

FINANCIAL AND LEGAL NORMS: LEGAL MEANS AND MECHANISM OF IMPLEMENTATION

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Abstract. *The aim* of the article is to disclose problematic issues, which are connected with financial and legal norms, as well as legal means and the mechanism for their implementation. *The subject of the study* is the financial and legal norms: legal means and the mechanism for their implementation. *Methodology.* The study is based on the dialectical method of scientific knowledge and general scientific methods, which are based on it, such as: analysis, comparison, analogy, induction and others. Results of the conducted study have shown the theoretical aspects of the implementation of financial and legal norms and their features. Particular attention is paid to the implementation of the law, which takes one of the main places among the pressing problems of legal science, despite the fact that a special theoretical analysis of the implementation of financial law in the legal literature is quite rare. During the analysis of this issue in the presented study, the question about the content and number of legal means in the mechanism of financial and legal regulation is set in the first place. Another problem, which is studied, is the impact of various determining factors on the procedure for the implementation of financial law. *Practical impact.* The author analyses the features of the forms of implementation of financial and legal norms, the legal regulation of relations developing in connection with the observance, use, execution, and application of these norms on the bases of the general theoretical approaches of law. *Correlation/originality.* After the legal analysis and analysis of the scientific literature, it was defined that the mechanism for the implementation of financial and legal norms today faces a number of unresolved problems in financial relations.

Key words: implementation of financial law, financial law, compliance, use, execution, application of financial law.

JEL Classification: F36, F37

1. Introduction

Today, the globalization of society contributes to the positive interpenetration of cultures, the strengthening of the country's potential by joining the world's best intellectual achievements, the study of historical experience in solving socially important issues (Sevruk, Pavlenko, 2015). Therefore, the radical socio-economic transformations that have taken place over the past decade have led to both positive and negative changes in modern Ukrainian society (Pavlenko, Sevruk, Kobko, 2017).

In today's conditions of functioning of the world economy, each country is trying to achieve a high level of socio-economic development. As globalization processes generate growing demands on the parameters of the national economy, Ukraine must develop a strategy for its development that can adequately reflect our state by means of macroeconomic indicators and the living standards of the population (Chorna, Chornyi, Shandruk, 2018).

At the present stage of the formation of Ukraine as a European state, a complex of strategic measures aimed at the development of the economy in the conditions

of European integration is being implemented. The influence of the main political, economic, social, and technological aspects of the external and internal environment on the Ukrainian economy is determined. For Ukraine, the EU is an important strategic partner, including in the investment and foreign trade spheres. Therefore, the future of our country in the European space will be determined by signing the Association Agreement. It is proved that the EU as an integration association will have the status of a leader in international economic relations; therefore, for Ukraine as a European state, it is an important step to form a new strategy for the economic development of the EU (Yunin, Sevruk, Pavlenko, 2018).

To date, Ukraine has proclaimed Euro-integration a key priority of economic policy. The need to develop the integration strategy of Ukraine was caused by the desire of our state to meet the requirements of the modern world economic system, this is a way of modernizing the economy, overcoming technological backwardness, attracting foreign investment and the latest technologies, creating new jobs, increasing the

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competitiveness of domestic producers, and entering the world markets. As a result of the changes taking place in society, along with the positive ones, all of the individual negative tendencies appear, which greatly impede the development of statehood in Ukraine (Mohilevskyi, Sevruk, Pavlