in state or communal ownership. Alongside state governmental bodies are not to participate in financial management on the local level. State also guarantees equal protection of both – state and communal ownership right for the correspondent resources (money, monetary funds, etc.).

Summing up stated above information it should be noted that not all the general legal principles have (special) meaning in financial law. But all the mentioned principles are basic for legal relations, namely financial legal relations. Taking into account a fact that there is no standard list of general legal principles, the represented variant is not a final one to reflect the contents of those principles in financial law.

2. General financial law principles

Financial law principles are both discoveries of a certain financial law study, which were formed and are used now only within its limits, and a result of science and law enforcement.

The list of financial law principles, represented in the modern financial law science, is a set of arguments that justify some concepts in the public finances sphere. However, these concepts are not always in agreement with each other. Besides, some of them characterize not only the financial legal regulation sphere but also all areas of public law and economic turnover. Financial principles are mentioned in various scientific works, nevertheless, their meanings are not always revealed there. What is more, the author's vision of definitions and a system of principles can vary significantly.

For the first time, the principles of financial law were formulated by Yu.A. Rovinskyi in Soviet times[8]. They were defined as principles of state financial activity. Nowadays, the basic financial law principles are being formed by lawmakers on the basis of certain legal expertise, a state legal culture and the main provisions of the legal system, taking into account the level of financial legislation development.

Financial law principles concern both – public financial activity and financial and legal relations. The following principles are included there: the unity of the financial, budgetary, tax, banking and monetary system of a state; the unity and interaction of fiscal policy and financial system; financial security; the unity and integrity within financial system bodies.

The principle of the unity of the financial, budgetary, tax, banking and monetary system of a state has cross-institutional meaning and purpose. Financial legal relations should be in close communication and interaction with other financial relations, not being isolated from them. For instance, there is an obvious link between budget law and tax law, since the main source of budget revenues, which make up the state budget system, is taxes included in the tax system. The banking system and its stability depend directly on the sustainability of the state monetary system.

Instead of the principle of the unity of the financial, budgetary, tax, banking and monetary system of a state, O.O. Semchyk points out the principle of balance in all areas of public financial activity, the core of which is "the focus on achieving sustainable development in all fields of economy. To ensure this principle, the state designs special programs for coordinating the actions of various bodies in order to develop a single financial policy. Besides, in the most general form,

[8] Ровинский Е.А. Основные вопросы теории советского финансового права. Москва : Гос. изд-во юрид. лит-ры, 1960. С. 21.

the principle is implemented through constitutionally guaranteed law principle of power distribution"[9]. In our opinion above-mentioned principles are identical.

The principle of the unity and interaction of financial policy and financial system deepens the contents of the previous one. It means the independence of public authorities as subjects of financial legal relations should not go beyond the basics of financial policy as far as the stability of the financial system and its individual components.

According to O.A. Muzyka-Stefanchuk's view, "financial policy is a set of state measures in the financial sphere on the organization and use of funds, focused on achieving a specific goal, namely, ensuring the economic and social development of the state"[10]. At the current stage financial policy is an integral part of the state economic policy aimed at the formation, distribution, and use of centralized and decentralized state and local cash funds. The implementation of financial policy is directly related to the forms and methods of public financial activities and aims at distributing national income among sectors of economy and individuals.

It is the politics that affects the content of public financial activity and its main element which is expressed in the number of functions, concerning the fields of formation, distribution, redistribution, and expenditure of centralized cash funds, and is determined by the specificity of its object.

In our opinion, financial policy influences not only centralized cash funds but also all public and private cash funds.

The policy is a prerequisite for the formation of any legal norms. In this context, it is necessary to agree with the statement that financial policy is a component of financial and legal regulation and a factor which affects its content and is expressed in the number of functions, concerning the fields of formation, distribution, redistribution and expenditure of centralized cash funds. That is, all relations around public finances are interdependent on the financial policy of the state.

Regarding the financial policy, the scientist P.M. Hodme wrote, that due to the fact that government spending is viewed as evil, financial policy is guided by one principle: achieve maximum savings and reduce costs as

[9] Семчик О.О. Принципи публічної фінансової діяльності як системоутворюючі поняття фінансового права. *Альманах права*. 2012. № 3. С. 436.

[10] Музика-Стефанчук О.А. Органи публічної влади як суб'єкти бюджетних правовідносин : монографія. Хмельницький : Хмельницький університет управління та права, 2011. С. 181.

much as possible. This simplified financial policy continues to be the basis of the liberal doctrine[11].

Thus, the principle of unity of the financial policy and the state financial system in the context of financial law determines the relationship of all parts of the financial system as well as the constant impact of government on public finances.

The unity of the financial system is imperative for the unity of the state and its sovereignty. It is defined not only by the unity of monetary, budget and tax systems but also by the prohibition of customs borders establishment within the state and ensuring the freedom of goods, services, and financial resources transfer. The public financial system functions efficiently only if there are a single market system and the participation of goods producers in it. At the same time, financial and legal regulation is only a part of the legal mechanism, which provides the unity of the economic space. This, in turn, requires the development of all its norms in accordance with this rule, ensuring its effect on the field of public finance.

The aim of financial law is maintaining the efficiency of public finances and state financial security on the level that is necessary for providing the rights, freedoms and legitimate interests of citizens. So, the principles of the efficiency of public finances and financial security reflect directly these goals.

In the condition of political and economic instability, observed, namely, in Ukraine, the principle of state financial security has a special position. World experience shows it is important to keep from resorting to extremes when building a model of the financial system from the standpoint of national security. Therefore, it is essential to avoid both – decentralization of the financial system, as there may be no money left to pay to civil officials, and an excessive centralization of financial resources in the state budget, including an independent development of the private economy. At the current stage of state development, the aim of financial law is maintaining a sufficient level of state financial security that should ensure the implementation of guaranteed rights, freedoms and legitimate interests of citizens. The principles of the state financial security and efficiency of public finances are up to this aim.

The level of state financial security in every country is determined by a certain set of factors. Some of them are: a degree of economic openness

[11] Годме П.М. Финансовое право / пер. и вступ. ст. Р.О. Халфиной. Москва : Прогресс, 1978. С. 70.

of the state and access to the domestic market; a degree of the financial market development; the attractiveness of the country's financial climate; a degree of legislative support of the financial market; a degree of public confidence in the state financial policy that manifests itself in the form of participation in financial market operations; the efficiency of combating financial offenses.

In E.S. Dmytrenko's opinion, financial security is a sense of safety from internal and external threats in the financial sphere, concerning vital financial interests of an individual, society and a country that is provided by legal, scientific and technical means[12].

In accordance with the Decree of the President of Ukraine issued on May 26, 2015 № 287/2015 "On the decision of the National Security and Defence Council of Ukraine as of May 6, 2015 "On the National Security Strategy of Ukraine"[13] National Security Policy of Ukraine is based on the respect for the norms and principles of international law. Ukraine protects its fundamental values defined by the Constitution and laws of Ukraine, in particular, independence, the territorial integrity and sovereignty, dignity, democracy, a person and his rights and freedoms, the rule of law, welfare, peace, and security. Their protection is provided by Armed Forces of Ukraine and other military units, intelligence, counterintelligence services, and law enforcement agencies, dynamic development of the Ukrainian economy.

Reforming and development of intelligence, counterintelligence services, and law enforcement agencies of Ukraine should be carried out on the basis of the rule of law, patriotism, competence, departisation, an expedient demilitarization, coordination and interaction, the distribution of tasks and elimination of functions duplication, the democratic civil control, and clarity.

Financial security is founded on financial discipline. According to O.P. Orliuk, financial discipline is "observance of financial and legal norms laid down by legislation and normative legal acts. Financial discipline must be maintained by state and local authorities, business entities of all forms

[12] Дмитренко Э.С. Теория финансовой безопасности как составная финансово-правовой доктрины государства. *Финансово-правовая доктрина постсоциалистического государства* : матер. Международной научной конференции. Черновцы : Рута, 2003. Вып. 1. С. 53.

[13] Про рішення Ради національної безпеки і оборони України від 6 травня 2015 року «Про Стратегію національної безпеки України» : Указ Президента України від 26 травня 2015 р. № 287/2015 / Президент України. URL: http://zakon.rada.gov.ua/laws/show/287/2015 (дата звернення: 21.12.2018).

of ownership, associations of citizens, officials, citizens of Ukraine and foreign citizens". Financial discipline expresses one of the aspects law"[14].

The concept of national security in the financial sector was approved by The Cabinet of Ministers of Ukraine decision issued on August 15, 2012 № 569-p in order to determine the basic principles and directions of state policy concerning the maintenance of the national security in the financial sphere[15]. The Concept emphasizes the factors which can lead to the emergence of external threats to the national security in the financial sector. Some of them are: 1) a limited access to international financial markets; 2) a significant dependence on export-import activity; 3) deterioration in foreign trade, growth of the balance of payments deficit, in particular, current accounts; 4) dependence on external creditors; 5) the impact of global financial crises on the state financial system.

Besides, there are factors to cause internal threats to the national security in the financial sector. They include: 1) instability and imperfection of legal regulation in the financial field; 2) an uneven distribution of tax burden on business entities that causes tax evasion and the flow of capital abroad; 3) capital outflow as a result of the deterioration of the investment climate; 4) the low level of budget discipline and imbalance in the budget system; 5) a growing level of public debt; 6) an extensive growth of the shadow economy; 7) an insufficient level of gold and foreign currency reserves; 8) a significant dollarization of the economy; 9) fluctuation in the exchange rate of the national currency that stems from the action of macroeconomic factors; 10) an underdeveloped stock market, in particular, regarding both the implementation of accounting mechanisms and transfer of property rights to securities and the provision of investors' rights protection in the stock market; 11) an undercapitalized financial system.

To strengthen the positive impact of budgetary policy on providing the stability of the financial system it is necessary: 1) to ensure that the objectives of the budgetary policy are consistent with the financial capabilities of the state; 2) to enhance control over the targeted and effective use of budget funds; 3) to enforce indicative projection data of the state budget for the medium term; 4) to complete the pension reform in order to

[14] Орлюк О.П. Фінансове право. Академічний курс : підручник. Київ : Юрінком Інтер, 2010. С. 148.

[15] Про схвалення Концепції забезпечення національної безпеки у фінансовій сфері : Розпорядження Кабінету Міністрів України від 15 серпня 2012 р. № 569-р / Кабінет Міністрів України. *Офіційний вісник України*. 2012. № 62. С. 156. Ст. 2533.

balance the budget of Pension Fund of Ukraine and prevent from deficit; 5) to stop providing state support to state monopolies by allocating the funds from the budget and keeping prices for their products at an economically unjustified level and granting other privileges.

To prevent capital outflow and reduce the amount of income missed by the state in the form of taxes and fees, state tax policy should be aimed at: 1) conducting an analysis of economic cooperation between Ukrainian residents and business entities registered in offshore zones, and improving legal framework in the tax area; 2) carrying out inventory of international treaties on prevention double taxation that do not meet the current standards of the Organization for Economic Cooperation and Development; 3) amending the provisions of such treaties in terms of expanding requirements on information exchange.

The next general financial legal principle is ***the unity and integrity within financial system bodies***. In the general sense financial bodies are subjects of financial law to make up financial apparatus that is a part of the state apparatus. Besides, financial apparatus performs the function of finance management. The financial apparatus of Ukraine includes: Court of Auditors, The Ministry of Finance of Ukraine, State Audit Service of Ukraine, State Fiscal Service of Ukraine, State Treasury Service of Ukraine, National Bank of Ukraine, their territorial divisions, financial departments and administration of ministries, agencies, state committees and commission, financial departments and administration of government bodies in ARC, local authorities and local state administrations. The issue of referring financial departments and administrations of enterprises, institutions, organizations of all forms of ownership to the state financial apparatus is quite controversial[16].

According to H.V. Petrova's point of view, the principle of the unity and integrity within financial system bodies provides for functional set of independent units that is characterized by common goals and objectives, and hierarchical subordination. The purpose of the activity, which determines the unity and integrity of the financial system bodies, is implementation of financial policy aimed at protecting and developing state budget system. Achievement of this goal requires solving the following tasks: 1) participation

[16] Музика-Стефанчук О.А. Органи публічної влади як суб'єкти бюджетних правовідносин : монографія. Хмельницький : Хмельницький університет управління та права, 2011. С. 89.

Музика О.А. Фінансовий апарат. *Фінансова енциклопедія* / О.П. Орлюк, Л.К. Воронова, І.Б. Заверуха та ін. ; за заг. ред. О.П. Орлюк. Київ : Юрінком Інтер, 2008.С. 427–428.

in the development of financial policy and its implementation; 2) ensuring economic security and unity of control and management within the limits of its competence; 3) protection of budgetary interests of the state; 4) implementation and improvement of financial management of economic activities on the basis of the priorities of the country's economic development and the need to create favorable conditions for the development of Russia in world economic relations; 5) organization and improvement of financial control over financial economy; 6) provision of a favorable conditions for investors, taking into account Russia's international obligations[17]. In our opinion, the principle of unity and integrity of the financial system bodies should be observed in all areas of public financial activity (budget, tax, banking activities, etc.) and concern the establishment and functioning of the bodies which carry out this activity. In addition, it is necessary to pay attention to the coordination of the activities of different bodies. Here are some examples of such coordination and interaction.

Guidelines on the interaction of the units of the State Tax Service of Ukraine concerning the organization and conduct of taxpayer inspections were confirmed by the Decision of the State Tax Administration of Ukraine as of May 27, 2008 № 355. These guidelines are designed to establish efficient interaction between divisions of central and local (territorial) tax authorities when organizing and conducting business entities inspections as well as implementing the results of inspections. Their introduction will help to streamline and establish a single approach to organizing and conducting scheduled and unscheduled on-site inspections of taxpayers. It includes verifying the requirements of tax, currency and other legislation, documentary checks, checking the procedure of making settlements for goods and services, cash operations, availability of state registration certificates, patents and licenses, and implementing the results of inspections.

The procedure of coordinating the simultaneous conduct of scheduled inspections (audits) by supervisory authorities and state financial control bodies was approved by the Cabinet of Ministers of Ukraine as of October 23, 2013 № 805[18]. This decision defines the mechanism

[17] Петрова Г.В. Финансовое право : учебник. Москва : ТК «Велби», 2006. С. 18–19.

[18] Про затвердження Порядку координації одночасного проведення планових перевірок (ревізій) контролюючими органами та органами державного фінансового контролю : Постанова Кабінету Міністрів України від 23 жовтня 2013 р. № 805 / Кабінет Міністрів України. URL: http://zakon.rada.gov.ua/laws/show/805-2013-%D0%BF (дата звернення: 14.11.2018).

of coordination of simultaneous conduct of scheduled documentary inspections by the supervisory authorities and scheduled on-site inspections by the state financial control bodies.

The procedure of interaction between the bodies of the State Control and Revision Service, Prosecutor's Offices, the Ministry of Internal Affairs, and the Security Service of Ukraine was approved by the order of State Audit Office of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and Prosecutor General's Office of Ukraine as of October 19, 2006 № 346/1025/685/53[19]. It aims at providing an efficient interaction between the bodies of the State Audit Office of Ukraine and the Prosecutor's Office, the Ministry of Internal Affairs and the Security Service of Ukraine (hereinafter referred to as law enforcement bodies) on issues of consideration appeals by law enforcement bodies, appointment, organization and conduct of audits, transfer of audit materials on the initiative of the bodies of the State Audit Office of Ukraine, feedback on the results of the review of the materials transmitted, providing correspondent specialists of the mentioned bodies.

Thus, the list of general financial law principles is not so extensive but they cover the range of social relationships which are important for state functioning. A significant factor is the observance of financial and legal norms in their practical implementation.

The principles of financial law are the fundamentals enshrined in various formal sources. In the functional aspect, the principles are, on the one hand, the ascending fundamentals of legal regulation, that ensure coherence and efficiency of the legal norms system. On the other hand, they are direct regulators of the participants' behaviour in financial legal relations.

CONCLUSIONS

1. Modern approaches to the definition of the law principles include mainly the guiding ideas enshrined in the current legislation, which reflect not only the essence of the norms of any branch of law, but also the main

[19] Про затвердження Порядку взаємодії органів державної контрольно-ревізійної служби, органів прокуратури, внутрішніх справ, Служби безпеки України : Наказ Головного контрольно-ревізійного управління України, Міністерства внутрішніх справ України, Служби безпеки України та Генеральної прокуратури України від 19 жовтня 2006 р. № 346/1025/685/53 / Головне контрольно-ревізійне управління України, Міністерство внутрішніх справ України, Служба безпеки України, Генеральна прокуратура України. *Офіційний вісник України*. 2006. № 44. Ст. 2962.

directions of state policy in a certain area of legal regulation in the relevant social relations, namely, in the public finance sphere. So, financial law, as any other branch of law, is characterized by certain principles.

2. There are certain requirements for the principles of financial law, in particular, completeness (the set of principles should be organised into a system that covers the areas of public financial activity as much as possible), a high degree of generalization (generalizations should be combined with a specific direction), practical implementation (the role of principles is taking into account certain guiding ideas in specific legal relationships).

3. General principles in financial law are divided into two groups: a) general legal principles (taking into account peculiarities of a certain field); b) general financial law principles. However, not all general principles in financial law are the result of practical legal activity; some of them have evaluative content and appeared due to human thought and social activity (justice, humanism, etc.).

SUMMARY

Definition and peculiarities of practical realization of general principles in financial law are studied. The essence of general legal and general financial legal principles is specified.

The principles of law in the sphere of financial law are studied. It is found that the principle of social justice in financial law does not have a vivid general meaning as it is hard to observe its realization in relations of dual legal nature (private and public). In financial law principle of the supremacy of law means that all public financial activity is regulated with the norms which provide not only financial authorities for state-governmental subjects but also the limits of governmental power.

In financial law the peculiarities of the following principles implementation are not observed: principle of democracy, humanism, the principle equality or equal protection of the law, ignorance of the law is no excuse. These principles are of vivid general legal nature; The principle of responsibility for the guilt means that both – a legal entity and physical person who acted for legal entity interests can be held liable for a violation of the law; principle of equality of all the forms of ownership means that public financial resources can be a state or a communal property.

The principle of the unity of the financial, budgetary, tax, banking and monetary system of a state has cross-institutional meaning. Financial legal

relations should be in close communication and interaction with other financial relations, not being isolated from them.

The principle of the unity and interaction of financial policy and financial system deepens the contents of the previous one. It means the independence of public authorities as subjects of financial legal relations should not go beyond the basics of financial policy as far as the stability of the financial system and its individual components. The principle of the unity and interaction of financial policy and financial system in the context of financial law predetermines the interconnection of all the links of financial system and constant influence of governmental measures on public finances. Under the conditions of political and economical instability in Ukraine, a principle of state financial security is of a special importance.

The principle of the unity and integrity within financial system bodies should be observed in all the spheres of public financial activity (budget, tax, banking, etc.) and concern creation and functioning of the correspondent official bodies.

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BASIC THEORETICAL PROBLEMS OF DETERMINING THE PLACE OF FINANCIAL LAW IN THE SYSTEM OF LAW

Sergii Ochkurenko

INTRODUCTION

Determining the place of financial law in the system of law involves the study of such key components as: the establishment of the subject matter of financial law and its regulatory boundaries, the delineation of the subject matter of financial law and related branches of law, the identification of the basic relationships of financial law with other branches of law. There is a number of factors that determine the relevance of the study of this topic.

First of all, the urgency of the problem of the place of financial law in the system of law is grounded by the lack of certainty of the regulatory boundaries of this branch of law. The transition to market relations led to a complete revision of Ukraine's financial legislation and at the same time caused the need to review theoretical approaches to understanding financial law. There are different positions in the science of financial law in regard to the definition of the subject matter and structure of this branch of law, as well as on the possible ways of its further formation. This doctrinal uncertainty is considered as the main problem of the science of financial law in modern scientific research.

The uncertainty of the regulatory boundaries of financial law causes problems in distinguishing between financial law and other branches of law. The solution of these problems has a significant theoretical and applied value, and they are at the centre of attention of scholars specialized in financial law, but until now they were not the subject matter of separate scientific monographic studies.

The next factor of the relevance of the research topic is the intensity of financial law relations with other branches of law, which is determined by the social role of this branch of law. This role resides not only in the regulation of social relations, which form the subject matter of financial law, but also in the influence on other social relations through the legal regulation of financial relations.

One more condition for updating the problem of the place of financial law in the system of Ukrainian law was the processes related to the

integration of Ukraine into the European Community. These processes require looking for the ways of harmonizing the European, on the one hand, and Ukrainian national – on the other hand, understanding of the social role of financial law. It means that financial law should find its place in the system of balancing monetary and fiscal relations according to the best European models.

It is also necessary to draw attention to the practical significance of this, at first glance, purely theoretical topic. One of the main problems that constantly arise in judicial practice is the delimitation between public and private relations, in particular, financial and civil relations. The problem of delimitation within public law is often of practical importance, for example, while applying the provisions of the legislation on liability of legal entities. The system of financial legislation is not properly structured in many ways just because of the doctrinal uncertainty of the subject matter of financial law. Much of the financial and legal subjects within educational process is simultaneously duplicated without the allocation of sectoral aspects by other public, private and complex legal disciplines. We constantly experienced all these problems on our own experience of practical work of a lecturer, practicing lawyer and a member of the Scientific Advisory Board of the Supreme Court of Ukraine.

Despite the mentioned urgency of the topic and the practical significance of solving the problem of the place of financial law in the system of Ukrainian law, it has been recently studied only fragmentarily, and the results of such research have been stated in certain articles and in larger scientific developments focused on other problems.

The indicated factors determine the objective of this work, which is the development of theoretical provisions that determine the place of financial law in the system of Ukrainian law and can be used to improve financial legislation and the practice of its application.

1. The subject matter and method of financial law

The existing legal structure is based on the allocation of the branches according to the criteria of the subject matter and the method of legal regulation. The famous lawyer N.H. Aleksandrov wrote in this regard: “Soviet legal science has long admitted that the subject matter of legal regulation, that is, a certain type of social relations regulated by the law, is the main (if not the only one) feature that distinguishes one branch from

another”[1]. The subject matter of legal regulation provides unity to the content of legal norms of the relevant branch of law, therefore the position of N.H. Aleksandrov has not lost its relevance in contemporary socio-economic conditions.

After Ukraine gained independence there were fundamental changes in the system of social relations. There were new objectives and tasks, the awareness of which resulted in the expansion of the subject matter of financial law, which included public relations to ensure a rational movement of money with the participation of banks and other financial institutions, besides relations on the formation, distribution and use of state centralized and decentralized funds of monetary means. This natural extension of the subject matter of financial law has complicated the problem of delimitation of financial law and other branches of law.

The radical change in the nature of public relations after Ukraine gained independence, as well as theoretical and practical problems associated with the application of traditional criteria of sectoral division, became the basis for the scientific search for additional criteria for building the system of law, which is the positive process. However, there are increasing propositions in regard to the complete refusal from the existing sectoral division and radical reorganization of the system of law.

For example, professor R.S. Melnyk in his article “The Subject Matter of Administrative Law” substantiates that the introduction of the category “subject matter of legal regulation” into the scientific circulation was made by professor M. Arzhanov in contrast to the Western European theory of the division of the law into public and private. On this basis, the author of this article has made a categorical conclusion, according to which “the concept of the subject matter and method of legal regulation suggested by the Soviet scholars as the criterion for delimitation of branches of law is artificial and non-viable”[2].

The use of V.I. Lenin thesis on “non-recognition of anything private” in Soviet law, when “everything in the sphere of economic activity is public and legal, but not private”[3], really caused significant deficiencies in the process of scientific research of the law system. But this does not refute the

[1] Александров Н.Г. О месте трудового и колхозного права в системе советского социалистического права. *Советское государство и право*. 1958. № 5. С. 116–123.

[2] Мельник Р.С. Предмет адміністративного права. *Право України*. 2018. № 3. С. 159.

[3] Ленин В.И. Полное собрание сочинений : в 55 т. 5-е изд. Москва : Изд-во политической литературы, 1970. Т. 44. С. 398.

leading importance of the subject matter and method of legal regulation, which are objective criteria for constructing the system of law and meet the essential issues about what exactly and how (in which way) regulates the law.

Thus, professor R.S. Melnyk, despite the categorical conclusion about the artificiality and non-viability of the subject matter of legal regulation, does not offer any other, alternative regulatory sphere of law. He directly admits that the category of "subject matter of administrative law" can be used to indicate the extent of its regulatory influence, and further establishes the scope of regulation of administrative law, mainly through the indication of social relations that are regulated by this branch of law. Thus, the logic of denial of the subject matter of legal regulation as the criterion for constructing the system of law is denied by its actual use in the same article to determine the internal structure of administrative law. The only deviation from the concept of the subject matter of legal regulation is the position that the law, along with social relations, may also regulate the various factual actions that, according to professor R.S. Melnyk, "do not cause legal consequences, including for private individuals, so in this case there is no legal relations"[4].

The stated proposition seems to be rather controversial. In our opinion, if person's actions do not give rise to any legal consequences, then they should not be regulated by the law in this part. For example, regulations should not establish potato cooking instructions. However, if such cooking affects the interests of other persons or public interests, in these cases there are certain sanitary standards, rules of fire safety and other rules, which inevitably gives rise to the corresponding legal relations related to the observance of these rules and control over their observance. Listed examples of the regulation of actual actions in the article by professor R.S. Melnyk, in our opinion, cause not only real, but also legal consequences, that is, these examples are indications on the actual content of certain legal relations. For example, patrolling the streets by the police is one of the ways to perform public and legal obligation of this agency to ensure public order, when powers in relation to third parties (verification of documents, recording and termination of offenses, etc.) may be exercised in the process of its implementation. Rule-making and legislative activities can not also be carried out beyond the limits of the relevant administrative or constitutional legal relations.

[4] Мельник Р.С. Предмет адміністративного права. *Право України*. 2018. № 3. С. 180.

It should be also noted that the same actual action can be taken for simultaneous implementation of completely different legal rights and obligations and/or at the same time create legal consequences (to be a legal fact) in various branches of law. For example, if an administrator of budgetary funds has legally paid a payment for the performed works, then this action was carried out simultaneously and in accordance with the civil and legal obligation to the performer of works, and in accordance with the financial and legal obligation to the chief administrator in regard to the purposeful use of budget funds. In turn, receiving the payment by the executor of works is the realization of his civil right, as well as the legal fact that generates for him certain tax consequences. Thus, the actual activities of the subject of law, including the state authority, even if there is the possibility of its regulation outside legal relations, can not be the main criterion for the construction of the system of law.

Thus, it is social relations that are generally recognized as the main, and in our opinion, the exclusive subject matter of legal regulation. Therefore, it is impossible to exclude the use of the criterion of the subject matter of legal regulation in its classical, traditional sense in the process of structuring the system of law.

It should be also noted that the leading concept of the subject matter of financial law has never contradicted the generally accepted in the world dualistic division of the law into private and public, since financial legal relations are exclusively public legal relations.

The method of legal regulation as a criterion for the allocation of branches in the system of law appears because social relations as the subject matter of legal regulation can be differentiated on different grounds. For example, we can allocate energy law, agricultural law, insurance law, banking law, etc. But the legal science started to determine without reasons such group of relations as the subject matter of each basic branch of law, which is homogeneous in accordance with the method's feature that needs to be regulated by this group of relations. As noted by H.K. Tolstoi, "the subject matter of the basic branch of law can be only such a set of social relations, the qualitative definition of which manifests itself in the specifics of the method of legal regulation"[5].

[5] Толстой Г.К. Кодификация гражданского законодательства в СССР (1961–1965 гг.) : автореф. дисс. … докт. юрид. наук : 12.712 ; Ленинградский государственный университет им. А.А. Жданова. Ленинград, 1970. С. 9–10.

Professor R.S. Melnyk offers for the delimitation of the branches of law "to use relevant theories developed by European authors and approved by the practice of law enforcement, such as: the theory of subordination, the special and legal theory and two-stage theory, but not the concept of the subject matter and method of legal regulation"[6].

We support the proposition to use these theories and achievements of European legal thought, but do not agree with their categorical opposition to the concept of the subject matter and the method of legal regulation. Revealing the content of the theory of subordination, professor R.S. Melnyk points out that the presence of the feature of power-subordination confirms the public and legal nature of the relevant relations[7]. In our opinion, the above is consistent with the domestic concept of the division of social relations in accordance with the method (way) of their legal regulation into relations based on the legal equality of the parties, and into relations of power-subordination. Of course, one can provide many differences in the theory of subordination and the concept of the method of legal regulation, but, in our opinion, there is no significant contradiction, incompatibility between them. In any case, such incompatibility can not be grounded only by the country and the political conditions, where these legal theories were developed. Besides, both the theory of subordination and the two-stage theory make it possible to differentiate only the private and legal, public and legal relations and do not answer the question of how to fulfill further structuring of the system of law.

It should be agreed with the position of professor R.S. Melnyk that "the establishment and maintenance of human rights and freedoms must be manifested not in one sphere of functioning <…> of subjects, but in all existing ones". In other words, the human-centrism concept should be implemented not only within the scope of public and service activities of public administration entities, but also in cases of limiting the legal status of a private person. "Compulsion can and must have a human face!"

Professor R.S. Melnyk's indication that "all social relations regulated by the norms of administrative law are managerial, that is, those that arise in the sphere of public administration (public management)" is important and

[6] Мельник Р.С. Предмет адміністративного права. *Право України*. 2018. № 3. С. 159, 162–163.

[7] Загальне адміністративне право : навчальний посібник / Р.С. Мельник, В.М. Бевзенко ; за заг. ред. Р.С. Мельника. Київ : Ваіте, 2014. С. 47–56.

relevant for the sphere of financial and legal regulation[8]. At the same time, it is not necessary to be so rigidly opposed to the term “administration (management)” and the term “power”. The authoritative nature of relations in the field of financial activity does not exclude the presence of both financial and legal responsibilities and the rights within dependent party, as well as the need to ensure the implementation of constitutional rights and freedoms in the process of implementing financial activities. However, even in those areas, when financial and legal regulation is closely related to civil transactions, it remains public and legal nature and has an authoritative feature. For example, a loan agreement between a bank and a client is purely civil transaction, which does not exclude the existence of financial and legal obligations of the bank related to the implementation of credit operations (formation of reserves, observance of economic standards of credit risks, etc.). The specifics of the material object of financial relations (funds of monetary means), as a rule, has the original nature of financial (branch) rights of the dependent subject from his financial and legal responsibilities, which, unlike administrative law, are clearly manifested in the process of implementing public and service financial activities (for example, in the process of rendering services for taxpayers). Therefore, the authoritative feature is present in all financial relations.

Based on the foregoing, it may be concluded that financial law exclusively regulates public relations using the imperious method of legal regulation.

The application of the criteria of the subject matter and method of legal regulation does not exclude difficulties in the process of delimitating the sectoral pertain of specific legal norms and regulated by them social relations.

The structuring of law and the allocation of branches of law are definitely determined by objective factors, which are the subject matter and method of legal regulation. However, the patterns in the social, including in the legal sphere, do not have the character of absolute conditionality. The emergence, existence or disappearance of social relations may depend on subjective factors (for example, the emergence and existence of collective-farm relations for a certain period of time).

Different scientific views on the legal nature of objectively existing social relations may be even more subjective. There is a negative tendency

[8] Мельник Р.С. Предмет адміністративного права. *Право України*. 2018. № 3. С. 172–173.

in modern sectoral legal studies of grounding the widest possible subject matter of regulation of that branch of law represented by a particular scholar. This tendency is periodically manifested in the science of financial law in attempts to extend the sphere of financial and legal regulation to all monetary relations[9]. This approach, in our opinion, is false. Besides, it is in no way aimed at increasing the role of financial law in the system of law, but, on the contrary, erodes its boundaries and transforms the financial law into a complex branch, secondary (derivative) formation in the system of law.

The aggregate negative result of the absence of a clear theoretical delimitation of the subject matters of legal regulation of various branches of law is the inability of the legal science to create a sound theoretical basis for solving necessary, urgent tasks in the law-making and law enforcement spheres. For example, such basic legal concepts as financial, tax, budget law are practically not used by the legislator due to the unclear and ambiguous definition of these concepts in the theory. Instead, the legislator defines only relations in the general provisions of the Budget and Tax Codes of Ukraine, regulated by the relevant Codes, although they can be determined by reading the relevant Codes. A similar situation is observed in other areas of regulatory regulation. The highest level of reflecting the sectoral theory is realized in the Civil Code of Ukraine, where the legislator already defines relations regulated by civil law, and not only by the Code, which gives much clearer benchmarks for judicial practice, although this situation is far from ideal. As a result, there are numerous problems in various spheres of law enforcement, a vivid example of which is the highly ambiguous judicial practice of delimitating the competence of general, commercial and administrative courts of Ukraine.

Recognition of the subject matter of legal regulation as the main criterion for building the system of law and the division of law into branches involve greater attention of science to the allocation of the types of social relations as the subject matter of legal regulation and their differentiation from other types of social relations. It is necessary to allocate various branch relations in any complex of legal relations, even in cases of their close interconnection, and not to declare this complex in general by the same relations. Therefore, we consider it false, when certain scholars admit the

[9] Ковальчук А.Т. Фінансове право України. Стан та перспективи розвитку. Київ : Парламентське вид-во, 2007. 488 с.

existence of public and private relations and legal relations[10], and we also consider it necessary to distinguish between relative and absolute legal relations. In our opinion, there are currently no grounds for admitting special regulation of property relations and other property rights by financial law that are properly regulated by civil law. Absolute relations, regulated by civil law, and closely related to financial and legal relations are distinguished even in such legal constructions as a tax pledge. Similarly, financial and legal relations should be clearly distinguished in such complex formations as banking or insurance law.

The author of this work admits the scientific importance of the research aimed at detailing the features and further development of the legal category of the legal regulation method, in particular, the allocation of such methods of legal regulation as prohibition, prescription, and permission[11]. However, such details are difficult to apply to use the method of legal regulation as precisely the criterion for sectoral differentiation of law, since the norms of all branches of law may contain prohibitions, prescriptions and permissions. Also, the division of the main methods of legal regulation into imperative and dispositive does not allow to determine unambiguously the sectoral affiliation of a specific legal norm, since civil law also contains a significant number of imperative norms. However, the features of legal equality of parties or relations of authoritative nature, as a rule, are manifested in the analysis of each specific norm of law and its regulated public relation, and therefore can be effectively used to differentiate between the norms of private and public law, including for the distinction between civil, financial and legal norms and relationships. At the same time, these features are not the universal criterion for sectoral delimitation. In particular, it is difficult to use them to choose the sectoral affiliation between public law branches (for example, to distinguish between administrative and financial law).

Therefore, to determine the limits of the regulatory influence of financial law, as well as to distinguish between financial and other sectoral relations, it is expedient to use not only the criteria of the subject matter and method of legal regulation, but also other additional criteria.

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[10] Разуваев Н.В. Правовая система и критерии отраслевой дифференциации права. *Правоведение*. 2002. № 3(242). С. 34.

[11] Сорокин В.Д. Метод правового регулирования. Теоретические проблемы. Москва : Юридическая литература, 1976. 143 с.

2. Application of other criteria for the division of the legal system and the allocation of financial law

Recognition of the subject matter and method of legal regulation as the main objective criteria for the structuring of law, in our opinion, does not exclude the use of other criteria for both the construction of the system of law and for solving the tasks of determining the sectoral pertain of specific legal norms and regulated by them social relations.

Significant features of determining the place of financial law in the national legal system are the existence of a well-developed financial legislation in Ukraine and a high level of development of the doctrine of financial law. The existence of special acts of financial legislation, in particular codes, makes it possible to use legislation to determine the sectoral pertain of legal norms, including the application of special and legal theory. However, such an application is limited to the inclusion of a significant number of provisions into the codified acts of financial legislation that formulate the norms of other branches of law.

In our opinion, the difficulties of sectoral qualifications are associated in many respects with insufficient research of the correlation of law and legislation. As we know, legislation and law correlate as the form and content. However, the full reflecting correspondence of the form and the content in practice is unattainable, and in some cases even inappropriate. Therefore, finding a normative provision, which is to be applied in the text of financial legislation's act does not mean that it necessarily formulates the norm of financial law. Moreover, the acts of financial legislation often use the wording, which simultaneously contain both financial and legal requirements, and the requirements of another branch affiliation in the same text of one sentence.

For example, according to Part 8 of the Art. 51 of the Budget Code of Ukraine "Administrators of budgetary funds organize budgetary commitments, taking into account the changes made to the special budget's fund". This legislative provision stipulates both the text of financial law norm, and also logically establishes the norm of civil law, which gives the managing organization of budget funds the right to request changes to the concluded civil and legal (commercial) agreements, which at the same time is its financial and legal obligation. Thus, we have a certain combination (coincidence) and normative basis, and the actual content of financial and civil relations, but their legal content is completely different (the financial obligation of the administrator of budget funds owed to the state or to the

territorial community, on behalf of which the chief administrator of budget funds and financial control agencies operate; and its civil right with respect to the other party to the transaction). Consequently, it is impossible to identify the norms of law and the relevant provisions of legislation. Unlike the normative provision, the law norm as the primary base element of the basic structure of law can not be comprehensive. In particular, the norm of financial law always has a purely financial and legal nature, and the public relation regulated by it is always financial legal relationship.

In order to further improvement of financial legislation, we offer to define the main features of relations in the general provisions of the Tax and Budget Codes of Ukraine, which are respectively regulated by tax and budgetary laws, but not to define only the composition of relations regulated by the mentioned Codes. The definition of such features will allow to exclude most of the normative provisions from these Codes that formulate the norms of non-financial, and other branches of law. Although there is no "legal purity" in any of the existing Codes, including the Civil Code of Ukraine, but the legislator's aspiration to maximize the achievement should be one of the priority objectives of the rule-making technique in the process of legislation's codification.

The task of the normative consolidation of the basic principles of financial legislation also requires the need to develop and adopt a general law on the financial and credit system of Ukraine, since the objectives, principles, system and other general provisions of financial legislation can be statutory consolidated only in this law.

Objective criteria for constructing the system of law indirectly affect the process of forming the system of law – through the cognition and awareness of the patterns of the development of social relations and their legal regulation, the formation of the objectives of legal regulation and further law-making activity. Therefore, the objectives of legal regulation as criteria for the allocation of branches of law and the definition of their regulatory boundaries at the stages of reforming social relations are at the forefront. It should be noted that the objectives of law in the classical world of jurisprudence were paid much more attention than in domestic jurisprudence. For example, Friedrich Carl von Savigny and Rudolf von Jhering used the objectives of law to distinguish between private and public law[12].

[12] Иеринг Р. Цель в праве. *Иеринг Р. Избранные труды* : в 2 т. Санкт-Петербург : Юридический центр Пресс, 2006. Т. 1. С. 573–593.

Нечай А.А. Правові проблеми регулювання публічних видатків у державі : дис. … докт. юрид. наук : 12.00.07 ; Київський нац. ун-т ім. Тараса Шевченка. Київ, 2005. С. 88–89.

Taking into account the experience of defining the objectives of system balanced regulation of monetary and fiscal relations in European countries, and on the basis of perception of this experience by the legislation of Ukraine (Articles 99, 100, 116 of the Constitution of Ukraine, Articles 1, 6 of the Law of Ukraine "On the National Bank of Ukraine"), we believe that the objectives of financial and legal regulation, along with the provision of financing public spendings, are the provision of the stability of the monetary item of Ukraine, price and financial stability (stability of money circulation), keeping sustainable economic growth, which in total is aimed at achieving macroeconomic stability in the country.

It should be noted that the range of relations that should be aimed at achieving the above objectives is much wider than the range of relations that directly forms the subject matter of financial and legal regulation. Even the spending of budget funds is mediated by relations that are regulated by other branches of law. Transactions of the National Bank of Ukraine, which assist to carry out the issuance of money and support of the stability of the banking system, are civil and legal ones. However, civil law establishes only the rights and obligations of the parties to the transaction and this regulation is not directly aimed at achieving public macroeconomic objectives. On the other hand, financial law can not and should not implement the legal regulation of civil relations, even if their material object is budgetary or issuing money. Financial law does not really regulate such relations, but it is able to influence them, and the intensity of such influence becomes decisive and comprehensive in the areas of the functioning of public funds of monetary means and realization of the issuance of money.

Such a decisive non-regulatory, but a purely legal influence is that the performance of the duties by the relevant subject and the exercise of his rights within financial legal relations substantially determines the content or dynamics of related legal relations that have another sectoral affiliation, and where the very subject takes part. For example, the administrator of budgetary funds enters into civil relations in a state when he is bound with financial and legal responsibilities. These responsibilities almost completely determine the content and procedure for the conclusion and execution of civil contracts. Similarly, financial relations affect labor relations for remuneration at the expense of budgetary funds.

The state of achieving the above-mentioned objectives is even more remote social consequence of the norms of financial law. This state can be

estimated only statistically as the result of relations at a massive level (inflation rate, balance of payments status, etc.). Although, such relations consist of concrete volitional relations, but in their totality they can not be completely regulated by law. Unfortunately, any normative order itself is not capable to ensure the stability of the monetary item, price and financial stability, maintaining a steady rate of economic growth. However, the proper legal regulation of the organization of money circulation and the functioning of public funds of monetary means can effectively contribute to the achievement of these objectives. This justifies the state interference into market relations, which, under the rule of law principle, can be exercised only in the order and within the limits established by the current legislation.

The usage of the stated objectives of financial law and the construction of legal influence along with the features of the subject matter and method of legal regulation, allows us to clarify the limits of financial and legal regulation, to differentiate the relations that are regulated by financial law and related branches of law and to identify the most significant relationships of financial law with such branches of law.

Financial law regulates authoritative property relations of monetary nature and authoritative non-property relations that ensure the organization of money circulation, the proper realization of property financial relations, public and legal influence in order to streamline other property relations associated with the functioning of public funds of monetary means and the organization of monetary circulation.

3. Delimitation and interaction of financial law with other branches of law

The active role predominantly belongs to constitutional law in the interaction of constitutional and financial law. Regulation of financial relations is carried out both by general norms of the Constitution of Ukraine, and by special norms regulating the main relations that arise in the process of financial activity of the state. At the same time, the constitutional norms establish the basis of legal regulation of financial relations and are the norms of direct action, and financial and legal norms specify the said regulation, are subordinated to the constitutional norms and should reflect the universality of constitutional rules and principles.

The norms of the Constitution of Ukraine, which regulate purely constitutional relations, which are a mandatory attribute of this branch of

law, have a decisive influence on financial relations. Financial law can not regulate such relations even in the order of detailing constitutional regulation. However, a part of such relations arises in the field of public financial activity, which justifies their separate consideration in science and in the educational discipline of financial law. In particular, the laws are adopted within the framework of constitutional relations, where the norms of financial law are formulated, the structure of the agencies that carry out financial activity is established. Consequently, there is also the need for the delimitation between legal regulation and legal influence in the process of studying the interaction of constitutional and financial law.

However, the main task of integrating financial law into the legal system of Ukraine is the subordination of financial law to the constitutional norms and principles of a general and universal nature that are applied to all (or most) social relations, including financial relations. Therefore, the provisions of financial legislation should be brought in strict compliance with the provisions of the Constitution of Ukraine. The principle of priority of public financial interests within financial activities can be applied only under conditions of its subordination to the constitutional principle of the rule of law.

The relationship of financial and administrative law raises difficulties in the process of separating relations regulated by financial law and administrative law. We suggest to make such a distinction in the science of financial law, according to the subject matter of authoritative and property financial relations. However, administrative law also regulates property relations. Therefore, we offer to narrow this feature and to determine only authoritative and monetary relations as financial ones, that is, those relations, which material object is monetary means and which do not have a commodity-based equivalent. But this also does not provide a complete delimitation. For example, relations regarding the imposition and charge of administrative fines are authoritative and monetary, but the main purpose of these relations can not be recognized as the renewal of budgets. Therefore, for the differentiation of financial and administrative relations we need complex application of objectives and subject matter feature as criteria of division. The delimitation of non-property financial relations from administrative ones also requires the establishment of relations with property relations regarding the functioning of public funds of monetary means and the organization of monetary circulation. If such a connection is established,

then it should be noted on the financial and legal nature of the relevant relations, for example, relations of banking supervision.

The delimitation between financial and civil law must be made through the consistent use of the criterion of the legal regulation method. Relations based on the principles of legal equality and free will of the parties are not regulated by financial law, even in cases where financial law significantly affects these relationships. However, in such cases, there is definitely the financial and legal regulation, but not specified, but related relations, which mainly differ in the parties.

For example, transactions carried out at the expense of budgetary funds, remain civil transactions. However, preconditions for civil relations are determined within the framework of financial and legal distribution of budget relations that mediate the spending of budgetary funds, that is, it is determined in what exactly civil obligatory relations administrators or recipients of budget funds can enter, which amount of money can be spent according to the intended purpose of budget funds and what result should be achieved. Civil and legal relations in such cases arise between an administrator of budget funds and a seller of goods (performer of works, services). Financial and legal relations arise between an administrator of the budget funds and the corresponding authorized state entities (the main administrator, the agencies of the State Treasury Service, etc.).

Civil law also has a reverse effect on financial relations. In this regard, attention should be paid to the possibility of subsidiary application of the provisions of civil law to financial legal relations. Subsidiary law enforcement is considered by us as an additional (auxiliary) application to financial legal relations of normative provisions of another branch of legislation. Herewith, subsidiary law enforcement does not affect the sectoral affiliation of financial legal relations, since in such cases the rights and obligations of the parties are determined by financial legislation, and only the provisions (text), but not the norms of civil law, are applied subsidiary (additionally). Thus, financial legislation often uses the terms that are only defined in civil law (for example, a legal entity), but in order to establish the financial rights and obligations of the parties.

The practical significance of the impact of financial law on the field of labor law may in some cases exceed the importance of legal regulation of labor relations. The fulfillment of duties on paying wages by budget institutions is effectively ensured by a ban on budget commitments and

restrictions on other payments, if there are arrears of wages (Part 4 of the Art. 51 of the Budget Code of Ukraine). Similar significance has also the attribution of expenditures of the general fund of the State Budget of Ukraine to the remuneration of employees of budgetary institutions to the category of protected expenditures of the general fund of the budget (Parts 1 and 2 of the Art. 55 of the Budget Code of Ukraine). These norms can not be called labor law norms, but they are capable to protect workers' rights to the remuneration not less efficiently than the guarantees provided by labor legislation.

Labor law also has a significant potential impact on financial relations. Labor law regulates labor relations with the participation of employees of state agencies acting as an authoritative side of financial relations, as well as labor relations of officials of those enterprises, institutions, organizations that are the other side of financial relations. Consequently, effective legal regulation of labor relations can positively affect financial relations.

The guard function in relation to financial legal relations is carried out by the security norms along with the protection norms of financial law, established by the criminal, administrative, labor and civil law, as well as the norms of administrative procedure.

The provisions of the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine, which establish liability for financial violations and crimes, are not properly structured, and in some cases are not coordinated with each other and with the relevant provisions of financial legislation. Therefore, it is necessary to systematize these regulations, selecting those financial relations as the object of protection, which objectively need protection by the measures of criminal or administrative liability. We believe that crimes and offenses in the field of finances would be expedient to allocate into the special Chapter of the Code of Ukraine on Administrative Offenses and the Section of the Criminal Code of Ukraine.

Own security mechanism of financial law in the form of financial and legal liability is at the stage of formation. Partially financial and legal liability obtained legislative consolidation. Completion of the formation of the institution of financial and legal liability involves both the solution of theoretical problems and the adoption of a law, which would define the general principles of financial and legal liability. The problem of consolidating the basic principles of financial and legal liability can also be solved in the general law on the financial and credit system.

CONCLUSIONS

Financial law regulates authoritative and property relations of monetary nature and authoritative non-property relations in regard to functioning of public funds of monetary means and the organization of monetary circulation. At the same time, the limits of financial and legal regulation should be determined not only on the basis of a scope of social relations that require financial and legal regulation, but also taking into account the need for appropriate social relations influenced by the norms of financial law.

The achievement of the objectives of financial law goes far beyond the financial and legal regulation, and therefore it is necessary to take into account that financial law both regulates financial relations, and can affect the relations regulated by other branches of law, as well as relations that arise at a massive level and are characterized by general statistical indicators of the economic situation of the country (inflation rate, balance of payments status, etc.).

The results of the study of the place of financial law in the system of Ukrainian law allow us to state the independence and exclusivity of the subject matter of financial law, the legal purity of the authoritative method of legal regulation, the target orientation of financial and legal regulation for the fulfillment of the main tasks and functions of the state, the existence of developed financial legislation, branch doctrine and an independent sectoral form of legal liability.

Based on the objectives of financial law, its subject matter and method, taking into account the ability of this branch of law to significantly affect relations regulated by other branches of law, and relations that characterize the overall economic situation of the country, it should be admitted that its place in the system of law corresponds to the level of fundamental (profiling) branch of law.

SUMMARY

The author of the article provides results of the research of the problems concerning the place of financial law in the system of Ukrainian law and the inter-branch relations of financial law and other branches of law.

The author has defined the criteria for the allocation of financial law in the system of Ukrainian law and the sphere of relations regulated by the financial law of Ukraine. The author has substantiated the preservation of the subject matter and the method of legal regulation as the main criteria for building the legal system, defining the scope of regulation and the internal

structure of the financial law branch. The problems of correlation of financial law and legislation have been studied. The possibility of applying additional criteria for structuring the system of law and the delineation of financial relations and relations regulated by other branches of law has been substantiated. The objectives of financial and legal regulation in the modern period have been established. The author has researched the main methods of the financial law influence on social relations, including relations regulated by other branches of law. The author has revealed the content of the interaction of financial law with the constitutional, administrative, civil and labor law of Ukraine, as well as the ways of protecting financial relations by different branches of law. A distinction between the subjects of regulation of financial law and the specified branches of Ukrainian law has been carried out.

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TARGET DETERMINATION OF FINANCIAL AND LEGAL INSTRUMENTARIUM IN THE DEVELOPMENT OF UKRAINIAN INNOVATIVE POLICY (THE ISSUE OF VARIABLE GEOMETRY)

Olena Orliuk

INTRODUCTION

The experience of the world's leading countries has shown that the development of the national economy should be based on the certain innovative principles, which in their turn reflect contemporary technological development. Taking into consideration Ukraine's entering to the European innovation space, the European research space, and the development of the digital economy, its internal policy urgently requires mechanisms that meet present-day challenges. Within current conditions, innovations that are based on and are the output of the realization and/or use of intellectual property, including world or local novelty are of the greatest value. Primarily, this is due to the fact that to develop comprehensive strategy to move the country out of economic decline and depression is possible only on the basis of the implementation of such-like measures. Logically, it results in a technological breakthrough. At the same time, such processes can occur only after the certain substantial changes. In particular, among them: structural institutional transformation, adaptation of the business entities' behavior to the technological changes that had been undertaken, and the adoption and implementation by the state of the corresponding national strategy for the innovative development. Notably, an integral part of such innovative development is prescribed by legal mechanisms, where kaleidoscopic financial and legal (financial, credit, tax) instruments occupy a key place. Specifically, the scope of those mechanisms is substantially predetermined by financial law.

The role of financial law in the modern era of Ukraine's development, stemming from the vital need to incorporate the innovative component, could not be overemphasized. There is strong evidence that the State's overall aim in the field of scientific, technical and innovation development is to profoundly shape the appropriate priorities for the development of science, technology and innovation, as well as the legal framework, personnel policy, material and technical support. Not least in these activities are the establishment and strengthening of economic

methods essential for regulating the development of science, technology and innovation. At the same time, the processes of increased openness of the Ukrainian economy along with the economies of other countries, as well as the attempts of our state towards the entering to the supranational structures, require from Ukraine a different level of competitiveness. In case if these issues have not to be tackled, we should expect to get negative results from the interaction with the relevant external markets. Without proper financial and legal regulators, enshrined at the level of national legislation, as well as development of profound strategies, these processes have neither the slightest prospects for implementation, nor practical outputs in the intellectual property domain. This has been evident especially in the unsuccessful innovation policy pursued during the last decade, which has not yet demonstrated the desired results, even despite the certain technological and scientific opportunities that still exist in the state.

In this context, outlined tasks took an extra significance, especially within two factors. On the one hand, according to the Governmental Plan for the implementation of governmental commitments, it is the harmonization and implementation of European standards, including those in financial sector, as well as intellectual property and the development of a free trade zone with the European Union on the basis of the Association Agreement[1], which has come into full force on September 1, 2017 (in terms of the FTZ – from January 1, 2016). Apart from this, in accordance with the Governmental action plan[2], Ukraine has obligations to achieve the national Sustainable Development Goals for the period up to 2030[3], as laid down

[1] Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони (ратифікована Законом від 16 вересня 2014 р. № 1678-VII) / Верховна Рада України. URL: http://zakon5.rada.gov.ua/laws/show/984_011.

[2] Про затвердження Плану заходів з виконання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : Постанова Кабінету Міністрів України від 25 жовтня 2017 р. № 1106 / Кабінет Міністрів України. URL: https://zakon5.rada.gov.ua/laws/show/1106-2017-%D0%BF.

[3] The sustainable development goals were defined in the National Report, approved by the High-Level Interdepartmental Working Group on the Organization of the Sustainable Development Goals in Ukraine. See: Цілі сталого розвитку 2016–2030. *Представництво ООН в Україні*. URL: http://www.un.org.ua/ua/tsili-rozvytku-tysiacholittia/tsili-staloho-rozvytku.

in the UN[4] and EU program documents, and which are subject to legislative specification[5]. On the other hand, the need to develop national policies must reflect strategic threats, that in the future may become the basis of technological development, the full dissemination of artificial intelligence[6], environmental crises, etc. Financial science in particular, as well as legal science in general, should have a quite ambitious agenda of how to respond to such challenges, along with the development appropriate legislative approaches and legal mechanisms for the future. These considerations determine the relevance of the issues identified in the presented scientific discourse.

1. Financial and legal instrumentarium used in Ukraine in the innovative domain

According to the data of 2017, provided by the World Bank's latest Doing Business survey, in comparison with 2016, Ukraine has ranked 76th place, having increased in 4 positions. In particular, according to the component "Dealing with construction permits", Ukraine had shown the highest growth among all other countries participating in the rating, going from 140 to 35th position, thus shot up the leaderboards and broke into the top 50. This rating is an indicator for the investors, since it entails an increase in foreign investment in the country, as according to the experts, each point in the rating is an opportunity to further engage about $ 600 million of investments to the national economy. In line with the component "Paying taxes", Ukraine has gone up with 41 points – from 84 to 43[7]. According to "Doing

[4] Transforming our world: the 2030 Agenda for Sustainable Development (Resolution 70/1, 25 September 2015) / The United Nations General Assembly. URL: http://www.un.org.ua/en/publications-and-reports/global-un-publications/4337-transforming-our-world-the-2030-agenda-for-sustainable-development-2015.

[5] Проект Закону про Стратегію сталого розвитку України до 2030 року від 7 серпня 2018 р. № 9015. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64508 ; Проект Закону про Стратегію впровадження моделі збалансованого розвитку України до 2030 року від 20 серпня 2018 р. № 9015-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64515. Abovementioned Draft Law are pending debate and examination in the relevant Committee on Science and Education of the Verkhovna Rada of Ukraine.

[6] Regarding this issue, among the current modern investigations should be highlighted: Harari Y.N. Homo Deus. A Brief History of Tomorrow. New York : Harper Collins Publishers LLC, 2015. 464 p. ; Harari Y.N. 21 Lessons for the 21st Century. London : Jonathan Cape, 2018. 368 p.

[7] Doing Business 2018. A World Bank Group flagship publication (2017). URL: https://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2018-report_web-version.pdf.

Business 2019", Ukraine's place has risen by another 5 positions, placed 71st among the countries surveyed[8]. Nevertheless, these indicators are still very far from the strategic objectives[9] that were set out after the Revolution of Dignity in 2014.

However, the challenge to achieve higher export competitiveness remains quite problematic. Since only the state-of-the-art technology provides a fixed return, which when operating within legal framework is not based on any other factors. While, Ukraine's economy is still only the 50th largest export orientation (The Economic Complexity Index, ECI)[10], the Ukrainian sector is still dominated by primary goods, raw materials and intermediate goods with a relatively low technological component – almost 70% of exports. Meanwhile, the share of high-technology exports of Ukraine is less than 5,5%[11]. Without a doubt, this indicator became slightly better than it was in the mid-2000s, but then the potential of domestic exports of high-tech products was estimated at about $ 10–15 billion, or 0,3–0,5% of world exports[12]. However, currently Ukraine purchases outdated technologies, spending on it not only private, but also public funds.

To confirm these findings, other ratings and indicators of the country can be elaborated. For example, according to Eurostat and the US National Science Foundation, in 2016, the share of high and medium high-tech sectors in industrial production in Switzerland was 14,6% and 21,3%, respectively, in Israel – 38% and 12,6%, in South Korea – 21% and 33,4%, in Germany – 3,7% and 28%. By contrast, in Ukraine, these figures were respectively 2,9% and 10,9%. In the Global Competitiveness Report 2017–

[8] Doing Business 2019: Training for Reform. A World Bank Group flagship publication (October, 2018). URL: https://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf.

[9] Про Стратегію сталого розвитку «Україна – 2020» : Указ Президента України від 12 січня 2015 р. № 5/2015 / Президент України. URL: https://zakon.rada.gov.ua/laws/show/5/2015.

[10] OEC – Ukraine. URL: https://atlas.media.mit.edu.

[11] 41% ($ 17,7 billion) – agribusiness products, 23,4% ($ 10,1 billion) – metallurgical products, 11,7% ($ 5 billion) – engineering products, 9,1% ($ 3,9 billion) – mineral products and etc. See: Український експорт: крок вперед чи біг на місці? *Kyiv International Economic Forum*. 2018. 21 травня. URL: http://forumkyiv.org/uk/analytics/ukrayinskij-eksport:-krok-vpered-chi-big-na-misci.

[12] Проект Стратегії інноваційного розвитку України на період до 2030 року, розроблений Міністерством освіти і науки України 21 жовтня 2018 р. URL: https://mon.gov.ua/storage/app/media/gromadske-obgovorennya/2018/10/22/innovatsiynogo-rozvitku-ukraini.pdf.

2018, Ukraine was ranked 81st among 137 countries surveyed, having risen in 4 positions[13]. In turn, according to the Global Innovation Index 2018[14], Ukraine ranked 43rd (in 2017 – 50th, in 2016 – 56th), taking the first place among the 30 low- and middle-income countries.

Therefore, the innovative development path is the only possible alternative to reach the breakthrough in national economy. In other words, among the outputs obtained from the state activity in the sphere of the implementation of an innovative way of management shall be activation of innovative processes in industry and entrepreneurship. Such innovative measures should become an integral part of every activity, and implemented in any sector of the domestic economy. In fact, the innovative nature of the relationship should actually become a necessary prerequisite for the fruitful functioning of any industry. That is why the state must stimulate, on the one hand, the creation of innovations that are socially useful or strategic effective from the public interests' perspective, especially within national security framework, and irrespective of their commercial value. On the other hand, it (the state) should ensure demand creation from the business sector, that is, support the commercialization of such innovations. Along with this, the state, as the key organizer of socially important processes, should provide institutional support for innovation processes, which implies the formation of an effective national innovation system.

Consequently, the formulation and implementation of the public policy requires, in turn, balanced theoretical approaches which would be based on the achievements of national science, with the special reference to the positive experience obtained from the international community. Indeed, today, the overwhelming majority of countries are aware of the fact that the state is interested in the development of science and innovations and, accordingly, should extend fully support for it. Certain support for science and innovation may include direct budget financing, attraction of grant programs, certain fiscal incentives for innovation entities, in particular, innovative enterprises, technology parks and technopoles, as well as system

[13] Проект Стратегії інноваційного розвитку України на період до 2030 року, розроблений Міністерством освіти і науки України 21 жовтня 2018 р. URL: https://mon.gov.ua/storage/app/media/gromadske-obgovorennya/2018/10/22/innovatsiynogo-rozvitku-ukraini.pdf.

[14] Global Innovation Index 2018. Energizing the World with Innovation (Cornell University, INSEAD, WIPO, 2018). URL: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2018-profile52.pdf.

for encouraging investment in research and development, etc. Nevertheless, it should be understood that the problem is not to organize the direct management of the scientific investigation process, but to organically integrate research, development and project designing activities into the innovation process, to establish a national innovation system that would cover and revolutionize all the economy.

At the same time, the actual implementation of ambitious intentions for the promotion of a modern innovative economy in Ukraine requires well-sound, balanced, purposeful and, most importantly, coherent state policy, which will not be of declarative nature. This is the explanation why, as early as in the 80-s of the last century, Ukrainian science theorists H.M. Dobrov had emphasized on the "unity of science, technology and social organization that is systemic in nature"[15]. A decade ago, we were talking about the development of the knowledge-based society, but we now are talking about the 4th technological revolution, the digital economy, artificial intelligence, the blockchain technologies, and much more.

Nowadays, the overwhelming majority of the leading countries recognize that the state is interested in the development of science and, accordingly, should provide all possible support to the efforts deployed in this sphere. Such support for science and innovation may include direct budgetary allocation of resources into the science, certain fiscal incentives for scientific and innovative enterprises, technology parks and technopoles, incentive system for investment in research and development, etc. In the meantime, the forms and rational scope of such support, its crucial directions and mechanisms of implementation, has remained the subject of heated debates. That is why, over the past decades radically different directions of implementation have been undertaken in various countries. Accordingly, in the formation of a national innovation system in Ukraine, the government needs to be sensitive to the fact that science has to become a key element of such a system[16]. This, in turn, requires the establishment of a genuinely effective management system, which must meet several requirements: first and foremost, it has to be utterly different from the traditional bureaucratic structures, and, secondly, it should be represented as the system of functional and interdisciplinary nature. However, we need to accept

[15] Добров Г.М. Проблемы управления организованной технологией. Киев : Знание ; РДНТП, 1980. С. 8.

[16] Стратегія інноваційного розвитку України на 2010–2020 роки в умовах глобалізаційних викликів. URL: http://kno.rada.gov.ua/uploads/documents/36382.pdf.

argument suggested by O.S. Popovych, that the problem is not to organize the direct management of the scientific research process, but to "organically integrate research, development and scientifically-engineering activities into the innovation process, to set up a national innovation system that would cover and revolutionize the economy as a whole"[17].

From the general perspective, Ukraine has created an appropriate legal and regulatory framework that defines the legal status of the innovation system subjects. Although, it allows them to function within the legislative framework, the efficiency of such functioning is not high, which is facilitated by imperfect legal mechanisms and existing inconsistency between the various legislative acts. In addition, Ukraine still lacks a holistic legal instrumentum that would contribute to the development of innovative business incubators, start-ups, innovation development centers, technology transfer centers, venture funds, etc. that would allow the public authorities to form comprehensively the national infrastructure of the innovation system.

Consequently, issues related to the determination of the subjects of innovative legal relations and their legal status, are crucial for developing the mechanism of legal regulation of the national innovation system. Nonetheless, in terms of financial instruments that are officially prescribed by the current legal acts and designed in order to support the innovative environment in Ukraine, there has been a quite ominous trend. In order to illustrate the abovementioned, it is enough to cite and analyze the provisions of the current innovation legislation, namely, the Laws of Ukraine "On Innovation Activity", "On Priority Areas of Innovation Activity in Ukraine", acts of the Cabinet of Ministers of Ukraine[18], etc. Therefore, the purpose of the Law of Ukraine "On Priority Areas of Innovation Activity in Ukraine"[19] is to create a legal framework for the concentration of state resources in the leading areas of scientific and technological renovation of

[17] Попович О.С. Науково-технологічна та інноваційна політика: основні механізми формулювання та реалізації / за ред. Б.А Маліцького. Київ : Фенікс, 2005. С. 20.

[18] Про схвалення Концепції реформування державної політики в інноваційній сфері : Розпорядження Кабінету Міністрів України від 10 вересня 2012 р. № 691-р / Кабінет Міністрів України. *Офіційний вісник України*. 2012. № 71. С. 199. Ст. 2883 ; Про схвалення Концепції розвитку національної інноваційної системи : Розпорядження Кабінету Міністрів України від 17 червня 2009 р. № 680-р / Кабінет Міністрів України. *Офіційний вісник України*. 2009. № 47. С. 533. Ст. 1593.

[19] Про пріоритетні напрями інноваційної діяльності в Україні : Закон України від 16 січня 2003 р. № 433-IV (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2003. № 13. Ст. 93.

both state industry and services, ensuring the domestic market with the competitive high-tech products and their entering the global market place.

In-depth analysis of the current legislation allows us to mark out the following major direct methods of financial support for the innovation. Among them, namely, are: budget financing of scientific and scientifically-technical activities; developing innovative lending programs; provision of government guarantees.

In contrast, indirect support for innovation can be provided, in particular, in the following ways: VAT relief and profits tax relief, exemption from taxation of technology importing as well as exemption from the VAT when importing goods; land tax relief (at the present moment, as a certain type of property tax); accelerated depreciation of fixed assets; stimulation of innovation process, etc.

The above financial instruments of innovation system state support are fully consistent with the principles of budget financing and certain taxation functions, which are intensively developed by the theory of financial and tax law. However, an assessment of the special legislation enforcement in outlined area indicates the following discrepancy between the regulatory fixation in the innovation legislation and financial legislation.

The Law of Ukraine "On Scientific and Scientific-Technical Activities"[20]. Current Law determines that the state provides budget financing of scientific and scientific-technical activities (other than defense and homeland security) in the amount of not less than 1,7% of GDP. Expenses for scientific and technical activities are stable and fived in the State Budget of Ukraine. At the same time, budget financing of research is carried out according to the target determination principle, that is, by means of basic and program-targeted funding. However, since the adoption of this Law, such criterion for the national science financing has never been employed. According to the State Statistics Committee of Ukraine, the greatest levels of financing the Ukrainian scientific and technical sphere were received from the State budget[21] in 1995 – 0,45% of GDP. In 2000, this figure decreased up to

[20] Про наукову і науково-технічну діяльність : Закон України від 26 листопада 2015 р. № 848-VIII (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2016. № 3. Ст. 25.

[21] The above indicators are stipulated in the Laws of Ukraine on the state budget of Ukraine for the relevant calendar years. The limited scope of the current paper does not allow to provide links for all of them. At the same time, full information on these laws is contained on the Website of the Verkhovna Rada of Ukraine: https://rada.gov.ua.

0,36%, in 2001 – 0,41%, in 2002 – 0,33%, in 2003 – 0,41%, in 2004 – 0,43%, in 2005 – 0,39%, in 2006 – 0,38%, in 2007 – 0,39%, in 2008 – 0,42%. After the global financial crisis, these figures began to fall significantly. And in 2016, they reached the lowest level – 0,16% of GDP. Indeed, in 2017, 4,7 billion UAH were allocated for science in Ukraine, and in 2018 – 6,1 billion UAH (0,27% of GDP). At the same time, university science receives up to 10% of the total budget financing for science. Although in 2019 for the first time, the state has provided the funds for the basic financing of science in universities (UAH 100 million).

The Law of Ukraine "On Priorities for the Development of Science and Technology"[22]. This law provided that the amount of funds allocated for the implementation of each of the priorities for the development of science and technology is stipulated annually by the Law on the State Budget of Ukraine. By October 2010, there was a legal rule according to which the amount of funds for such financing should not be less than 30% of the total amount of funding for science from the State Budget of Ukraine. However, the Law of Ukraine "On Amendments to the Law of Ukraine "On Priorities for the Development of Science and Technology" dated September 9, 2010 № 2519-VI, abovementioned requirement was canceled.

Law of Ukraine "On Innovation"[23]. In accordance with the Article 17 of the current Law, in order to implement the innovative projects, the subjects of innovation activities can be provided with necessary financial support (direct forms of stimulating innovation activity) by means of full or partial (up to 50%) interest-free funds for the prior innovative projects at the expense of budget funds; full or partial compensation at the expense of budget funds of interests paid by innovation entities to commercial banks and other financial and credit institutions for lending the innovative projects; the provision of state guarantees to commercial banks' lending priority innovation projects, etc. At the same time, state support for the implementation of an innovative project is provided unless it will be registered by the state. Admittedly, the procedure for this process of state registration is considered to be over-regulated and in fact has practically ceased to apply.

[22] Про пріоритетні напрями розвитку науки і техніки : Закон України від 11 липня 2001 р. № 2623-III (у редакції Закону № 2519-VI від 9 вересня 2010 р.) / Верховна Рада України. *Відомості Верховної Ради України*. 2001. № 48. Ст. 253.

[23] Про інноваційну діяльність : Закон України від 4 липня 2002 р. № 40-IV (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2002. № 36. Ст. 266.

It is also worth noting that the above-mentioned indirect forms of innovation activity stimulation were directly stipulated by the Law of Ukraine "On Innovation". For instance, during the period of validity of the certificate on the state registration of an innovative project, taxation of innovative activity objects shall be carried out in the following way. Particularly, 50% of VAT on transactions for the sale of goods (work execution, service delivery) related to the implementation of innovative projects and 50% of income tax from the implementation of these projects remained with the taxpayer. Afterwards, they were credited to the taxpayer's special account and used exclusively to finance innovative, scientific and technical activities. Moreover, such financial resources were essential for taxpayers to expand their own scientific, technological and experimental bases (Part 1 of Article 21 of the Law). Other conditions of indirect financial support were also predetermined.

At the same time, within the final provisions of this Law, it was assumed that these benefits and reliefs will come into force on January 1, 2003, but, unfortunately, these norms did not become fully operational. After all, the effect of Articles 21 and 22 was suspended for 2003, according to the Law of Ukraine dated December 26, 2002 № 380-IV; for 2004 – according to the Law of Ukraine of November 27, 2003 № 1344-IV, for 2005 – according to the Law of Ukraine dated December 23, 2004 № 2285-IV. And in accordance with the Law № 2505-IV of March 25, 2005, Articles 21 and 22 of the Law were excluded at all. Thus, the current version of the Law of Ukraine "On Innovation" provides for the provision of direct state financial support to subjects of innovation activity in the following way: full or partial interest-free crediting, full or partial compensation for interests; provision of state guarantees to commercial banks and property insurance for the implementation of innovative projects.

The financial instruments stipulated in such Laws of Ukraine as "On the Special Mode of Innovation Activity of Technological Parks"[24], "On Scientific Parks"[25], "On State Regulation of Activities in the Sphere

[24] Про спеціальний режим інноваційної діяльності технологічних парків : Закон України від 16 липня 1999 р. № 991-XIV (у редакції Закону № 3333-IV від 12 січня 2006 р., зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2006. № 5. Ст. 345.

[25] Про наукові парки : Закон України від 25 червня 2009 р. № 1563-VI (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2009. № 51. Ст. 1859.

of Technology Transfer"[26] were not operated properly. First of all, this can be explained by the fact that the relevant prescriptions were absent in the annual budget acts, within which the corresponding state support should be provided. Along with this, changes in fiscal and budget legislation also led to the cancellation of certain types of financial state support.

For instance, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in connection with the adoption of the Tax Code of Ukraine" dated December 2, 2010 № 2756-VI, the following forms of indirect support for technological parks were canceled: exemption from income tax; exemption from VAT on sales in Ukraine; exemption from VAT on imports; accelerated depreciation for fixed assets of technological parks. Consequently, since January 1, 2001, only the following preferences were functioning for technological parks: targeted subsidies in the form of import duty; funds received in foreign currency from the products sold by technological parks, which are not subject to mandatory sale; payments for export-import transactions that are carried out in a period of up to 150 calendar days (that is, the extension of the term of export-import payments from 90 to 150 days). Nevertheless, such-like provision shall not be considered a preference, as in 2010 certain changes were made, according to which the term of export-import payments was prolonged from 90 days to 180 days. Currently, in the context of liberalization of the foreign-exchange market (which had actively began from February 2019), this aspect had taken on another meaning, although this mechanism has practically not been implemented for almost ten years.

On a more general note, for more than fifteen years, experts have stressed on fact that society must begin to understand that transformed and commercialized knowledge in itself may generate considerable income, thereby leading to the new financial returns[27]. However, much greater

[26] Про державне регулювання діяльності у сфері трансферу технологій : Закон України від 14 вересня 2006 р. № 143-V (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2006. № 45. Ст. 1479.

[27] These questions were raised, in particular, within the following monographic publications: Національна політика розвитку інтелектуального капіталу з позиції глобалізації економіки та механізм її правового забезпечення : монографія / за ред. О.Б. Бутнік-Сіверського. Київ : НДІ ІВ НАПрНУ ; Інтерсервіс, 2017. 382 с. ; Оцінка людських ресурсів, людського потенціалу та людського капіталу (методико-правовий аспект з урахуванням зарубіжного досвіду) : монографія / О.Б. Бутнік-Сіверський, О.П. Орлюк та ін. ; за ред. О.Б. Бутнік-Сіверського. Київ : НДІ ІВ НАПрНУ ; Інтерсервіс, 2014. 158 с. ; Попович О.С. Науково-технологічна та інноваційна політика: основні механізми формулювання та реалізації / за ред. Б.А Маліцького. Київ : Фенікс, 2005. 226 с.

benefits may be realized by achieving the high level of real implementation the innovative methods in production of a high-tech products or modern technologies that will be created within qualitatively new knowledge[28]. Against this backdrop, it is appropriate to offer following scheme for the implementation of an innovative model in Ukraine. Firstly, researches are transformed into the knowledge as universal human wealth. Then they materialized in the relevant developments, which, in turn, are transformed into the knowledge as a specific product. Finally, with the aid financial and natural resources, they resulted into the innovation, which presupposes to be implemented into the production (providing new quality to technologies, goods, etc.). Within the implementation of such an algorithm, the money spent on research will be transformed into a new scientific knowledge, which, in turn, will generate substantially more financial possibilities (including resources) resulting in the intellectual capital and new technologies.

2. The outlook for financial and legal instrumentum that may be used in the implementation of innovation policy in Ukraine

In shaping the innovation economy, it must be assumed that Ukraine has a vast majority of the components inherent in innovation system. Moreover, the functions, the role and the algorithm for interaction of institutions and authorities that may have a considerable impact on the sphere of science and innovation are prescribed legislatively. A certain regulatory and legal framework for the implementation of innovative processes has also been established. At the same time, the real situation is considered to be unsystematic, primarily, due to the lack of clearly defined goals, as well fixed and stable mechanisms of interaction between these institutions.

[28] Statistical analysis of the obstacles to the implementation of innovations has shown that the most important of them are economic factors: lack of own funds (83,0% of respondents are industrial enterprises), insufficient financial support from the state (56,6%), high expenditures on innovation (55,9%), high economic risk (38,9%), imperfect legislative base (37,7%), long payback period for the innovations (34,6%), lack of funds from customers (31,7%). In addition, 19,5% of industrial enterprises has noted that the lack of information on new technologies is the major challenge for the implementation of innovations, and 18,5% – the lack of opportunities for cooperation with other enterprises and scientific organizations, 18.3% – lack of information on sales markets, 17,2% – lack of qualified personnel, 16,0% – lack of demand, and for 14,5% – enterprises' "resistance" to innovations. These factors were identified more than 15 years ago. At the present moment, unfortunately, they still remain relevant for the development of national innovation policy.

Notably, that applies to virtually all mechanisms and instruments, including financial and legal. Indeed, despite the institutional presence of a significant number of innovative structures peculiar for the developed economies (particularly, science parks, technological parks, technopoles, venture funds, etc.), the legal confirmation of their legal status (mainly at the level of special laws), as well as teleological features of financial instruments in the innovation legislation. Tragically, in practice such instruments do not work at all.

In 2015, the Ministry of Education and Science of Ukraine jointly with many interested experts (in particular, the Scientific Research Institute of Intellectual Property of the National Academy of Law Sciences of Ukraine) has developed virtually updated legislation in the field of innovation. The main reason for this is substantial shortcomings in current legal regulations, as it is deemed to be obsolete. Logically, such-like legislation fails to provide adequate legal regulation of those public relations existing in the current innovation environment. Despite the strong support and consensus on the need to adopt the new version, the Draft Law did not pass the evaluative assessment either in the Ministry of Economic Development and Trade or in the Ministry of Finance of Ukraine. Consequently, at the present moment Ukraine is working on obsolete legislation in the sphere of innovations, although it is this sphere that requires the most progressive mechanisms. In the Draft Law "On Support and Development of Innovation Activity"[29] there were stipulate new progressive legal rules regarding the Innovation Development Fund. Specifically, the definition of the mechanism for its financing, investment, commercialization, etc. was determined. Also, the conditions for co-financing in a public-private partnership were developed and prescribed. In other words, the functional mechanism was suggested. Admittedly, the viability and effectiveness of such mechanism was proven in the world's innovative economies. Also, within the framework of suggested Draft Law, there was developed a number of other financial mechanisms and instruments that were supposed to contribute to the development of the innovation environment in Ukraine. It had been assumed that abovementioned Draft Law will create the basis for intensive engagement of not only public, but also private financial resources.

[29] Проект Закону України «Про підтримку та розвиток інноваційної діяльності». URL: http://ndipzir.org.ua/archives/4015.

Also, one of the developer team from the Ukrainian Academe[30] has suggested a schedule to the Law of Ukraine "On Support and Development of Innovation Activity". A key idea of this legislative schedule was to suggest a comprehensive taxonomic classification of governmental support in the sphere of innovation activity in Ukraine. Particularly, it included detailed checklist of certain instruments, mechanisms and particular supportive measure, directly related to the public financial activities.

For example, in regard to the "Fiscal incentives" as one of the type of governmental support, there can be distinguished following instruments:

– granting of tax preferences on taxation of funds and other assets raised by the subject of innovation activity for the implementation of an innovation project that is included in the electronic register of innovation projects, that is provided with the state support from the Innovation Development Fund for a period exceeding the accounting period;

– granting of tax preferences for taxation of the earnings provided by the subject of innovation and obtained from the sale (supply) of innovative products, services, except for excisable goods and services for the supply of excisable goods, as the part of an innovative project that is included in the electronic register of innovative projects that are provided with the state support;

– granting of tax preferences for the payment of VAT on payment of the cost of research and development work performed by a university and/or a scientific institution, at the expense of implementing innovative projects included in the electronic register of innovative projects, which are supported by the state, venture funds for financing innovative projects, the Innovation Development Fund.

In its turn, in accordance with such type of state support as "Financial, credit support and provision of guarantees", the following instruments were marked out:

– enhancement of credit lines for subjects of innovation by providing the state guarantees for the implementation of innovative projects;

– partial reimbursement of expenses made by subjects of innovation activity on paying loan interests;

– one-time involvement of the State in the reimbursement of part of the costs of subjects of innovation activity for the acquisition of patents, licenses

[30] Such position was held by the experts of the National Academy of Sciences of Ukraine, in particular, the Center for Intellectual Property and Technology Transfer.

for the production of import substitution goods through direct budget support with the return of funds to the budget sometime after the establishment of well-functioned production;

– raising of long-term funds which may be provided by venture funds for financing innovative projects for the implementation of innovative projects;

– encouraging of commercial banks and non-banking financial institutions to credit and microcredit the spin-off and start-up companies;

– budget financing of spin-off and start-up companies in priority areas of innovation;

– assistance in lending for the for the acquisition and incorporating of new technologies;

– providing partial compensation for leasing, factoring transactions and payments for the use of guarantees for subjects of innovative activity;

– financing of patenting inventions, utility models, industrial designs and selection invention abroad;

– co-financing of innovative projects that are performed by business entities and presuppose the exploitation and/or generation of scientific and technical results obtained from scientific institutions and higher education institutions (the mechanism of an innovation voucher, within which funding is provided by the state or local budgets up to 50% of the project cost), etc.

From the perspective of Ukrainian internal innovative policy, the analyzed above instruments should be fully supported (perhaps, specifying some of the provisions so that they comply with the current financial legislation). However, the theory of financial law[31], as well as the current financial legislation and the specifics of its enforcement, allows us to claim the following.

As can be seen from the above, the implementation of such financial instruments mainly involves attracting certain budgetary resources to these processes. Consequently, these instruments should be enshrined in the current budget legislation. More specifically: from the general rules enshrined in the Budget Code of Ukraine, to the detailed legal prescriptions in the annual laws on the state budget of Ukraine (or decisions on local

[31] Regarding this issue, there are profound domestic scientific investigations. Namely, among them are: Фінансове право: навчальний посібник / Л.К. Воронова, Н.Ю. Пришва, Н.Я. Якимчук та ін. ; за заг. ред. Н.Ю. Пришви. Київ : Ліра-К, 2018. 376 с. ; Орлюк О.П. Фінансове право. Академічний курс : підручник. Київ : Юрінком Інтер, 2010. 808 с. In these works, the meaning, the essence, the principles and organization of budget holders, as well as their legal status are revealed.

budgets). Along with this, it is also of utmost important to provide the clear determination of a budget holder with a strict stipulation of the appropriate budgetary powers and determining specific means of their exercising. In the future, the relevant powers should be detailed in the budgetary estimates of the main and lower budget holders. Subject to the attracting specific recipients (which is quite appropriate for the innovation area), such powers shall be also prescribed at the level of relevant budget planning at the level of budget holders in terms of detailing such recipients.

If we consider the current budget legislation, from the Budget Code of Ukraine, annual budget acts and to the financial documentation of budget holders (from specialized ministries to the state scientific institutes or higher educational institutions that are funded from the corresponding budget), it turns out that the above financial instruments (expected to become a perspective in the innovation legislation) are not enshrined in the budget legislation at all. Even in case of its similarity with the existing mechanisms of direct state support for innovation (within the framework of current legislation), such instruments lie unused. This can be attributed to various factors, for example, due to the suspension of the use of relevant financial instruments in a particular budget period in connection with the fixation in the current budget act. Unfortunately, more than fifteen-year practice of innovation in relation to the application of budgetary legislation (even with the entry into force in 2011 of the virtually revised Budget Code) merely confirms correctness of this assertion. Illustrating the point is the current situation of the formation of a special fund of estimates for scientific institutions and universities directly financed from the budget. Although the updated Laws of Ukraine "On Scientific and Scientific-Technical Activities" and "On Higher Education"[32] (virtually applied in Ukraine from 2015–2016) provide preferences in the use of funds that form a special fund of such institutions, the Budget Code of Ukraine[33] has still not been made with appropriate changes. Thus, the indicated norms remain only prescriptions without the establishment of the corresponding budget-legal mechanism.

[32] Про наукову і науково-технічну діяльність : Закон України від 26 листопада 2015 р. № 848-VIII (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2016. № 3. Ст. 25 ; Про вищу освіту : Закон України від 1 липня 2014 р. № 1556-VII (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2014. № 37–38. Ст. 2716.

[33] Бюджетний кодекс України : Закон України від 8 липня 2010 р. № 2456-VI (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2010. № 50–51. Ст. 572. URL: http://zakon3.rada.gov.ua/laws/show/2456-17.

Scientific institutions receive basic budgetary financing within the program-targeted funding of research (fundamental or applied). Innovative direction can be incorporated in such basic financing, nonetheless this is not typical for the country in the last decade, since the level of financial support for national science is falling rapidly (even when there is an actual growth in absolute numbers of funds allocated to science in the last few years). Nevertheless, in relation to GDP, Ukraine, as was previously emphasized, has already crossed the line, determined by the world community[34] with an aim to understand whether the country's scientific sector is progressing or, on the contrary, is regressing. Accordingly, for modern day Ukraine, the economic function of science can be crucial only after the level of total expenditure on research and development will exceed 1,7% of officially recorded GDP. Given the fact that since 2010 EU has already set the goal to achieve the funding for science at the level of 3% of GDP[35], this figure over the past decade has been revised towards an increase.

Moreover, governmental certification of scientific institutions, the mechanism of which was developed firstly by the Ministry of Education and Science of Ukraine in 2017 and then in 2018 integrated to the Cabinet of Ministers of Ukraine with an aim to start from 2019, will lead to significant changes in the approaches to financing scientific institutions. In turn, it will depend from the category of certification received (from 100% of basic financing, ending with the decision to cease certain transactions).

In relation to the higher education institutions, in the future, if they are supported with budgetary resources, financing can be allocated either

[34] World experience has confirmed that when the expenditure on science is less than 0,4% of GDP, the latter in a given country can perform only a certain socio-cultural function. In contrast, when there is a small increase in this figures, that is scientific results can be recognized by the world scientific community, that is, it performs some cognitive function. And only with the expenditure on science, exceeding 0,9% of GDP, it can be expected to get noticeable impact of domestic science on the development of the economy, that is, its economic function is carried out. See, for example: Актуальні питання методології та практики науково-технологічної політики / Б.А. Маліцький, І.О. Бєлкін, І.Ю. Єгоров та ін. Київ : УкрІНТЕІ, 2001. С. 117.

[35] These issues were considered in a number of the author's publications, for example: Орлюк О.П. Проблеми формування та реалізації науково-технологічної та інноваційної політики. *Питання інтелектуальної власності* : збірник наукових праць. Київ, 2006. Вип. 4. С. 4–9 ; Орлюк О.П. Євроінтеграційні засади реформування сфери інтелектуальної власності в Україні. *Particularităţile adaptării legislaţiei Republicii Moldova şi Uerainei la legislaţia Uniunii Europene* : Conferinţa internaţională ştiinţifico-practică, 23–24 martie 2018 / com. org. V. Bujor et al. Chişinău : Iulian, 2018. P. 194–197.

separately for the basic financial support of universities, or directly for the research purposes. At the same time, the lack of an internal policy in the field of the use and commercialization of the intellectual activity results by universities and scientific institutions in fact reversed the effectiveness of the use of such budgetary resources. This matter specifically relates to the expertly working innovative environment, in which there is a bridge between science, education and business. Obviously, this shall be done primarily in terms of attracting investment in the research and development area, as well as reverse commercialization of the results of intellectual activity.

Similarly, previously given conclusions can be made in relation to the banking sector, especially in terms of the relevant financial and credit mechanisms that can be actively employed by innovation business entities. Certainly, in Ukraine, the banking sector can be considered as of private nature (although in the last few years the ratio of public and private banks has significantly changed). However, according to the financial instruments suggested above, the banking sector is planning to provide support on the possibility of obtaining of concessional lending by the innovative environment.

It cannot be argued that the banking sector does not grant the subjects of innovation activity at all. At the same time, such lending does not reflect the essence of the implementation of innovation policy with the aid of appropriate financial and credit mechanisms. Although national banks could for all this time (in accordance with both the old and the new legislation on banks and banking) focused on investment operations (including innovative ones), it is not possible to simultaneously define this as a permanent area of expertise. Respectively, in their focus area the banks can be considered more depositary than investment ones. Commonly, the state does not provide in current regulatory acts on the budget the provision to finance soft loans in the banking sector for subjects of innovation activity.

Furthermore, among the planned changes to the innovation legislation, with the special focus to the mechanisms of state support, the development and introduction of new financial instruments to support the subjects of innovation activity is provided. However, if we analyze this aspect from the gnoseological point of view, obviously does not attest the possibility of practical implementation. But while in Ukraine, even the fixed (by special innovative legislation) list of mechanisms has been considerably reduced.

Therefore, particular legal support primarily requires the well-established and balanced development of the national innovation system, which against all odds should become fully operational. Improvements in the operation and structuring of such a system remain equally important. It is necessary to take into account the fact that at the present moment there is a number of gaps and conflicts in the legal regulation of the innovation sphere. This frequently leads results in impossibility of the effective application of law-realization mechanism both at the stage of the formation of an innovative project and at the stage of its implementation. A major impediment is in obvious lack of officially prescribed financial mechanisms. In other words, in this case, the State does not take the opportunities that arise from the functions assigned to it in the implementation of a stable, flexible and effective policy in the area of public financial activities aimed at the facilitation of innovation environment.

According to the suggested holistic approach to improving the effective functioning and sustainable development of the national innovation system (hereinafter referred to as NIS), the mechanism of legal regulation of the latter should, in our opinion[36], include and define, first of all, the following aspects: 1) the concept of innovation activity, the principles of its implementation; 2) principles, key tenets of NIS regulation; 3) NIS structural elements; 4) the place of the state, the forms of its participation in the NIS; 5) mechanisms and measures of state regulation of NIS; 6) the system of government bodies and public authorities established to control over innovative processes in the country; 7) directions and programs for the NIS development, including the procedure for their development, approval, monitoring and adjustment, with defining the determining factors of its functioning in future periods; 8) objects, features and varieties of innovation relations; 9) the legal status, organizational and legal forms and requirements for subjects of innovation activity; 10) NIS infrastructure; 11) features of the

[36] For the first time, most of these tasks were outlined by the author during the Parliamentary hearings “Strategy of innovative development of Ukraine for 2010–2020 in the context of globalization challenges”, which took place in the Verkhovna Rada of Ukraine on October 21, 2010. In particular, this position has been repeatedly stated in the materials and speeches in the Committee for the Development of the Innovation System of Ukraine, namely in the materials at the parliamentary hearings “National Innovation System of Ukraine: Status and Legislative Support” which took place on March 21, 2018. However, the development of the Innovation Development Strategy was presented by the Ministry of Education and Science of Ukraine only in the autumn of 2018, and the relevant actions may only now get appropriate normative regulation.

legal circulation of intellectual and innovative objects in the innovation market; 12) legislatively stipulated financial mechanisms (financial, credit, fiscal) aimed at supporting the subjects of innovation activity and attracting investments in the sphere of innovation and development, as well as stipulating the legal status of public funds that can finance certain scientific, scientific-technological and innovation developments.

A special focus should be placed on the need to develop a national strategy for innovative development and the perspectives for its adoption. Thus, in October 2018, the Ministry of Education and Science of Ukraine submitted a draft Strategy for Innovative Development (hereinafter – the Draft)[37] for public discussion. In this Draft, along with the provisions regarding the directions of creating favorable conditions for the introduction of new technologies and the development of innovations, the enhancement of human capital, etc., it is suggested to increase the efficiency of the use of budget funds allocated for science and innovative development. Within the outlined scope of the present investigation, we will concentrate only on a few issues regarding the use of financial instruments.

Particularly, the Draft defines the areas for innovative developing and effective ways to address the problems at various stages of the innovation system functioning. Thus, at the stage of creating innovations, the increase in research funding is recognized to be an essential component of a competitive basis. In doing this, special emphasis is placed on the transition of the results obtained from fundamental research, on the level of applied research and scientifically-technical developments, to which business is attracted. Although this approach de facto involves the involvement of public-private partnership mechanisms, someone may argue on the effectiveness of such a method. However, in terms of domestic innovation environment, such mechanisms are not adequately provided by current legislation[38].

At the same time, the Draft does not correctly prescribe the financial instruments of state support for innovative development in Ukraine. The experience of innovatively developed countries has shown the direct

[37] Проект Стратегії інноваційного розвитку України на період до 2030 року, розроблений Міністерством освіти і науки України 21 жовтня 2018 р. URL: https://mon.gov.ua/storage/app/media/gromadske-obgovorennya/2018/10/22/innovatsiynogo-rozvitku-ukraini.pdf.

[38] Про державно-приватне партнерство : Закон України від 1 липня 2010 р. № 2404-VI (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2010. № 40. Ст. 1436.

interdependence between the state participation in these processes and the level of innovative development. Namely, the more the government invests resources (through direct or indirect budget financing, the creation of appropriate trust funds, preferential incentives for attracting investments, etc.), the higher the innovative indicators of the economy it may receive.

The Draft stipulates that during the transfer of innovations, it is necessary to establish fiscal charges for the transfer technologies abroad, funded from the State budget, a certain percentage, to a special fund (for instance, to the National Research Foundation) with a view to the subsequent support of innovation sphere. The application of these mechanisms in practice may cause a certain conflict between the norms of innovation and budget legislation. As a matter of practice, within the framework of the relevant legislation, the innovative structure presupposes intellectual property rights to service objects. Therefore, if in the process of technology transfer (or other operations aimed at commercialization of the scientific results), such a structure tries to transfer funds to the appropriate specialized fund. Thus, these actions can be interpreted by budget legislation as a violation of its norms and principles of budget financing. That is, without making appropriate changes to the Budget Code of Ukraine, this legal rule will not function properly.

In order to create favorable conditions for innovations to become commercial used, particularly, through the development of start-ups, the Draft plans to ensure favorable conditions for the activities carried out by venture business. Among them, namely, are: preservation of a simplified taxation and reporting system for small innovative businesses, which in this case serves as an State's instrument for competitiveness policy; legislative rationing of measures necessary for the state support of small innovative businesses, subject to co-financing from other sources, etc. To a certain extent, it is possible to agree with the above assumptions (even without considering the fact that at the present moment venture business in Ukraine does not fulfill its function of providing an innovative environment inherent in innovative economies). However, the strategic objective, approved at the governmental level (as established in this Innovation Development Strategy), will not in any way affect the next attempt to amend the Tax Code of Ukraine[39]. Since 2011, its application is

[39] Податковий кодекс України : Закон України від 2 грудня 2010 р. № 2755-VI (зі змінами) / Верховна Рада України. *Відомості Верховної Ради України*. 2003. № 52. Ст. 377. URL: http://zakon3.rada.gov.ua/laws/show/2755-17.

characterized by constant practice of violation of the principle of stability tax legislation[40] (in the general theory of law – the principle of legal certainty). This is especially true of the fact that such changes are often made by current state budget laws adopted at the end of the year. Another attempt to change substantially the taxation of small business and the use of a simplified taxation system took place literally at the end of February 2019 and was unsuccessful. In particular, it has touched the innovation environment in the IT sector. At this stage, such an attempt was rejected, but this can largely be explained by the ongoing electoral process in Ukraine. Without any doubt, this cannot exclude the corresponding changes in the future.

In order to create favorable conditions for the development of startups projects, the Draft provides for reducing the tax burden on wages and personal incomes with a partial transfer of the tax burden to the resources and land/real estate, etc. These provisions are considered to be quite controversial, as they are not supported by relevant economic calculations, which would testify in favor of ensuring an adequate level of tax revenues. Moreover, in this case we are talking mainly about the formation of revenues of local budgets.

In order to address the outlined challenges, the Draft did not focus on the possibility of the establishment the instruments of financial or tax policy. Nevertheless, among the expected results of the Strategy are an increase in revenues from the sale and use of intellectual property, high-tech products (results of research and development, software, know-how, and other intellectual services); increase in extrabudgetary funding of certain scientific researches financed through both domestic and foreign investors.

It is pertinent to note that on November 9, 2018 the Ministry of Education and Science of Ukraine, in cooperation with the National Institute for Strategic Studies, has organized a round table held to discuss the proposals and comments on the received draft Strategy for Innovative Development of Ukraine. Crucially, the aim was to design the common framework of future

[40] The role of the principle of stability in the development of the tax system is revealed in a number of publications written by representatives of economics and law, for example: Кучерявенко М.П. Зміст і класифікація принципів у податковому праві. *Право України*. 2002. № 2. С. 38–42 ; Бабін І.І. Податкове право : навчальний посібник. 2-ге вид., випр. Та доп. Чернівці : Чернівецький нац. ун-т, 2013. 496 с. ; Гетманцев Д.О. Стабільність та визначеність податкового права. URL: https://taxlink.ua/ua/analytics/4-1-9/stabilnist-ta-viznachenist-podatkovogo-prava/full/.

actions through the public discussion platform[41]. In connection with the comments and proposals, submitted to the draft decree of the Cabinet of Ministers of Ukraine "On the approval of the Strategy for Innovative Development of Ukraine for the period up to 2030", the new draft of the document is being finalized. This provides a temporary opportunity to finalize a strategic document in the field of innovation in order to predict the appropriate financial instruments in the sphere of development of national innovation policy.

CONCLUSIONS

Ukraine still lacks a holistic legal instrumentum that would contribute to the development of innovative business incubators, start-ups, innovation development centers, technology transfer centers, venture funds, etc. that would allow the public authorities to form comprehensively the national infrastructure of the innovation system. At the legislative level, priority areas are identified for both scientifically-technological and innovative development, and it appeared that little effort had been made to their development, which, in turn, does not produce the intended effect. Admittedly, its functional potential is not high, which is facilitated by imperfect legal mechanisms and existing inconsistency between the various legislative acts. That is why the issues related to the determination of the subjects of innovative legal relations and their legal status, are considered to be crucial for developing the mechanism of legal regulation of the national innovation system.

The current program-targeted method cannot fully satisfy the aim that identified in order to facilitate financing scientific, scientific-technical and innovative programs, as it inherently has two major shortcomings. Firstly, it does not provide neither any real mechanisms for managing the implementation of such a program, nor ways to achieve the intended goal. Secondly, it does not imply either actual control over the results that had to be obtained, nor real mechanisms for commercialization of such results. Given that every project that is flourishing, requires large financial resources, the importance of the role of the state in such a process is unquestionable. At the same time, Ukraine is characterized by the lack

[41] МОН пропонує до громадського обговорення проект Стратегії інноваційного розвитку України. URL: https://mon.gov.ua/ua/news/mon-proponuye-do-gromadskogo-obgovorennya-proekt-strategiyi-innovacijnogo-rozvitku-ukrayini.

of assistance to the innovation system and inefficient financial and legal instruments in terms of supporting and attracting private capital, which shall be used in the implementation of national innovation policy.

Among the significant challenges of our time are the issues related to the involvement of domestic regions in the process of innovation. In this vein, the idea that science not only allows the scientist to be engaged in creative work, but can also become a potentially-productive business (through the commercialization of the scientific results) needs to be promoted among early-career researchers. Therefore, it is deemed necessary to create regional centers for technology transfer, providing scientific schools with access to the cutting edge equipment, academic mobility, etc. This requires increasing mobilization of budget and grant financing, which are essential for the establishment of a modern scientific infrastructure, its modernization and equipping with the newest instruments and techniques. All this necessitate relevant changes to the Budget and Tax Codes of Ukraine.

In the light of the growing pace of global technological development and the challenges facing society today, and in order not to lose all the scientific potential that Ukraine still has, it is necessary to make efforts both at the level of developing a national strategy for innovative development, as well as directly in the field of implementation of innovation policy. We are deeply convinced that this will contribute to the development of national fundamental science, economics and innovation. At the same time, the role of financial and legal instruments in the implementation of such innovation policy is considered to be crucial.

SUMMARY

In this article, the author tries to put forward current issues and questions on the using financial and legal instruments in the implementation of innovation policy in Ukraine. Despite the significant implications of the pushback, the challenges arising from the innovation processes remain poorly understood. From this perspective, the article constitutes an initial attempt to combine the comprehensive analyses of the importance of innovation component in the economic development of the state and the challenges facing Ukraine today. Attempting to overcome this, the author tries to illustrate the contextual interplay between innovation processes and financial and legal tools. Thus, this article contextualizes the types and significance of financial instruments used in the national innovation system.

The paper also describes and discusses the shortcomings existing in national legislative regulation and enforcement. Specifically, the analytical framework of the current investigation is entirely built on the budget and tax legislation. The main contribution of this study is to assess key directions for improving the legislative regulation and strategic planning in the national innovation system domain. The author concludes with her observations about the determining influence of financial and legal instruments on the implementation of innovation policy in Ukraine.

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Republicii Moldova şi Uerainei la legislaţia Uniunii Europene : Conferinţa internaţională ştiinţifico-practică, 23–24 martie 2018 / com. org. V. Bujor et al. Chişinău : Iulian, 2018. P. 194–197.

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FINANCE AND LEGAL REGULATION OF SELF-GOVERNING AUTHORITIES ACTIVITY UNDER THE CONDITIONS OF DECENTRALIZATION

Nadiia Pryshva

INTRODUCTION

Problems solving which face our state nowadays demands of realization of fundamental reforms in many areas of society.

One of the reforming directions is a securing of efficient institution of self-governing authorities through the effective decentralization, which includes financial one and improvement of territorial authority organization in Ukraine[1].

The modern institution of local government holds a specific place in the political system (in management mechanism of society and state). The local government, its authorities aren't a part of the government mechanism, while it doesn't mean its stand-alone self-sufficiency from the state, the government.

Self-government is effected by the territorial community in the procedures laid down by the law not only direct but also through the self-governing authorities to which belong according to Clause 140 of the Constitution of Ukraine village, settlement and town councils and their bodies of executive power.

The local self-governing authorities that represent common interests of the territorial communities of villages, settlements and towns are district and regional councils.

Viable solution by the territorial community of local significance problems, exercise of own and delegate powers demands a relevant financial base for functioning of the local self-governing authorities.

Time and again scientists got to cross-light of the matters of financial activity of the local self-governing authorities in their works.

In particular, S.O. Nishchymna publicized principles of financial activity, N.Ya. Yakymchuk and O.A. Muzyka-Stefanchuk dwelled on the subject of the public officers' powers and authority of budgetary relations,

[1] Овчаренко В.А. Місцеве самоврядування в Україні: історичні витоки, становлення та перспективи : монографія. Київ : Логос, 2014. С. 648.

Z.I. Peroshchuk analyzed the problems of legal regulation of local government budgets[2].

The consideration of the above-noted topics became particularly topical with the beginning of taking measures on the decentralization of power in Ukraine and stabilizing of reasonable steps in the legislation in effect.

The goal of this article is the definition of the self-governing authority activities as a part of the public officers' fiscal relations, the clarification of their power essence in conditions of the financial decentralization and the determination of basic directions for the improvement of legislation in effect in terms of regulation of local government budgets.

1. Powers of self-governing authorities in conditions of financial decentralization

The activity of self-governing authorities should correspond to the European principles of general application built-in in the European Charter of Local Self-Government. In Clause 9 of this document it is said "that the local self-governing authorities have a right to their own suitable financial resources within the framework of the national economic policy, they can make free use of them within the scope of their powers. At any rate, a part of the financial resources of the local self-governing authorities are pulled from local taxes and dues, amount of which they are entitled to impose within the law"[3].

The local self-governing authorities are an integral part of the public officers' public financial relations. They belong to the group of public officers' powers of authority who not only can take part in the financial legal relations but should do that on the basis of their competence.

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[2] Якимчук Н.Я. Розпорядники бюджетних коштів: система та правовий статус : монографія. Чернівці : Чернівецький нац. ун-т, 2009. 647 с.

Музика-Стефанчук О.А. Органи публічної влади як суб'єкти бюджетних правовідносин : монографія. Хмельницький : Хмельницький ун-т управління та права, 2011. 384 с.

Перощук З.І. Правові проблеми регулювання відносин у сфері бюджетної системи України : автореф. дис. … докт. юрид. наук : 12.00.07 ; Київський нац. ун-т ім. Тараса Шевченка. Київ, 2015. 38 с.

[3] Європейська хартія місцевого самоврядування : міжнародний документ від 15 жовтня 1985 р. (ратифікований Законом України від 15 липня 1997 р. № 452/97-ВР) / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/994_036 (дата звернення: 13.01.2019).

According to Clause 143 of the Constitution of Ukraine the local self-governing authorities can be given by the law particular powers and authority of the government agency. Delegation of powers is provided by financing of the within named expenses using funds of State budget of Ukraine or by fixation for the revenues of the local budgets of particular national-level taxes etc.

The local self-governing authorities as the public officers' public financial relations according to the regulations of the Budgetary Code of Ukraine (henceforth – BC of Ukraine), Internal Revenue Code of Ukraine (henceforth – IRC of Ukraine) and the Law of Ukraine "About local government in Ukraine"[4] are endued with powers of authority in the field of budgetary activity and in the field of taxation. Realization of the above-noted powers and authority directed to serving the territorial public interest. As O.A. Muzyka-Stefanchuk notes, financial activity of the local self-governing authorities is a simple public indication[5].

To such powers and authority of the village, settlement, town councils and the unified territorial communities' councils belong: consideration of the local budget forecast (will be in use from the 1st of January 2020); adoption of the local budget; introduction of amendments to it; approval of the account about the fulfillment of the prorated budget; purposeful fund formation, approval of the regulations about these funds; decision making about fulfillment of the local borrowings; decision making about the rollover from the prorated local budget; decision making about assignment of consent to the cooperation of the territorial communities, the subject of which is a territorial community of a village, a settlement, a town in the manner defined in the Law of Ukraine "About the cooperation of the territorial communities", about approval of the draft contract about the cooperation and other decisions related to the fulfillment according to within named the Law of the cooperation of the territorial communities.

The village, settlement, town councils and the unified territorial communities' councils formed according to the law and the long-term plan of the territorial communities' organization within their powers accept a

[4] Про місцеве самоврядування в Україні : Закон України від 21 травня 1997 р. № 280/ВР / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80 (дата звернення: 13.01.2019).

[5] Музика-Стефанчук О.А. Фінансово-правова основа місцевого самоврядування в зарубіжних країнах : навчальний посібник. Київ : Правова єдність, 2009. С. 26.

decision about the assessment of local taxes and dues as provided in Clause 12 of the IRC of Ukraine and about assignment according to the legislation in power of the local taxes and dues. Provided that they are incapacitated to impose individual promotional rates of the local taxes and dues for separate legal entity and private individuals – enterprisers and private individuals or frank them these taxes and dues[6].

The principal directions of the reformation of the local government institution which will make a strengthening of the financial base of the local government have to include with: 1) the realization of financial decentralization (budgetary decentralization, the reformation of tax system); 2) the widening of cooperation practice of the territorial communities which is realized by a conclusion of treaties about the cooperation between two or more territorial communities with the objective of ensuring of social economic and cultural development of the territories, improvement of service quality for people on the ground of common interests and goals, efficient implementation by the local self-governing authority of the defined by the law powers and authority.

Decentralization is a process which foresees the delegation of the best part of powers and authority from the State government body to the local self-governing authority for the purpose of assignment of public services to their consumers, residents of prorated territorial community. Delegation of powers to the local self-governing authorities is provided by the assignment them prorated financial resources, fastening of a part of national-level taxes and dues to the local government budgets, the reformation of the local taxes and dues system, emerging role of inter-budget relations, reconsideration of inter-budget transfers etc.

A legislator neither operates with the term “financial decentralization”, nor “budgetary decentralization”.

This terminology is mainly used in scientific recourses and among the experts. The budgetary law scientist Z.I. Peroshchuk describes budgetary decentralization as one of the directions of the budgetary system of Ukraine reformation, as a process of delegation of powers in the area of the budgetary system of Ukraine the goal of which is the efficient satisfaction of public interest.

[6] Податковий кодекс України : Закон України від 2 грудня 2010 р. № 2755-VI / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2755-17 (дата звернення: 13.01.2019).

The scientist proposes to determine directions of the budgetary decentralization, having developed the corresponding Conception and having foreseen in it such directions: modernization of internal structure of the budgetary system (it is possible after implementation of the administrative reform); optimization of the budgetary institutions (it is possible after implementation of the economic branch reform); determination of financial standards in fiscal capacity on the ground of the state social standards and criterions (it is possible after implementation of the economic branch reform); realization of the budgetary decentralization which can be the most effective on conditions that all above-noted reforms will be effected, including the tax reform[7].

The scientists say that the forms of the exercise in centralization are: fixing of dead rules of the budgetary process; the performance of transactions with all public funds through the accounts of pay offices; the government action to public people toward the taking out and recapture of the public funds[8].

The decentralization which is effected within a framework of the budgetary system of Ukraine foresees the delegation of bigger powers to the local budgets, but it doesn't renounce the above-noted principles contained in the centralization.

In our opinion, the term "financial decentralization" is accurate indicative of the processes which are in the modern financial system of Ukraine, as the changes in the budgetary system of Ukraine should be simultaneously considered in co-ordination with the tax reforming of Ukraine. Only as a whole they can lead to positive solution in this area.

In the Conception about reforming of local government and the organization of territorial governance in Ukraine it was laid stress on the applicability of the financial decentralization.

However, the first major step as to its real integration was the passage of the bill "About the introduction of amendments to the Budget Code

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[7] Перощук З.І. Правові проблеми регулювання відносин у сфері бюджетної системи України : автореф. дис. … докт. юрид. наук : 12.00.07 ; Київський нац. ун-т ім. Тараса Шевченка. Київ, 2015. С. 8–9.

[8] Ніщимна С.О. Принципи публічної фінансової діяльності в бюджетній сфері : дис. … докт. юрид. наук : 12.00.07 ; Київський нац. ун-т ім. Тараса Шевченка. Київ, 2013. С. 167.

Шевелева Н.А. Бюджетная система России (проблемы правового регулирования в период интенсивных реформ) : дисс. … докт. юрид. наук : 12.00.14. Санкт-Петербург, 2005. С. 66.

of Ukraine as to the reforms of inter-budget relations" of the 28th of December 2014 № 79-VIII which was: has been strengthened revenue of the local budgets (for example, the excise duty for realization of sub-excise goods by the incorporated and unincorporated businesses of retail dealing has been included in the budgets of the united territorial communities, the local budgets; the budgets of the cities of district subordinance, village, settlement budgets); has been determined that the local budgets should be signed into law not later than the 25th of December, regardless of the date of the passage of the bill about the state budget; the united territorial communities were gained the right for direct inter-budget relations with the State budget of Ukraine; has been determined the kinds of transfers that go into the oblast and district budgets, the budgets of the cities of oblast subordinance and the budgets of the united territorial communities from the State budget of Ukraine etc.

In the coming years the legislator has continually made amendments in the BC of Ukraine, among the latest – the Law of Ukraine "About making amendments in the BC of Ukraine" of the 22th of November 2018 № 2621-VII by which has been brought in a new kind of subvention to the local budgets for the state assistance for people with special educational needs (Clause 103^3 BC of Ukraine); to protected expenses of the budget it has been assigned the expenses of the common fund of the budget for the program of state guarantees of public health service (Clause 55 BC of Ukraine); the regional council have been gained the right to make borrowings and provide the local guarantees (Part 3 of Clause 16 and Part 2 of Clause 17 BC of Ukraine) etc.

The analysis of the legislation in power (both tax and budget) allows drawing conclusions toward the key directions which are actualized on going to the financial (budgetary) decentralization. They are:

– developments in the structure of the budgetary system of Ukraine. Budgeting of the united territorial communities as an independent kind of the local government;

– reforming of the local budgets revenue;

– reforming of the local budgets expenditure;

– improvement of the inter-budget transfers system;

– assignment of local taxes status for the payments which earlier belonged to the group of the national-level taxes (dues).

Also it has been simplified the administration of local guarantees and local external borrowings; it has been changed the approach to leveling-off of the local budgets taxability; it has been brought in the mid-term budgetary planning which foresees forecasting and consideration of the local budget for the medium-term period which includes the planned one and next two budgetary periods (will be used as per 01.01.2020).

The above-noted directions are reflected in the laws of Ukraine "About making amendments in the Budgetary Code of Ukraine as to the reform of inter-budget relations" of the 28th of December 2014 № 79-VIII, "About making amendments in the Budgetary Code of Ukraine" of the 2nd of March 2015 № 212-VIII, "About making amendments in the Tax Code of Ukraine and some other legislative instruments of Ukraine as to the tax reform of the 28th of December 2014" № 71-VIII and so on.

One of the forms of the effect of the decentralization should be also considered the right of the territorial community of a village, a settlement, town acting by the body of executive power of their councils in consolidation of funds of the prorated local budgets on a contractual basis.

The realization of the above-noted powers allows the local self-governing authorities pooling financial resources for efficient implementation of joint projects, for consolidated financing of the utility companies, establishments and organizations, solution to other questions dealing with common interests of the territorial communities.

In the Law of Ukraine "About cooperation of the territorial communities" has been foreseen such forms cooperation:

1) deputation one of the parties to cooperation by other parties to cooperation the fulfillment of one or more assignments with transfer of prorated resources to them;

2) realization of joint projects that foresees the coordination of activities of the parties to cooperation and accumulation of assets by them for the purpose of cooperative carrying out prorated activities;

3) consolidated financing (support) by the parties to cooperation enterprises, establishments and organizations of the municipal form of ownership – infrastructure facilities;

4) formation by the parties to cooperation joint utility companies, establishments and organizations – joint infrastructure facilities;

5) formation by the parties to cooperation a joint managing authority for the cooperative carrying out specific by the law powers[9].

The financing of cooperation is realized by using the funds of the local budgets of the parties to cooperation; self-taxation; other unforbidden by the legislation resources, in particular, the state budget, and international technological and financial support, credit resources.

2. Principal directions of reforming of the financial and legal basis of the local government

According to Clauses 2 and 5 BC of Ukraine, the budgetary system of Ukraine is made as the whole complex of the state budget and the local budgets organized inclusive of economic relations, state, administrative and territorial structure and regulated by the rules of law. The local budgets are the budget of the Autonomous Republic of Crimea, the regional, district budgets and the budgets of local government. The budgets of the territorial communities of villages, their corporation, settlements and towns (which include districts in towns and cities), the budgets of the united territorial communities which are formed according to the law and the long-term plan of organization of communities belong to the last one[10].

With the aid of the budgets that make up the budgetary system of the state, the last one realizes the distribution and redistribution of a part of value of gross domestic product made both at the level of national economy and at the regional level over a particular period of time and in such a way changes the profile of production, has an impact on the operating results of the incorporated and unincorporated businesses, realizes social transformational change[11].

Since 2016 in Ukraine it has been set the budgets of the united territorial communities as part of the budgetary system of Ukraine. The united territorial communities are voluntary bodies which have been formed and are in effect according to the Law of Ukraine of the 5th of February 2015

[9] Про співробітництво територіальних громад : Закон України від 17 червня 2014 р. № 1508-VII / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/1508-18 (дата звернення: 13.01.2019).

[10] Бюджетний кодекс України : Закон України від 8 липня 2010 р. № 2456-IV / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2456-17 (дата звернення: 13.01.2019).

[11] Крохина Ю.А. Бюджетное право и российский федерализм. Москва : Норма, 2008. С. 90.

Управління державним бюджетом України : підручник / за ред. М.Я. Азарова. Київ : Зовнішня торгівля, 2010. С. 25.

“About voluntary Association of Communities”. The allied territorial communities of the villages, the settlements and the towns belong to the parties to voluntary association of the territorial communities. According to the Law of Ukraine “About the State budget of Ukraine for 2019” (Supplement № 6) 804 of such budgets are in effect nowadays in Ukraine[12]. As a comparison, in 2016 there were only159 of them.

In Ukraine there are in the area of 9 thousand of the local budgets, the majority of which, especially in the country:

a) have low amount of incomings (both own and in the form of inter-budgetary transfers);

b) are formed inside of the territorial communities with small population size.

The above-noted factors complicate addressing problems and functions set before the prorated territories. The processes as to association of the territorial communities and formation of the prorated budgets allow accumulating and doling out money for solution of problems which are general for some territorial communities. Under the conditions of the realization of the financial (budgetary) decentralization the united territorial communities gained the right in the direct inter-budgetary relations with the state budget.

In the law about the State budget for then-year it has been foreseen the educational and healthcare subventions, base governmental grants to the budgets of the united territorial communities.

There is a good reason to consider the united territorial communities as an emerging model on going to the future of the administration and territorial reform which has to offer a new administration and territorial subdivision of the country that would fit the times.

The special kind of the budgetary legal relations is inter-budgetary relations; the goal of their regulation is the assurance of correlation of powers for the fulfillment of the expenses protected by the instruments of legislation to the budgets and financial resources which have to implement of these powers.

One of the ways of the budgetary decentralization is a change of the structure of the inter-budgetary transfers and a usage of them as a one

[12] Про Державний бюджет України на 2019 рік : Закон України від 23 листопада 2018 р. № 2629-VIII / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2629-19 (дата звернення: 13.01.2019).

of the important sources of balancing of the local revenues. The inter-budgetary transfers are the funds which are placed from one budget into another one without compensation and irrecoverable. They are divided into: the base governmental grants (a transfer given from the state budget to the local budgets for the horizontal alignment of taxable capacity of the territories); the subventions; the reversed governmental grants (funds given to the state budget from the local budgets for horizontal alignment of taxable capacity of the territories); extra governmental grants.

Such kinds of transfers are given from the State budget of Ukraine to the local budgets: the base governmental grants; the subventions for the realizing of the state programs of social safety-net programs; extra governmental grants for the compensation of loss of the local budget revenues by the impact of exemption, set by the state; extra governmental grants for the realizing of given from the state budget the maintenance cost of the education establishment and healthcare facilities; the subvention for realizing of investment programs; the subvention for state care assistance the people with special educational needs; the medical subvention, the subvention for financing of event listings of social and economic offsetting risk of population living on the territory of the supervised zone; the subvention for response projects of the collieries and peat facilities and upkeep of pumping machinery in secure mode under the terms and conditions of co-financing (50%); the subvention for financial assurance of building, reconstruction, repair and local road maintenance of public service, streets and roads of communal property in settlements; other extra governmental grants and subventions according to Clause 97 BC.

The transfers which go into the local budgets from the State budget in 2019 enshrined in the Law of Ukraine "About the State budget of Ukraine for 2019" of 23th of November 2018 № 2629-VIII (Supplement № 6 and Supplement № 7). For example, 3 451 424,9 thousand hryvna for the education subvention and 4 199 262,0 thousand hryvna for the healthcare subvention will go agreeably into the budget of the city Kyiv in 2019.

According to the amendments made in the Tax Code of Ukraine by the Law of Ukraine "About making of amendments to the Tax Code of Ukraine and some legal acts of Ukraine to the tax reform" of the 28th of December 2014 № 71-VIII it was realized the redistribution of some taxes (dues). The wealth tax was absorbed into the local taxes composition (Clause 10 TC).

According to Clause 265 TC the wealth tax consists of an immovable property tax which is different from a land property; a transport tax; a land fee. The land fee is a statutory charge imposed in a land tax form and a rent for the land property of the state and communal property. That particular payment is an element of the tax system of Ukraine which was absorbed up to 2015 into the national-level taxes (dues)[13].

The legal regulation of the immovable property tax which is different from a land property needs the improvement for increasing of the revenue receipts into the local government budgets. It is subject to reconsideration of governance mechanism as to the record keeping of these taxpayers, formation of the tax assessment base and determination of the taxation rate. According to sub item 266.3.2. item 266.3 of Clause 266 TC the base of tax assessment of the objects of residential and nonresidential property which includes their fractions which are owned by private individuals are got evaluated by the inspection body on grounds of the data of the State Register of Proprietary Rights to Immovable Property which are donated by the state registration authorities rights to immovable property and/or on grounds of the prorated original document of the taxpayers, especially the deeds.

The named the State Register went live since the 1st of January 2013 according to the Law of Ukraine "About the state registration of proprietary rights to immovable property and their encumbrances" of the 1st of July 2004 № 1952-IV and the Rules of procedure of the State Register of proprietary rights to immovable property, approved by the Order of the Cabinet of Ministers of the 26th of October 2011 № 1141. The private individuals who gained the freehold interest in the property up to the 1st of January 2013 have indeed become taxpayers either in case of prorated data entry into the base of the State Register or in case of their direct applying for the State Fiscal Service of Ukraine. The imperfections system of the registration of the taxpayers let the considerable part of private individuals – the owners of residential and nonresidential properties – retain out of the taxation.

It is useful to delegate a part of powers as to the control of the local taxpayers' registration from the State Fiscal Service of Ukraine to the local self-governing authorities which are interested parties as to pumping up the local budgets.

[13] Податковий кодекс України : Закон України від 2 грудня 2010 р. № 2755-VI / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2755-17 (дата звернення: 13.01.2019).

In Ukraine the property tax rate which is different from a land property depends on the minimum salary, but the taxable base depends on the common area of the real property item. The different approaches for determination of the taxable base of immovable property are used in different countries, in particular, the imputed land and building value (Greece, Denmark, South Korea and Norway), the predicted value of rent (France), the cadastral appraisal of immovable property (Spain, Mexico), the area of the first floor building (Poland, Slovenia, Czech Republic).

In Canada it is taken into account three factors in forming of the taxable base and the tax rate setting: expenses incurring by providing this immovable property; incomings that the immovable property brings to owner; the market-value of the immovable property at the time of its evaluation. The rate is considerably raised in case of the office rooms' usage when carrying out special activities (provision of healthcare, hairdressing saloons, legal profession)[14].

Improvement of the legal regulation of the above-noted tax in Ukraine should be provided with experience study of this fee collection in foreign countries.

In setting of the tax elements on the immovable property which is different from a land property the legislator should take into account such data as a location of the immovable property in the settlement and its ratable value. This will let first do the tax more socially just; at the second, will drive up revenues into the local government budget from the mentioned payment.

The reforming of the budgetary system is connected with significant changes as a part of the revenues in the local budgets. According to item 23 part 1 Clause 2 BC the revenues of the budget are tax, non-tax and other revenues on non-repayable terms, the levying of which has been foreseen by the legislation of Ukraine (including of transfers, fee for administrative services, own revenue receipts of the budgetary institutions). To be noticed is that the conception "incomings" and "revenues" are not identical. The incomings of the budget are only one of the kind's revenues of the budget. The latest ones include also credit reimbursements into the budget, proceeds from the state (local) borrowing, proceeds from selling state-owned assets (as to the state budget), refund of public money from deposits, revenues in consequence of selling/production of capital issues.

[14] Луніна І.О. Оподаткування багатства: міжнародний досвід та уроки для України. *Фінанси України*. 2013. № 2. С. 25.

Beginning in 2015 the excise duty from the proceeds by the incorporated and unincorporated businesses of the sub-excise goods retail trading; license fees for some kinds of business functions and certificates which are out by the district administrations, the executive bodies of the prorated local councils which is deemed to have agreeably been received into the district budgets and the budgets of local government and some others have been included in a part as incomings of the local budgets that is general fund revenue of the city of oblast subordination budgets, city of Kyiv, the district budgets, (and since 2016) the budgets of the united territorial communities with the purpose of their growth. This is an incomplete list of incomings which have been delegated to the local budgets according to the reforming of the budgetary system and the local budget replenishment by the incomings.

The listed revenues are real incomings replenishing budgets that considerably supports the local budgets and gives agreeably a possibility the local executive bodies and the self-governing authorities to fulfill their powers.

The prorated amendments dealt with other clauses of the BC which confirm the list of incomings in the regional budgets (Clause 66 BC), in the cities of district subordinance budgets, in the village, settlement budgets (Clause 69 BC).

The legislator strengthening the revenue of the local budgets made changes also to the expenditure of the local budgets that way having foreseen standby powers of the self-governing authorities for carrying out of expenses for realizing of tasks as to supports of operations of the prorated territories.

The expenses of the budget are funds directed to the fulfillment of the programs and event listings foreseen by the prorated budget. A part of the expenses which were carried through from the State budget of Ukraine was included in the list of expenses of the local budgets. In particular, it is subject to the expenses for specialized education; education establishment for the citizens who need social care and rehabilitation etc.

The allocation of charges between the branches of the budgetary system is performed within the principle of subsidiary which is based on necessity as high as possible delivery of public services to their direct consumer, and the guarantee of delivery of these services.

The expenses are divided into three groups:

1) the expenses for functioning of the budgetary institutions and the realizing of the event listings which provide necessary fundamental delivery of public services and which are located to the nearest consumers (are

performed from the budgets of villages, their communities, settlements, towns and from the budgets of the united territorial communities);

2) the expenses for functioning of the budgetary institutions and the realizing of the event listings which provide the delivery of basic guaranteed public services for all citizens in Ukraine (are performed from the cities of oblast subordination budgets, also from the cities of district subordinance budgets and from the united territorial communities' budgets);

3) the expenses for functioning of the budgetary institutions and the realizing of the event listings which provide the guaranteed public services for the certain categories of citizens or the realization of the programs, the requirement in which is for all regions of Ukraine (are performed from the regional budgets).

CONCLUSIONS

1. The financial (budgetary) decentralization is a regulated by law generic process of reforming of the budgetary and tax systems directed to strengthen of the local budgets, vesting of standby powers to the local self-governing authorities as to performance of expenses for providing of functioning of the prorated territorial communities.

2. The financial decentralization should be considered as a process which is only at the origin and needs improvement in terms of legislation. The set of rules of BC as to extension of the inter-budgetary transfers, improvement of the spending system and some others need agreeably adaptation.

3. The realization of the tasks to the fulfillment of which directed the financial decentralization needs the improvement of legal regulation of the local taxes and dues, changes in their structure, specification of governance mechanism of taxpayers' list on the immovable property which is different from a land property and a land tax.

4. The finishing of this process is connected not only with changes in the budgetary and tax areas, but depends on the realization in future the administrative and territorial reform, implementation of the tasks established in Conception of reforming of the local government and territorial government organization in Ukraine[15].

[15] Про схвалення Концепції реформування місцевого самоврядування та територіальної організації влади в Україні : Розпорядження Кабінету Міністрів України від 1 квітня 2014 р. № 333-р / Кабінет Міністрів України. *Офіційний вісник України*. 2014. № 18. Ст. 831.

The scientists appreciating the legislator's action steps as to the decentralization warn for all that "weakening of the budgetary centralization (as a result of the budgetary decentralization) can be the key for arising of arbitrary local self-governing authorities' action in a part of command of financial resources of the local budgets by the latest ones"[16].

SUMMARY

The article deals the matters of financial activity of the local self-governing authorities under the conditions of decentralization. It has been determined a place of the local self-governing authorities as part of the entities of public financial legal relationships and has been defined some of their powers and authority in the field of financial activity. The article defines "decentralization" and "financial decentralization". It has been carried out of the laws and regulations analysis in which the key stages and forms of the financial decentralization have been fixed. It has been characterized the key building blocks of the financial decentralization – the budgetary decentralization and reforming of the tax system. It deals the changes in the legal regulation of the local taxes (dues), it has been found out the content of the wealth tax as a replenishing building block of the local government budgets. It has been made available event listings as to improvement of the legal mechanism for levy upon property which is different from a land property and a land tax.

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PUBLIC AND PRIVATE FINANCIAL CONTROL: LIMITS OF LEGAL REGULATION

Lesia Savchenko

INTRODUCTION

The issues of control over public finances have recently been of interest not only to scholars who try to theoretically substantiate their own version of the need to improve its organization and implementation, managers and employees of controlling entities pointing to the problems encountered in practice and outline their solutions, but ordinary citizens, who are taxpayers and want to know how the management of budget funds and other types of public financial resources is carried out. Effective, efficient control of public finances is important for any state, regardless of its state structure, a form of government that tries to take various measures to properly regulate it. But despite this, there are many questions in its organization and implementation, and one of the problems is the unclear definition of certain concepts within normative acts, in particular, the subject matter of control, the financial control itself, its subjects, the types – public and private ones, which also affect on the limits of their legal regulation.

There is no comprehensive approach in Ukraine to the development of financial legislation, which is negatively reflected on the content of regulations adopted within financial and control sphere. Various terms are used in literary sources, like: finances, financial control, public finances, state financial resources, state financial control, local finances, finances of local self-government agencies, local financial control, municipal financial control, finances of Ukraine, public finances, public financial control, control over public finances, private financial control, auditing financial control and others. At the same time normative and legal acts do not contain unambiguous definition of these concepts. This complicates the management of public finances, including the organization and implementation of their control. The term “finances” is a historical category; it is referred by representatives of various sciences. Taking into account the positions of the representatives of financial law science, who outlined the legal essence of finances, public finances, financial resources highlighted by us in scientific work[1], and the norms of the Law of Ukraine “On the

[1] Савченко Л.А. Фінансово-контрольне право: становлення та розвиток : монографія. Київ : Юрінком Інтер, 2017. С. 7–15, 36–42.

Transparency of Using Public Funds"[2], which defines the term "public funds", the legislation of foreign countries, in particular, the Law of the Republic of Moldova "On Public Finances, Budget and Tax Liability"[3], the Law of the Republic of Tajikistan "On Public Finances of the Republic of Tajikistan"[4], it is expedient to determine the public finances as social relations, one of the subjects of which is the state, acting by certain agencies, local self-government agencies, other public entities, which in the course of management (regulation, information, control, etc.) ensure timely formation, distribution and usage of public funds and other public financial resources. The author supports the position of scholars who believe that public finances in material terms are fund resources. In this sense, they are the direct subject matter of public and private financial control. The objective of this publication is to find out the limits of legal regulation of public and private financial control precisely for public finances, which includes, in particular the definition of the essence of the specified types of control, the peculiarities of the legal status of certain entities that perform it.

1. Financial control – the basic category for determining the essence of its varieties like public and private ones

Financial control is exercised by various entities that differ with the legal status, including powers or rights, duties, functions, performed tasks, etc. Public and private financial control is the types of financial control, where the entities that carry it out are the basis for its division. Consequently, to formulate the definitions of public and private financial control, not contained by the legislation, an understanding of their essence, it is advisable to refer to the concept of "financial control", which is interpreted by scholars, and which outlines the subjects of control, its types.

Financial control in various forms and types existed from the moment of the state's origin, but it was clearly defined by the scholars, indicating

[2] Про відкритість використання публічних коштів : Закон України від 11 лютого 2015 р. № 183-VIII / Верховна Рада України. *Відомості Верховної Ради України*. 2015. № 16. Ст. 109.

[3] О публичных финансах и бюджетно-налоговой ответственности : Закон Республики Молдова от 25 июля 2014 г. № 181. URL: http://lex.justice.md/ru/354213/ (дата обращения: 10.10.2018).

[4] О государственных финансах Республики Таджикистан : Закон Республики Таджикистан от 19 марта 2013 г. № 946. URL: http://medt.tj/documents/main/normativno-pravovie-akti/zakonodatelnie-akti/ru/02522-ru.pdf (дата обращения: 10.10.2018).

the subjects who carried it out, only at the end of the XX century. L.I. Voronina and S.O. Shokhin[5] point out that financial control is a multidimensional, inter-sectoral supervisory system of state and public authorities with control powers. It is difficult to support such a position, because control is not always supervision; besides the authors also refer NGOs to the subjects that have control powers, that unlikely have supervisory functions. The formulation of the definition of financial control through the term of "activity", induced scholars to delineate precisely the subjects that perform it, and, accordingly, to the possibility of distinguishing the varieties. Ye.O. Voznesenskyi[6] indicated that financial control is the activity of state and public agencies, and divided it into state and public ones noting that these types of control are not contradictory, each of them has its own patterns of development, their differences are determined by the volume of authority of the respective subjects, the legal regulation of their activity, the nature of the impact measures that they apply, etc. The definitions of financial control, containing publications on financial law, cover different subjects, in particular, it is indicated that it is the activity of: state and public organizations and agencies[7], state agencies and non-governmental organizations[8]; legislative and executive agencies of public authorities and non-governmental organizations[9] of state agencies, and in certain cases also non-state agencies empowered with appropriate powers by the law[10]. Some scholars[11] distinguish the following types of financial control, as state and public, while others[12], besides mentioned types indicate

[5] Шохин С.О., Воронина Л.И. Бюджетно-финансовый контроль и аудит. Теория и практика применения в России : научно-методическое пособие. Москва : Финансы и статистика, 1997. С. 13–16.

[6] Вознесенский Э.А. Финансовый контроль в СССР. Москва : Юридическая литература, 1973. С. 43, 73.

[7] Воронова Л.К., Мартьянов И.В. Советское финансовое право. Киев : Вища школа, 1983. С. 37, 38.

[8] Фінансове право : навчальний посібник для студентів юридичних вузів та факультетів / за ред. Л.К. Воронової. Київ : Вентурі, 1998. С. 51.

[9] Фінансове право : підручник / Є.О. Алісов, Л.К. Воронова, С.Т. Кадькаленко та ін. ; кер. авт. кол. і відп. ред. Л.К. Воронова. Харків : Фірма «Консум», 1998. С. 81.

[10] Финансовое право : учебник / под ред. О.Н. Горбуновой. Москва : Юристъ, 1996. С. 47, 48.

[11] Шорина Е.В. Контроль за деятельностью органов государственного управления в СССР. Москва : Наука, 1981. С. 44.

[12] Ялбулганов А.А. Финансовый контроль как институт финансового права. *Юрист.* 1999. № 4. С. 44.

the existence of independent (audit) control. P.S. Patsurkivskyi[13] divides financial control into the state, internal economic, public and independent (audit) ones. Consequently, from the definitions of financial control that were formulated by scholars in the XX century and the types that they provided, it was clear that the majority inclined to the existence of the state financial control, because state agencies were defined as entities. The indication that control is exercised by public authorities that include legislative and executive agencies, testifies about the allocation of its kind as a public one from the financial control system. Appeal to such entities of financial control as public agencies, public organizations indicates on the existence of public financial control, and to non-state organizations and non-state agencies – private financial control, which sometimes referred to as independent (audit) control, as we can see from the foregoing.

The XXI century was marked by a somewhat renewed approach from the representatives of financial and legal science to the definition of financial control. O.Yu. Hrachov[14] in the monographic research describes two interacting, but separate spheres – state and non-state financial control and notes that the classification of financial control over entities involves its division into national (interdepartmental), intra-economic, internal and public, municipal (carried out by local self-government agencies) and independent (carried out by auditors, audit companies). M.F. Bazas[15] interprets financial control in the broad sense as a multidimensional inter-sectoral control and supervision system of state and public agencies with control functions and notes the following types of financial control not outlining the classification criterion of division: state (non-government), municipal (public), independent (audit), control of the owner (its forms are departmental and intra-economic). It is difficult to support the position regarding the identification of municipal and public financial control, especially since the author notes that the municipal (public) is the control over the state of accounting and reporting at enterprises that are communal property, etc. L.K. Voronova[16] determined financial control as the activities of state and municipal and other public

[13] Пацурківський П.С. Правові засади фінансової діяльності держави: проблеми методології : монографія. Чернівці : ЧДУ, 1997. С. 185.

[14] Грачева Е.Ю. Проблемы правового регулирования государственного финансового контроля : монография. Москва : Юриспруденция, 2000. С. 12–13, 119, 122.

[15] Базась М.Ф. Методика та організація фінансового контролю : підручник для студентів вищ. навч. закл. Київ : МАУП, 2004. С. 12, 23.

[16] Воронова Л.К. Фінансове право України : підручник. Київ : Прецедент ; Моя книга, 2006. С. 82.

agencies regulated by the legal norms to verify the timeliness and accuracy of planning, the validity and completeness of the received money to the relevant funds, the correctness and efficiency of its use. Consequently, L.K. Voronova paid attention to the existence of "other public agencies", which were entrusted with control powers that included public agencies (audit) and economic entities themselves, that is, allocated public and private control, along with state financial control. Appeals to the municipal authorities, point out the distinction of municipal (local) financial control into the separate form. O.P. Orliuk[17] notes the financial control as a deliberate activity of state-authorized agencies, enterprises, institutions and organizations irrespective of the forms of ownership and allocates such its types as the state, internal economic, departmental, audit financial control, control of financial and credit institutions, municipal financial control. Such a fairly successful assignment of state-authorized agencies, enterprises, institutions and organizations, regardless of ownership forms to the entities that carry out financial control made by O.P. Orliuk, testifies to the existence of both public and private financial control. E.S. Dmytrenko[18] defines financial control as the activity of state, local, public and other entities regulated by the norms of law, and distinguishes state, local, internal, public and audit (independent) financial control. O.A. Muzyka-Stefanchuk[19] while determining financial control outlines: the range of its subjects – agencies of state power, local self-government agencies, enterprises, institutions, organizations, public associations irrespective of the forms of ownership and other entities; the following types – state, departmental, internal economic, audit (non-state), financial control of local governments. As can be seen from the foregoing, the authors, singling out audit control, note it differently, that is, they use different terminology, synonyms. So, E.S. Dmytrenko indicates that it is an independent control, and O.A. Muzyka-Stefanchuk states that it is non-state control. It is stated in the training manual on the legal basis of accounting and tax accounting and audit[20] that the norms according to audit, which is

[17] Орлюк О.П. Фінансове право. Академічний курс : підручник. Київ : Юрінком Інтер, 2010. С. 148–149, 153.

[18] Дмитренко Е.С. Фінансове право України. Загальна частина : навчальний посібник. Київ : Алерта ; КНТ, 2006. С. 206, 211–212.

[19] Музика-Стефанчук О.А. Фінансове право : навчальний посібник. 3-тє вид., доп. і перероб. Київ : Атіка, 2007. С. 49–50, 52.

[20] Правовые основы бухгалтерского и налогового учета, аудита в Российской Федерации : учебное пособие / отв. ред. Е.М. Ашмарина. 2-е изд., перераб. и доп. Москва : Юрист, 2006. С. 9.

independent non-state control, interact directly with all financial law institutions. Consequently, its authors clearly state that the audit is non-state control, but they also use the term “independent”.

It is difficult to support the point of view that financial control depending on the types of subjects of its implementation is divided according to the spheres of economic systems into state – in the sphere of state power, municipal – in the sphere of local self-government, independent – in the field of civil society[21]. And the division of financial control into types depending on the subjects of its initiation – state, municipal, economic (control of the owner or management body of a business entity), public[22], does not allow to understand, which of these varieties may include financial control that can be carried out by state authorities after the appeal of the object of control and is initiative, but not obligatory.

Other representatives of financial and legal science also outline the types of financial control: state (general state and departmental), municipal, intra-company (internal economic), audit[23]; state and independent[24]; state, municipal, public, audit[25].

The foregoing makes it possible to state that all definitions of financial control refer to state agencies as their subjects, in all its classifications on types, there is also such kind of control as the state one, which testifies to the fact that it is the state agencies are the main subjects of control over public finances. Addressing the works of scholars of different periods allowed us to conclude: it is the state financial control that first originated, then the public and its other varieties. Although financial control is currently carried out by public authorities, but more and more often they are called public entities; thus, it is advisable to clarify the financial and control terminology, in particular, not to use the term of “state financial control”, but to use the concept of “public financial control”.

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[21] Дмитренко Г.В. Концептуально-методологічні основи організації і здійснення фінансового контролю : монографія. Київ : АДЕЛЬФ-Україна, 2009. С. 27–28.

[22] Державний фінансовий контроль: ревізія і аудит / П.К. Германчук, І.Б. Стефанюк, Н.І. Рубан, В.Т. Александров, О.І. Назарчук. Київ : НВП «АВТ», 2004. С. 34–35.

[23] Финансовое право : учебник / О.Н. Горбунова, Е.Ю. Грачева и др. ; отв. ред. : Е.Ю. Грачева, Г.П. Толстопятенко. Москва : ТК «Велби» ; Изд-во «Проспект», 2003. С. 40.

[24] Воронова Л.К., Кучерявенко Н.П. Финансовое право : учебное пособие для студентов юридических вузов и факультетов. Харьков : Легас, 2003. С. 57–58.

[25] Финансовое право / Н.И. Химичева, Е.В. Покачалова ; отв. ред. Н.И. Химичева. Москва : Норма, 2005. С. 154.

The allocation of municipal or local control into a separate kind, is due to the fact that historically local self-government agencies were initially defined as state entities, were later separated from state agencies, that is, they ceased to be subjects of the centralized apparatus of state administration, began to be considered as non-state subjects, namely, the subject exercising local self-government. At present time, local self-government in Ukraine is a specific form of public authority that is carried out by territorial communities, relevant councils and other subjects that form a system of local self-government in accordance with the Art. 5 of the Law of Ukraine "On Local Self-Government in Ukraine". This makes grounds to state that local control, or otherwise control, carried out by local self-government agencies or municipal financial control is public financial control. Consequently, the concept of "public financial control" is comprehensive, covering both state control and local (municipal, communal) control.

The evolution of financial control has led to the separation and the need for independent existence of audit financial control, which, in our opinion, is a prototype of modern private financial control. Consequently, independent, or audit control according to the scholars, should be attributed to such a kind of financial control as a private one. Taking into account the expediency of using the term of "public financial control", which also covers the state one; it would be logical and correct to apply the term "private financial control" in relation to audit control instead of the term "non-state control". The term "audit control" is used in literary sources, because its subjects are auditors, audit companies. Scholars call this kind of control in the appropriate way. Nowadays, public authorities start to accomplish the audit and their officials are called state auditors. International auditors are stated within international documents, in particular the Art. 14 of the Lima Declaration of Controlling Guidelines[26] states that members and employees of the Supreme Control Agency, i. e. state auditors, should have the relevant qualification and be honest; while recruiting the staff for the highest control agency, it is necessary to pay attention to the level of their theoretical training, work capacity and experience in the specialty. The requirements for state auditors, who are employees of the highest financial control agencies (hereinafter referred to

[26] Лимская декларация руководящих принципов контроля : принята IX Конгрессом Международной организации высших контрольных органов (INTOSAI) в 1977 г. URL: http://zakon.rada.gov.ua/laws/show/606_001 (дата обращения: 10.12.2018).

as the HFCA) are put in details within the Standards on the Audit of State Finances. The documents approved by the Cabinet of Ministers of Ukraine and related to the conduction of the state audit, for example, the Regulations for conducting the state financial audit of the state (regional) target programs[27] by the State Audit Office of Ukraine, its interregional, territorial agencies, contain the definition of the concept of "state auditor" – is an official of the agency of the State Audit Office having the authority to conduct the state financial audit, and enjoys the rights specified in the Law of Ukraine "On the Basic Principles of the Implementation of the State Financial Control in Ukraine". Taking into account this aspect, the term "audit control", which the subjects are independent auditors and audit commpanies, is not appropriate for classifying financial control into types, depending on the subjects that perform it.

If the financial control is divided into public and private depending on the subjects that implement it, then it is appropriate to determine the public financial control as the activity of state agencies, local self-government agencies, other public subjects, with the respective control powers, aimed at verifying the legality of the financial planning, provision of financial discipline in the process of mobilization, distribution, redistribution and use of public finances, in cases established by law in regard to the application of sanctions to violators of financial discipline. Private financial control is the activity of non-state auditors, audit companies, relevant services of the economic entities themselves, including internal audit units of private enterprises, institutions, organizations, which provides the conduction of control measures to determine the effectiveness, feasibility, legality of the management of public finances and providing counseling assistance in this area. Consequently, public financial control is directed at the prevention of violations in the field of public finances, their detection, elimination and, in cases provided by the law, imposing sanctions for their commission; in turn, the subjects that accomplish private financial control are not endowed with the rights to apply measures of influence to violators of financial legislation, their activities mainly have advisory, consultative and informative nature. Differences in the purpose of private and public financial control are

[27] Про затвердження Порядку проведення Державною аудиторською службою України, її міжрегіональними, територіальними органами державного фінансового аудиту державних (регіональних) цільових програм : Постанова Кабінету Міністрів України від 29 серпня 2018 р. № 692 / Кабінет Міністрів України. URL: http://zakon.rada.gov.ua/laws/show/692_2018 (дата звернення: 10.12 2018).

determined by the scope of the powers of the relevant subjects, or by the rights granted to them, by the legal regulation of their activities, by the range of control objects, etc.

2. Features of legal regulation of public and private financial control

Public and private financial control relates to public finances, which are its subject matter, therefore, the limits of their legal regulation, which depend on the range of subjects implementing them, their powers or the granted rights, etc. should be clearly defined. Nowadays, the organization and implementation of the control over public finances in Ukraine are regulated by a wide range of normative and legal acts, which include international documents developed by international organizations and internally issued by state authorities and non-governmental organizations in accordance with the granted powers and rights. International and legal documents are adopted in the form of Declarations, Standards, etc., for the dissemination of positive experience; they determine the general principles of the organization of the control over public finances and, in general, are of a recommendatory nature. The national regulations can be divided into those of a general nature, that is, those that determine the legal status of the relevant state agencies, the rights and obligations of other entities, including those in the financial and control sphere, and those directly related to the control over public finances – special documents. But, unfortunately, there is no a comprehensive regulatory act nowadays in Ukraine that would regulate the issues of the control over public finances, would define general approaches to its organization and implementation, the basic concepts in the financial and control sphere, would outline the range of controlling entities and other issues within the control sphere. Therefore, as we note[28], there are different approaches of scholars to the financial and control terminology that is used to characterize the control over public finances and, accordingly, the definition, the interpretation of its elements in normative acts, which complicates the implementation of norms and indicates the imperfection of legal regulation.

The national regulations, depending on the subject, can be divided into those adopted by the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, by other state agencies, and those

[28] Савченко Л.А. Фінансово-контрольне право: становлення та розвиток : монографія. Київ : Юрінком Інтер, 2017. С. 99–139.

adopted by the entities that exercise control over public finances. The Constitution of Ukraine defines the competence of the relevant public agencies, in particular the Accounting Chamber, the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, local self-government agencies and other subjects, including those in the financial and control sphere. The Budget Code of Ukraine provides detailed powers of the Verkhovna Rada of Ukraine, the Accounting Chamber, the Ministry of Finance of Ukraine, local financial authorities, the State Treasury of Ukraine, the agencies of state financial control, the Verkhovna Rada of the Autonomous Republic of Crimea, relevant councils, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations and executive agencies of the relevant councils for monitoring the compliance with the budget legislation.

The Tax Code of Ukraine outlines the peculiarities of tax control and the powers of state authorities regarding its implementation. The Laws of Ukraine "On the Cabinet of Ministers of Ukraine", "On the Committees of the Verkhovna Rada of Ukraine", "On Local Self-Government in Ukraine" and others, refer to normative and legal acts of general character and to some extent related to the control over public finances. An important place is given to the following Laws of Ukraine: "On Audit of Financial Reporting and Audit Activity", "On the Basic Principles of the State Financial Control in Ukraine", "On the Accounting Chamber"[29].

The Cabinet of Ministers of Ukraine approves documents that are important for the organization of the control over public finances, for example, the Concept for the Implementation of the State Policy in the Field of Reforming the System of State Financial Control up to 2020, the Strategy of Reforming the System of Public Finances Management for 2017–2020, and others. Besides, the Cabinet of Ministers of Ukraine approves the Regulations defining the tasks and functions of entities that have control powers, including the Regulations on the State Audit Office of Ukraine, Regulations on the State Fiscal Service of Ukraine, Regulations on the State Treasury of Ukraine, Regulations on the Civil Service for financial monitoring of Ukraine. Regulatory acts that determine the legal status of entities that carry out control over public finances contain articles that refer to other entities with whom they coordinate their activities, interact, but do

[29] Савченко Л.А. Фінансово-контрольне право: становлення та розвиток : монографія. Київ : Юрінком Інтер, 2017. С. 291–293.

not determine the methods and forms, the boundaries of such interaction, coordination. Therefore, the entities that exercise such a control, in order to properly interact, coordinate actions during the control measures, adopt joint Instructions, Regulations, Orders and other documents related to their activities within the financial and control sphere[30]. It is clear from the above that the implementation of public financial control regulates a large number of normative acts. In regard to private financial control, it is only the Law of Ukraine "On Audit of Financial Reporting and Auditing"[31] that outlines the legal principles for the audit of financial reporting, the proceedings of audit activity in Ukraine, and regulates the relations that arise in its proceedings. This Law indicates that the Cabinet of Ministers of Ukraine may establish the peculiarities of proceedings of audit activities in relation to certain tasks in accordance with interstate agreements concluded in line with the legislation on behalf of the Government of Ukraine with the governments of other states, and the National Bank of Ukraine, the National Commission on Securities and Stock Market, the National Commission that carries out state regulation in the area of financial services markets may impose additional requirements on information relating to the audit or review of the financial reporting and must be contained in the audit report. Consequently, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the National Commission on Securities and Stock Market, and the National Commission that carries out state regulation in the area of financial services markets issue sub-normative acts related to private financial control.

The main international regulatory act on the issues of control over public finances is the Lima Declaration of Controlling Guidance – a document adopted in October 1977 at the IX Congress of the International Organization of Supreme Audit Institutions (INTOSAI). This document on the official website of the Accounting Chamber of Ukraine is called – the Lima Declaration of the Guidelines for the Audit of Public Finances. To our mind, such a translation of the title of the Declaration is not entirely successful, since it concerns not just auditing, but financial control. The preamble of the Lima Declaration indicates the necessity of the existence of the HFCA in each state, in order to ensure effective and

[30] Савченко Л.А. Фінансово-контрольне право: становлення та розвиток : монографія. Київ : Юрінком Інтер, 2017. С. 293–294.

[31] Про аудит фінансової звітності та аудиторську діяльність : Закон України від 21 грудня 2017 р. № 2258-VIII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2258-19 (дата звернення: 10.12.2018).

targeted use of public financial resources. But, unfortunately, legally there is no such a subject in Ukraine, but in fact it is the Accounting Chamber. The Code of Ethics of the INTOSAI is very important for auditors, or otherwise the Ethics Code, or the International Ethics Code of Controllers (Auditors) of the Public Sector, adopted by the International Organization of Supreme Audit Institutions, has an extanded official list of the values and principles that should be followed by controllers (auditors) in their work. Taking into account the importance of applying high ethical standards, the decision of the Accounting Chamber of our country in 2015 adopted the Rules of professional ethics of Accounting Chamber officials, which were developed considering such international documents as the Lima Declaration of Controlling Guidelines and the Code of Ethics[32]. The Abu Dhabi Declaration was adopted in December 2016, at the XXII Congress of the International Organization of Supreme Audit Institutions, which outlines INTOSAI activities in the coming years.

The international documents related to the control over public finances include the Audit Standards – in broad terms, documents that establish common rules for the organization and implementation of audit, the purpose of which is to assist auditors in performing their duties. Approval of audit standards for entities that carry out private financial control is the right of the Audit Chamber of Ukraine. For example, the Audit Chamber of Ukraine on June 8, 2018[33], with the aim of introducing audit standards of the International Federation of Accountants at the national level, decided to approve International standards for quality control, audit, review, and other assurance and Related Services Edition 2016–2017 for mandatory application starting from July 1, 2018 as national audit standards. The Public Audit Standards, which define the general principles for conducting an audit of state finances, play an important role in the implementation of the state audit.

Certain documents related to the activities of the HFCA (Declaration of the Board of Governors of the Supreme Audit Institutions of the Member States of the Commonwealth of Independent States on ensuring publicity in the activities of the HFCA and their interaction with different branches of power, the Declaration on the general principles of the activities of the HFCA of the Member States of the Commonwealth of Independent States,

[32] Савченко Л.А. Фінансово-контрольне право: становлення та розвиток : монографія. Київ : Юрінком Інтер, 2017. С. 294–295.

[33] Матеріали офіційного сайту Аудиторської палати України. URL: https://www.apu.net/ua.attachments/artilcle/1117/361_рішення (дата звернення: 10.12.2018).

the Declaration on the basis of independence of the HFCA of the Member States of the Commonwealth of Independent States) are also adopted by the Council of Heads of Supreme Audit Institutions of the Member States of the Commonwealth of Independent States.

The legislation of our state regarding public financial control does not fully comply with international standards and the subjects that carry it out are guided by national regulations. For example, the Article 2 of the Law of Ukraine "On the Accounting Chamber" states that "the organization, powers and procedure for the activities of the Accounting Chamber are determined by the Constitution of Ukraine, this and other Laws of Ukraine" and only the separate Art. 3, concerning the principles of the Accounting Chamber and the guarantees of its independence, assumes that the Accounting Chamber applies the basic principles of the activities of International Organization of Supreme Audit Institutions (INTOSAI), the European Organization of Supreme Audit Institutions (EUROSAI) and International Standards of Supreme Audit Institutions (ISSAI) in a part that does not contradict the Constitution and laws of Ukraine. We believe that the Art. 2, "Legal Basis of the Accounting Chamber", which has the general nature, should contain norms about the mentioned standards.

The validity of this proposition is also confirmed by the Abu Dhabi Declaration[34], which points to the improvement of the INTOSAI standardization process, and notes that the INTOSAI standardization process should help to ensure the access of HFCA to high-quality internationally recognized audit standards, and the INTOSAI will play an active role in promoting the application and implementation of international standards of HFCA. The Art. 1 of the Law of Ukraine "On the Basic Principles of the Implementation of State Financial Control in Ukraine"[35] states that "the agency of state financial control in its activities is guided by the Constitution of Ukraine, the Budget Code of Ukraine, this Law, other legislative acts, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine". Thus, this Article does not refer to international documents that can be used by the State Audit Office of Ukraine in its activities; therefore, it needs to be amended.

[34] Абу-Дабійська декларація (2016 р.). URL: http://www.ac-rada.gov.ua/doccatalog/document/16750671/Abu% (дата звернення: 10.12.2018).

[35] Про основні засади здійснення державного фінансового контролю в Україні : Закон України від 26 січня 1993 р. № 2939-XII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2939-12 (дата звернення: 10.12.2018).

Unlike the legislation that determines the legal status of the subjects of public financial control, the Law of Ukraine "On Audit of Financial Reporting and Audit Activities"[36] clearly stipulates that "audit activities are regulated by this Law, other legal acts and international auditing standards".

Thus, the legal regulation of private financial control is clearly oriented to international norms. The said Law contains Section 2, entitled "Professional Standards and Audit Report". The Law does not contain the definition of the concept of "professional standards" it is also not clear from its content what professional standards represent. Besides, Section 2 itself deals only with international auditing standards and the audit report, while the Art. 1 of the Law defines international auditing standards as "a set of professional standards that set the rules for the provision of audit services and reveal ethics and quality control issues"[37]. Therefore, it is expedient, either to clarify the title of Section 2, in particular to call it "International Standards on Auditing and Audit Report" that corresponds to its content, or without changing the title of the Section to indicate there that they are professional standards.

The normative acts of Ukraine say about the need to reform the control sphere, taking into account international documents. Thus, the specific clauses of the Strategy for Reforming the Public Finance Management System for 2017–2020[38], defined the task for the reform: the system of state internal financial control; state financial control; independent external financial control (audit) (elaboration of the strategic plan for the development of the Accounting Chamber, strengthening of the Accounting Chamber's ability to accomplish control in accordance with international standards INTOSAI and ISSAI). This confirms our position regarding the need to clarify the legal bases of the Accounting Chamber's activities.

Legislation defining the legal status of auditors and audit companies, unlike the regulations relating to the legal status of entities that carry out

[36] Про аудит фінансової звітності та аудиторську діяльність : Закон України від 21 грудня 2017 р. № 2258-VIII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2258-19 (дата звернення: 10.12.2018).

[37] Про аудит фінансової звітності та аудиторську діяльність : Закон України від 21 грудня 2017 р. № 2258-VIII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2258-19 (дата звернення: 10.12.2018).

[38] Про схвалення Стратегії реформування системи управління державними фінансами на 2017–2020 роки : Розпорядження Кабінету Міністрів України від 8 лютого 2017 р. № 142-р / Кабінет Міністрів України. URL: http://zakon2rada.gov.ua/laws/show/142-2017 (дата звернення: 10.12.2018).

public financial control, such as the Accounting Chamber, the State Audit Office of Ukraine, contains clear norms aimed at ensuring compliance with the principles of independence and objectivity. Thus, the Law of Ukraine "On Audit of Financial Reporting and Audit Activity"[39] refers to restrictions on the provision of services, an assessment of threats to independence, the appointment and removal of an auditor from the provision of services on the mandatory audit of financial reporting, and others, that influence on the objectivity, effectiveness for the conduction of control measures, and the Art. 1 even formulates the definition of the concept of "competitive interests". The Article 19 of the Law of Ukraine "On the Accounting Chamber"[40] establishes general requirements to a member of the Accounting Chamber "during the exercise of own powers, he must adhere to the requirements of the Constitution and Laws of Ukraine, not to commit any actions that compromise the position of a member of the Accounting Chamber and may cause doubt in his objectivity, impartiality and independence", and the Art. 32 states that during the implementation of measures of the state external financial control (audit) of persons, who are part of the control group of the Accounting Chamber have the right to claim loyalty of rejection to participate in the activities of external public financial control (audit) if circumstances indicating a potential competitive interests. We believe that the persons who are part of the control group of the Accounting Chamber are obliged to declare such cases, therefore, it is necessary to make amendments to the specified Article – this will assist to observe the objectivity of control over public finances.

The effectiveness of both private and public financial control is important for the control over public finances. And this depends, among others, on the quality control of the activities of the entities that carry it out. The peculiarities of quality assurance of audit services have been quite successfully defined in the separate Section of the Law of Ukraine "On Audit of Financial Reporting and Audit Activity"[41], while the issues

[39] Про аудит фінансової звітності та аудиторську діяльність : Закон України від 21 грудня 2017 р. № 2258-VIII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2258-19 (дата звернення: 10.12.2018).

[40] Про Рахункову палату : Закон України від 2 липня 2015 р. № 576-VII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/6576-19 (дата звернення: 10.12.2018).

[41] Про аудит фінансової звітності та аудиторську діяльність : Закон України від 21 грудня 2017 р. № 2258-VIII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2258-19 (дата звернення: 10.12.2018).

of the quality of public financial control have been only partially provided in the legislation. Thus, the art. 43 of the Law of Ukraine "On the Accounting Chamber"[42] refers to the external audit of the Accounting Chamber and external evaluation of its activities, but it has been noted that "the Verkhovna Rada of Ukraine may decide on the implementation of an external audit of the Accounting Chamber. <…> An external audit of the Accounting Chamber may be conducted by once every three years. <…> An external assessment of the Accounting Chamber's activities regarding the compliance with international auditing standards may be carried out by one of the leading members of the international organization of supreme financial control agencies (INTOSAI) at the request of the Accounting Chamber". Such norms, which contain the term "may", do not precisely indicate on the necessity, the obligation of quality control of the activities of the Accounting Chamber. Taking into account the norms of the international document, in particular the Abu Dhabi Declaration[43], which refers to the widespread use of the assessment system of effectiveness for the activity of the HFCA, and it is noted that the XXII Congress of INOSAI adopted the Conceptual basis of the assessment system of effectiveness for the activity of the HFCA (SAI Performance Measurement Framework, PMF) for the use by all INTOSAI members as a comprehensive tool for a scientifically based assessment of the effectiveness of the HFCA activities and identifying opportunities for the improvement, we consider it necessary to provide cases of the mandatory conduction of external assessment of the activities of this subject of public financial control in the Law of Ukraine "On the Accounting Chamber". It is also advisable to determine the peculiarities of external quality control to conduct control activities by the agencies of state financial control in the separate Article of the Law of Ukraine "On the Basic Principles of the Implementation of State Financial Control in Ukraine"[44]. This right should be given to the Accounting Chamber as an important subject of public financial control. Besides, taking into account the special constitutional status of the Accounting Chamber, this entity should

[42] Про Рахункову палату : Закон України від 2 липня 2015 р. № 576-VII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/6576-19 (дата звернення: 10.12.2018).

[43] Абу-Дабійська декларація (2016 р.). URL: http://www.ac-rada.gov.ua/doccatalog/document/16750671/Abu% (дата звернення: 10.12.2018).

[44] Про основні засади здійснення державного фінансового контролю в Україні : Закон України від 26 січня 1993 р. № 2939-XII / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/2939-12 (дата звернення: 10.12.2018).

determine the main directions of the state policy in the field of control over public finances, both public and private one.

Currently, there is no single approach to the development of Ukrainian legislation on control over public finances, which is negatively reflected on the content of regulations adopted in the financial sector. There is no comprehensive document that would define the directions of development of public and private financial control in Ukraine, including the application of international standards of the control over public finances. The improvement of the organization and control over public finances, first of all, should include the development and adoption of the Financial Control Development Strategy, the Law of Ukraine "On Public Financial Control"[45], the Methods for Assessing the Effectiveness of Public Financial Control, and the activities of the entities that carry it out.

CONCLUSIONS

Addressing the types and definitions of financial control available in the writings of scholars made it possible: to follow the origin of such its varieties as public and private control; to conclude that it primarily originated from the state financial control, then there was the public control and its other varieties; and that audit control is a prototype of modern private financial control. The control over public finances is carried out by state agencies, local self-government agencies, which are called public entities, indicating the need to clarify the terminology and the use of the concept of "public financial control". Taking into account the subjects carrying out control over public finances, and its purpose, the author has formulated own definitions of the concepts of "public financial control" and "private financial control".

The limits of legal regulation of both public and private financial control depend on the range of subjects implementing them, their powers or granted rights, etc. Issues of control over public finances in Ukraine are regulated both by internal regulations and international documents. Improvement of the legal regulation of the control over public finances indicates the need for making alterations to: the Articles 2, 32, 43 of the Law of Ukraine "On the Accounting Chamber"; the Art. 1 and the title or content of the Section 2 of the Law of Ukraine "On the Basic Principles of

[45] Савченко Л.А. Фінансово-контрольне право: становлення та розвиток : монографія. Київ : Юрінком Інтер, 2017. С. 347–357.

the Implementation of the State Financial Control in Ukraine". In order to properly manage control over public finances, it is expedient to: give the Accounting Chamber the right to carry out external quality control over the conduction of control activities by the state financial control agencies; to determine the main directions of the state policy in this sphere both in relation to public and private financial control; to adopt the Strategy for the Development of Financial Control, the Law of Ukraine "On Public Financial Control", the Methodology for Assessing the Effectiveness of Public Financial Control, and the activities of the entities that carry it out.

SUMMARY

The author of the article has paid attention to public finances, which are the subject of both private and public financial control, and has formulated their definition in order to understand the peculiarities of the legal regulation of its organization and implementation. The author has provided the notion of financial control available in literary sources and own definition of the concepts of "public financial control", "private financial control". The purpose of public and private financial control has been outlined. Special attention has been emphasized on domestic regulations and international documents on the control over public finances. It has been concluded that the legislation of our state with regard to public financial control does not fully comply with international standards, and the subjects that implement it are guided by domestic regulations. It has been stated that the legal regulation of private financial control is clearly oriented to international norms. Propositions on making amendments and alterations to the legislation of Ukraine have been formulated in order to improve the legal regulation of public and private financial control.

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THE EMERGENCE OF CENTRAL BANKS AND FINANCE-LEGAL STATUS OF NATIONAL BANK OF UKRAINE

Vladyslava Savenkova

INTRODUCTION

The legal status of the Central Bank in each country is reflection of democratic traditions of society, level of economic development of state, and of processes, that take place in its economy.

One of the first activities to reform national economy was the introduction of the two-level banking system that consists of the NBU and other banks, and branches of foreign banks, that were created and function in Ukraine according to the Law of Ukraine "On Banks and Banking Activity" and other laws in Ukraine.

Implementation of financial-legal grounds for NBU's activity is done through its authority to manage the banking system. Therefore, the research when it comes to the legal status and peculiarities of the NBU must be done through prism of public relations, as it takes a key place in management of state funds that are accumulated by the banking system.

Variety of opinions when it comes to the legal status of the NBU proves that this matter is of importance to both foreign and national scientists.

Legal relations in the sphere of NBU have been an object of research for such scientists as K. Belskij, V. Bescherevnyh, L. Voronova, A. Grytsenko, Y. Drobotia, I. Zaveruha, S. Zapolsky, T. Krychevsky, N. Zlatina, L. Efimova, M. Karasiova, V. Koziuk, V. Krotiuk, T. Latkovsa, O. Orliuk, O. Oleinyk, O. Petryk, A. Selivanova, G. Tosuniana, Y. Topolia, O. Kostiuchenko, N. Khimicheva, V. Chernadchuk, V. Shemshechenko.

Central banks take an important place in the management of banking activity and providing for a stable banking system. Besides, they are financial agents of the government, bank of other bank and as providers of monetary policy have important influence on the economy of the country as such. However it has not always been so.

1. Preconditions of emergence and functioning of central banks

Central bank plays an important role in financial activity of the state. Researching this question, it is important to give definition and differentiate between such concepts as "state", "emission", and "central". In opinion

of V. Kravets, the title of the central bank differs depending on its role in the monetary system.

According to the banking encyclopaedia edited by S. Arbuzova, the notion of a bank is considered as a legal entity that has exclusive right, based on the license of the national bank, to attract funds of physical and legal entities and place these funds on its name, on own conditions, for its own risk, and open accounts and manage accounts of physical and legal entities[1]. Emission of money (from lat. *emissio* – to issue) is defined as issuance into circulation of new currency in different forms, increasing the volume of monetary funds in circulation. Volumes of emission are stipulated by needs of the sphere of circulation both as means of circulation, payment, and saving. If emission is done within these limits, conditions are created to provide for stability of money. One differentiates between emission with cash and without cash. Therefore, emission bank is the bank, which main function is emission of funds.

State bank is the bank that has state property and which main function is financing state needs. According to A. Pyshny, first such banks emerged already in the IV century B.C. with the aim to conduct currency exchange. These banks were managing state capital, and received profit from this service. In the IV century B.C. – till the I century A.D., there were king's banks, that performed functions of collecting the funds to the king's treasury, and do all kinds of payments on behalf of the king[2]. Therefore, first state banks, that were prototypes of Central Banks, emerged even before the beginning of our century.

Ukrainian scientists emphasize, that there are two ways banks have become established: evolutionary way and legislative way. In the opinion of A. Kovalenko[3], the history of central banks is related to evolutionary processes and understanding the necessity to separate the central bank from other banks. As a result that many countries are rather young, creating central banks has a legislative way too, which, however, is based on evolutionary understanding of the necessity to create a central bank.

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[1] Банківська енциклопедія / С. Арбузов, Ю. Колобов, В. Міщенко, С. Науменкова. Київ : Центр наукових досліджень Національного банку України ; Знання, 2011. 504 с.

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Central banks in their current form have existed since not so long ago. In the early stage of capitalism, there was no strict differentiation between central and private banks. Banks issued currency into circulation with the aim to accumulate wealth. As the credit system was developing, it was accompanied by the process of centralisation of banking emission in some of them. As a result of this process, one bank would have a monopoly right on remittance of monetary units, which led to creation of central banks in many states[4].

The first country which has a central bank, is considered to be Switzerland, where in 1668 a Riksbank – central bank with the aim to control a significance growth in the volume of money. England created a central bank in 1694 in the form of an auctioneer company (thanks to closeness to the government, through giving it loans for financing warfare). English Bank acquired a status of emitting bank in 1928, transitioning from private, in which its reserves saving other private banks of England, from giving loans to the government on warfare to having a status of emitting bank. From 1800 to 1913 France, Italy, Germany, Russian and USA followed the same way of development[5].

Central banks in their present form emerged in XIX century. One can classify central banks in the following way:

– the capital of the bank belongs to the state (France, Great Britain, Germany, Netherlands, Spain);

– the capital of the bank is partially state (Belgium, Japan);

– the capital of the Central Bank belongs to private banks (USA).

Scientists indicate that managing state finance is a process of influencing financial interests. Therefore, a process of organised impact of the state on banking relations with the aim of stable and effective use of public financial means can be considered as state management of banking system.

T. Latkovska indicates[6], that state management of a banking system – is an organised influence of the state on the development of a banking system

[4] Крухмаль О., Коваленко В. Антикризове управління в забезпеченні фінансової стійкості банківської системи : монографія. Суми : ДВНЗ «УАБС НБУ», 2007. 198 с.

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[6] Латковська Т. Фінансово-правове регулювання організації та функціонування банківської системи в Україні та зарубіжних країнах: порівняльно-правовий аналіз : автореф. дис. … докт. юрид. наук ; Одеська національна юридична академія. Одеса, 2008. 36 с.

with power-legal methods, while state management of a banking system – these are methods of government influence of the national bank on the behaviour of the object of management – banking structures.

Preconditions for existence and functioning of the central bank of Ukraine was the decision on creation of the National Bank of Ukraine on the basis of the Ukrainian Republican Unit of the State Bank of the USSR, endorsed on the 20 March 1991 (point 3 of the Parliament of Ukraine's Ruling "On Order of Implementing the Law of Ukraine "On Banks and Banking Activity").

This decision laid foundations of functioning of the National Bank of Ukraine as of the central bank of the state. In terms of creation of a financial institution with respective functions, authority, and structure, analysis of which falls within the scope of the central bank, we can talk only after adoption in May 1999 the Law of Ukraine "On National Bank of Ukraine".

Central Bank heads credit-finance system in countries with developed market economy. It creates auspicious conditions for functioning of the system through providing stability of currency and reliability of the banking sector.

Ukraine is not an exception to the usual practice. More specifically, to the Law of Ukraine, "On Banks and Banking System" as of 20 March 1991 (became null and void as of 2001) laid foundations of classical two-level structure of the banking system, that embraced the National Bank of Ukraine, singling it out as the emitting centre of the state and as the responsible for implementation of money-credit policy, and banks – another component of the banking system, that is called upon to provide banking services to citizens of Ukraine, markets, and entrepreneurial structures[7].

Developed countries of Europe have the top level of banking system formed by the central bank and other state financial institutions. According to M. Sidak[8], the foundation of such a structure is underpinned by the principle of deterrence and counterbalance that fixes separation of the function of oversight and control by the financial institution in the state. The principle of poli-subjectivity of the upper level of the banking system preconditions differentiation and fixing the competency of its organs.

[7] Орлюк О. Банківська система України. Правові засади організації : монографія. Київ : Юрінком Інтер, 2003. С. 83.

[8] Сідак М. Фінансово-правове регулювання банківських відносин в Європейському Союзі та країнах східної Європи : автореф. дис. … докт. юрид. наук ; ДВНЗ «Ужгородський національний університет». Ужгород, 2011. 21 с.

The meaning is that one and the same organ cannot assume legislative, control, oversight, and regulatory functions and at the same time be an entity of the market. The lower level of the banking system of EU-members is composed of banks, financial and credit institutions. One needs to note that the EU legislation does not use a notion of bank, instead preferring to use "financial institute" and "credit institute".

Article 75 of the Constitution of the Russian Federation establishes a special constitutional-legal status of the central bank of the Russian federation, and fixes, that monetary emission is done only by this bank. Also, the constitution defines its main function the protection and provision of stability of the rubble.

According to the article 95 of the Constitution of Georgia, the National Bank of Georgia provides functioning of the money-credit system of the state. It develops and implements money-credit and currency policy according to the directions that are established by the Parliament. The National Bank of Georgia has an exclusive right for currency emission.

According to the 5th article of the law of United Arab Emirates № 10, the Central Bank of United Arab Emirates "directs currency, credit and banking policy and controls their implementation according to the overall state policy in a way to develop the national economy and stability of the currency".

The national legislation of Ukraine identifies a bank as a financial institution. According to article 1 of the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services", financial institutions are legal entities, that according to the law, provide one or several financial services, and other services (operations) related to provision of financial services; in cases, directly specified by law, and that is included in the respective registry in the established by law order. Financial institutions are banks, credit unions, lombards, leasing companies, trust companies, insurance companies, entities of accumulative pension provision, invest funds and companies, and other legal entities, exclusive activity of which is provision of financial services, and in cases, directly specified by law – other services (operations), linked with provision of financial services. Independent financial intermediaries, that provides services on issuing financial guarantees in order and on conditions, defined by the Customs Code of Ukraine, the not financial institutions (do not have a status of a financial institution).

2. Main aspects of National Bank of Ukraine activity

Constitution of Ukraine defines key aspects of activity of the National Bank as of a central structure and key managerial body of currency-credit and currency system of the country, fixing its autonomous status in power structures. More specifically, article 99 of the Constitution of Ukraine specifies that the monetary unit of Ukraine is hryvnia. Provision of stability of the monetary unit is the main function of the central bank of the state, the NBU. According to article 100 of Ukraine, the NBU Council develops key basis of the monetary-credit policy and controls its implementation. Law identifies the legal status of the NBU.

According to S. Shevchuk[9], Constitution guarantees constitutional rights and freedoms, perfections the state mechanism and makes it more effective.

The Constitution of Ukraine, the Law of Ukraine "On the National Bank of Ukraine" and other legal provisions stipulate the legal status of the NBU. Analysis of the current legislation enables to single out key elements of the legal status of the NBU: organisational-legal level of system management; goals and tasks, functions, rights and responsibilities (authorities), special responsibility when it comes to judicial responsibility in specified by the law cases. As V. Krotiuk[10] mentions, the theory of law looks at this matter in the following way: legal status implies an ability of the subject and its rights and responsibilities. These rights and responsibilities (authority), if one talk about state institutions that assume public function is its competency.

We consider that the lack of a clear definition of the financial-legal status of the NBU in theory and in the Constitution of Ukraine complicate functioning of all of the monetary-credit system.

The state finances management is linked to state regulation by the NBU, because state management of the banking system and of the banking activity is done through the system of methods of legal influence of the leading subject.

It is researched that the NBU has authority for law-making and control activity in the banking sphere as a result of its Constitutional authority, while legal regulation of a banking activity embraces means of its management. Therefore, tasks functions and authority that are characteristic

[9] Шевчук С. Основи конституційної юриспруденції. Київ : Український центр правничих студій, 2001. С. 132.

[10] Кротюк В. Національний банк – центр банківської системи України. Організаційно-правовий аналіз. Київ : ВД «Ін Юре», 2017. 247 с.

to the NBU as subject of the state regulation of banking system and banking activity, as well as its authority as key direct managing subject in the banking sphere, define peculiarity of its legal status.

There is a seriously grounded opinion that the NBU does not belong to either of the classical power branches. However, according to the article 2 of the Law of Ukraine "On National Bank of Ukraine", it is a special central body of the state management.

Considering the matter of the place of the National Bank in the system of state organs, one needs to note that is very important to give a rather strict definition, to ensure for the strict compliance with its functions. This is also necessary to regulate relations with other state power structures.

In the opinion of V. Krotiuk, according to the article 6 of the Constitution of Ukraine, state power in Ukraine is implemented based on its division on legislative, executive, and judiciary. On the one hand, the NBU has characteristics of executive service, which is confirmed by the functions and its operations however it does not form part of the system headed by the Cabinet of Ministers of Ukraine, and is not reporting to it. According to the Law of Ukraine "On the National Bank of Ukraine" (article 52), The national Bank of Ukraine and the Cabinet of Ministers of Ukraine conduct joint consultations on matters of money-credit policy, development and implementation of overall state program of economic and social development. Para. 4 of article 52 stipulates, that if NBU supports economic policy of the Cabinet of Ministers of Ukraine, if it is not against providing for stability of the monetary unit of Ukraine. The NBU reports to the President of Ukraine and to the Parliament of Ukraine within the limits of their constitutional authorities. The NBU is among the entities that have legislative initiative (MPs, President of Ukraine, Cabinet of Ministers of Ukraine). This gives it a right to introduce to the parliament of Ukraine bills or amendments, independently endorse decisions within the framework of monetary-credit policy.

The NBU is the centre of the banking system. It represents two forms: on the one hand, a state entity that performs function of providing stability of the national currency, while on the other – centre of banking self-governance.

There are no single uniform criteria in the world according to which one defines the place of the bank in the state power pyramid, as it depends on the organisation and on the form of state power in the country, as well as on types of influences on financial policy. Stability of the national currency depends on the level of independence of the national bank of the country.

T. Latkovska[11] indicates that looking at the traditional approach to state power and the meaning of the current legislation, it is impossible to single-handedly identify the place of NBU in the current system of state structures. The NBU is a special entity that combines traits of a special body of state management by definition, with specific elements of legal entity.

O. Kostiuchenko[12] notes that NBU activity as of central state managerial body encompasses a cycle of managerial activities and decisions in the banking sector. In opinion of O. Orliuk[13], definition of NBU as of a special central structure of state management is done first and foremost to take the NBU out from the jurisdiction of the Cabinet of Ministers of Ukraine, which is a central executive power: "The National Bank supports economic policy of the government in the case, when it is not against provision of stability of the monetary unit of Ukraine (para. 4 article 52 of the law of Ukraine)".

It is important to note that the mechanism of relations of the NBU with the Cabinet of Ministers of Ukraine is not yet legislatively fixed. The Law of Ukraine "On Cabinet of Ministers of Ukraine". Article 38 "Relations of the Cabinet of Ministers of Ukraine with the National Bank of Ukraine and other state structures" it is specified that the Cabinet of Ministers of Ukraine, according to the Constitution and laws of Ukraine, interacts with the NBU and other state structures on matters of its authority.

It is argued that the provision does not provide for details of the relationship between the Cabinet of Ministers and the NBU, but only refers to a constitutional norm and provision of another law, that regulates these relations, more specifically, a law of Ukraine "On the National Bank of Ukraine", which in its structure has a chapter IX "Relations with the President of Ukraine, Parliament of Ukraine, and Cabinet of Ministers of Ukraine", while article 52 "Relations with the Cabinet of Ministers of Ukraine" totally develops the meaning of the relationship of these two structures. Evidently, that the current state of legislation on relations

[11] Латковська Т. Фінансово-правові питання формування центральних та державних банків в Україні, країнах центральноєвропейської та англосаксонської системи права : монографія. Одеса : Юридична література, 2007. С. 12.

[12] Костюченко О. Ключові повноваження Національного банку України як суб'єкта адміністративно-правового забезпечення фінансової безпеки вітчизняної банківської системи. *Актуальні питання фінансової безпеки держави* : збірник наукових праць Міжнародної науково-практичної інтернет-конференції «Актуальні питання безпеки фінансової системи держави», м. Харків, 21 лютого 2014 р. Харків, 2014. С. 165–168.

[13] Орлюк О. Банківська система України. Правові засади організації : монографія. Київ : Юрінком Інтер, 2003. С. 83.

between the NBU and Cabinet of Ministers incites such scientists as N. Zlatina to justify amendments in terms of expanding the meaning of the article 38 of the law of Ukraine “On Cabinet of Ministers of Ukraine”.

Some scientists think that the NBU performs its functions on grounds of independence. However this main unit of the banking system according to the legal status is dependent on the President of Ukraine and on the Parliament of Ukraine, to which it reports. Therefore, they, considering the functions, that are assumed by the central bank, put suggestions concerning its being a separate 4th power line.

Taking into account the current legislation, one can state that the NBU is an autonomous structure; it acts independently and does not depend on state management structures in resolving questions that are exclusive competency of the central bank. Intrusion in the process of functioning and the authority of the Council or Board of the NBU is not possible, unless within the limits specified by the Law of Ukraine “On the National Bank of Ukraine”.

Summing up the research as stated above, we tend to agree that the NBU in its nature is a special structure of state management, competency of which includes the function of providing for the stability of the monetary unit, that is implemented through a prism of administrative and commercial functions. The structure has independent status in the system of state power (is independent form other public administration units)[14].

We consider that establishment of the NBU structure alongside the principle of centralisation with vertical reporting structure does not need improvement. However a qualitatively new approach to the activity of its managing bodies (NBU Council and NBU board) given the conditions of today needs changes, in the part of the status of workers (members) of NBU council (prohibition of merging a function of the NBU member and function of a deputy, or other public person), revision of personal responsibility of the head of the state central bank and NBU Council members.

Current legal status of the NBU provides for its independence in implementing a single state monetary-credit policy, promotes prevention of uncontrolled monetary emission, and limitation of financing budget deficit.

[14] Ковалко Н., Ястребова О. Феномен незалежності Національного банку України як ключовий критерій ефективності грошово-кредитної політики держави. *International Scientific Journal “Internauka”*. 2017. № 3. С. 7–8. URL: http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/mnj_2017_3%282%29__40.pdf.

Activity of the central bank in each country is reflected in functions that it performs. We consider that the function of a central bank is key implemented activities that legislatively differ the central bank from other banks.

L. Voronova[15] believes that all functions of the National Bank we can unit in 2 groups: organisational (organisation and management of currency circulation) and protection of interests of investors and creditors. It is within these limits that the NBU performs its legislative work.

According to provisions of the article 6 of the Law of Ukraine "On the National Bank of Ukraine" as of 20 May 1999, its key function, according to the Constitution of Ukraine, is provision of the stability of the monetary unit of Ukraine. In implementing this main function it needs to consider priorities of achievement and support of price stability in the state. The NBU, within the limits of its authority, promotes financial stability, as well as keeping up to the stable economic growth, supports economic policy of the Cabinet of Ministers of Ukraine. Considering the European integration vector or our state, proposals of scientists to introduce clarifications and additions to the law of Ukraine "On the National Bank of Ukraine" in part of definition of the main purpose of NBU's activity is supported (similar to the European Central Bank and Central Banks of EU member states). It is suggested to have the article 6^1 of the law of Ukraine in the following edition: "the key purpose of the National Bank of Ukraine – is provision of stability of monetary-credit policy of Ukraine".

In such a context, we appreciate the opinion of Y. Dmytrenko[16], who argues that financial-legal regulation of banking activity, given the legal status and authority of the NBU, define its key role in the system of subjects of financial relations with participation of banks. In terms of public-private appointment of the NBU, it is performed through the function of the banking management of banks' activity (registration of banks and licensing of banking activity, implementation of monetary-credit policy, definition of economic provisions, control and oversight on compliance with the banking legislation). Given the public-private appointment is realised concerning the movement of public financial resources, NBU is considered a

[15] Воронова Л. Про правовий статус Національного банку України та його Ради за новим Законом України «Про Національний банк України». *Реферативний огляд чинного законодавства України* / за ред. В. Цвєткова, Є. Кубко. Київ : Салком, 2000. С. 90.

[16] Дмитренко Ю. Правове регулювання діяльності Національного банку України : монографія. Харків : Золота миля, 2014. С. 25.

mandatory subject of financial-legal regulation of banking activity and banking system.

In terms of authority of the NBU, we agree with opinion of O. Kostiuchenko, who reiterates, that according to the law on central bank, authority of this structure is defined depending on its functions among which the main is providing stability of the monetary unit of Ukraine, and other 29 functions promote performance of the main. NBU preforms authority to provide for stability of the monetary unit independently from state structures, but within state monetary-credit policy, foundations of which, according to the state program of economic development and key parameters of economic and social development of Ukraine, is developed by the NBU Council as managerial structure of the central bank.

One needs to note that functions of central banks during the history of the institute of banking system were becoming more complex, were changing and were modified, however they all were closely interrelated and jointly they represent inseparable components of its status. They imply combination within its competency commercial and state functions.

Analysis the text of the Law of Ukraine "On the National Bank of Ukraine" and its structure, we come to the conclusion that the authority of the bank is realised with strict compliance of differentiation between its units and structural parts. More specifically, NBU Council, NBU Board and NBU head of authority of power. Authority of the Head of the National Bank has a rather managerial character that enables the head to lead such a governmental entity and perform the main function.

Current Ukrainian legislation stipulates that the NBU structure is built following the principle of centralization with vertical reporting, however legislative differentiation of competencies foresees such a model that does not allow for concentration of different power competencies in a separate organ or a structural unit. Therefore, structural units take part in the legislative process, but the right to issue legislative legal acts is within the NBU Board.

Introduction of economic regulations for banks is also within its competency and must identify Key foundations of monetary-credit policy that gives this body opportunity to influence on the strategy of NBU's activity. The Head of the NBU, responsible for activity of the NBU and responsible for performance of the NBU's functions, ensures implementation of tasks that are assumed by the central bank.

At the same time, the National Bank of Ukraine has the right to use other types of influence and sanctions for violation of banking legislation, especially in the course of its oversight activity on the basis of the article 74 of the Law of Ukraine "On Banks and on Banking Activity". Types of influence can be applied to the bank – legal entity, and to the Head and its staff, private payers – owners of significant shareholders, fins on whom are put in the order, stipulated by the Code of Ukraine on administrative wrongdoing. The following gives us grounds to think that NBU's activity encompasses a cycle of managerial acts and decisions in the banking sphere as of a special central body of state management. Such legal position of the NBU gives it the legal right to identify strategy of development of a banking system, provide for realisation of this strategy, analyse activity results and give an evaluation, lead oversight and control realisation, correct the course of action of the bank and its subjects, that lead banking activity, using measures of influence to violators of banking legislation. Respectively, when it comes to the security provision of financial security of the banks and banking system, one can say that the central bank of Ukraine has a possibility to foresee threats in the financial security, in maximum tight terms control such threats and in case they materialise, use means to counteract them.

Western scientists identify the degree of independence of the central bank based on two specially developed indexes:

– Legal index that includes a procedure of elaboration of monetary-credit policy, involvement of government representatives, involvement of government representatives to the Board membership and procedure of appointment the bank's management;

– Index of factual independence of the central bank that is revealed through indicator of interchangeably of heads of the central bank, i. e. periodicity of change of heads of the central bank[17].

M. Crowford[18] identifies the following elements of the principle: 1) legislative guarantees of the central bank and prohibition to interfere in its activity; 2) way to appoint the head of the central bank; 3) the course of the term of the head off the central bank; 4) grounds for firing the head and

[17] Пуховкіна М. Незалежність центрального банку. *Фінанси, облік і аудит: збірник наукових праць*. Київ : ДВНЗ «Київський національний економічний університет ім. Вадима Гетьмана», 2011. № 18. С. 183–189.

[18] Crawford M. One Money for Europe? The Economist and Polities of Maastricht. London : The MacMillan Press Ltd, 1993. 377 p.

members of the highest collegial managerial body of the bank; 5) introduction of the cabinet of ministers to the list of central bank's management and the scope of their functions; 6) whether there is or there is no authority in the bank to endorse decisions in the area of establishing the refinancing rate; 7) the order of introducing changes to norms that regulate activity of central bank's activity.

M. Sidak[19] identifies independence of the central bank along the following factors: 1) political independence; 2) independence of the government; 3) institutional and functional independence; 4) personal independence of members of the management of the bank; 5) economic and financial independence of the central bank from other structures of the state.

One should not forget the legal provision on independence of the NBU. More specifically, article 53 of the law of Ukraine "On the National Bank" that is entitled "guarantee of non-intrusion" stipulates that intrusion of legislative and executive branches or their representatives in the work of the NBU's Council or NBU's management is not possible with the exceptions, established by the law. Some scientists believe that it is due to this norm that the monetary-credit and currency policy of the NBU is so closed and non-transparent, as it is inaccessible for control by the Parliament, Cabinet of Ministers, other controlling bodies of the state, including the Accounting Body, State Audit Service of Ukraine.

Financial independence of NBU is best described in the article 4 of the law of Ukraine "On the National Bank of Ukraine", that defines the NBU as economically independent body. This is seen in the following elements:

– NBU ensures implementation of its functions at the expense of its income within the limits of the funds that are approved by the NBU Board;

– NBU is not responsible for obligations of the state and state banks, and they are not responsible for obligations of the NBU.

Independence of the NBU can also be considered from the point of view of budget independence that constraints two elements:

a) prohibition of financing the state budget deficit, to give loans to the government, to buy precious papers emitted by the Cabinet of Ministers, state structure or other legal entity, the goods of which is in state property;

[19] Сідак М., Бисага Ю. Правове регулювання банківських відносин в країнах Центральної та Східної Європи: порівняльний аналіз (Україна, Чехія та Словаччина) : монографія. Ужгород : Ліра, 2006. 200 с.

b) the order of recalculation of the income of the National Bank to the state budget[20].

When one thinks about independence of central banks, it seems important to analyse foreign experience of central banks' activity.

Traditionally, Bundesbank is considered maximally independent in Germany; it was the prototype of the European Central Bank. O. Orliuk indicated, that a special place in the system of central banks of European countries due to the high level of its independence. The law on German Federal Bank obligates it to promote overall economic policy of the federal government. Bundesbank must support overall economic policy of the federal government only then when it is compatible with its own task, more specifically, to provide for stability of its currency.

Central Bank of Germany endorses decisions in the area of monetary-credit policy without any influence on it. However, one will note a certain specificity of the Bundesbank. The law, that guarantees its independence, has no constitutional rank and can therefore be changed with a relative majority in Bundestag. Besides, federal government keeps a number of functions in the area of currency policy, for instance, endorsement on decisions to enter a system with fixed currency exchange rate or a monetary union. Bundesbank can introduce a policy of stability against possible opposition of parties and government only in cases, when it is confident of the population's support, for which a stable currency is one of the key conditions for stable life. It also depends on public endorsement of its monetary policy[21].

We believe that current realities of the legal existence of the NBU political independence are especially important. Taking into account the key principles of banking activity in the EU, in line wit key goal of European Central Bank, i. e. provision of price stability, one can state that central bank's independence – is a precondition of stability of the banking system as such. International experience confirms that countries with relatively independent central bank usually get higher results in economics than countries with dependent central bank.

[20] Конституційні повноваження та правовий статус Національного банку України / Юридичний департамент Національного банку України. *Вісник Національного банку України*. 2013. № 6. С. 8–10. URL: http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Vnbu_2013_6_6.pdf.

[21] European Neighbourhood and Partnership Instrument 2007–2013. Overview of Activities and Results / European Commission. Brussels : European Union, 2014. URL: https://ec.europa.eu/europeaid/sites/devco/files/overview_of_enpi_results_2007-2013_en_0.pdf.

CONCLUSIONS

The core of the system reform that takes place in Ukraine is consolidation of European values in all spheres of society. Therefore, learning legal regulation of banking activity in the EU and adopting its experience is important for Ukraine. Research of the financial-legal status of the National Bank of Ukraine, the main regulator of the monetary-credit policy of the state is important in the time of changes and European integration vector of Ukraine.

We tend to believe that special attention needs to be paid to fixing principles of central banks activity in the legislative base that it uses for its activity. One of the key prerequisites for the activity of the central bank is the principle of independence.

Establishment of the NBU in line with the principle of centralisation with vertical reporting does not need further perfection, however one needs a new approach when it comes to the activity of the managing bodies of the central bank, especially when it comes to the change of status of NBU's Council. One also needs to reconsider the foundations of personal responsibility of the Head of the central bank and of the NBU Council's members.

Given the European vector of the country, we support recommendations of scientists to introduce additions to the Law of Ukraine "On the National Bank of Ukraine" in the part of defining the main activity of the NBU (similarly to the European Central Bank and central banks of EU member states). It is suggested that the article 6^1 is adopted in the following edition: "Key purpose of the NBU's activity is provision of stability of the money-credit policy of Ukraine".

Therefore, analysis of preconditions of creation and functioning of the central bank of Ukraine proves that its legal status needs perfection through adoption of experience of legal regulation of central banks of countries of Europe.

SUMMARY

The article is dedicated to the complex research of the basis of legal regulation of the National Bank of Ukraine's activity. The author looks at evolution of central banks in different countries and of the National Bank of Ukraine (NBU). The author looks at the legal status of the NBU, analyses approaches of scientists to definition of the place of the NBU in the state power system, researches the authority of NBU, its functions, and principles of its activity. Special attention is paid to the matter of reinforcing

independence of the NBU. Given the European integration direction of our state, the author argues necessity of legislative provisions for stability of money-credit policy as one of the key goals for NBU's activity.

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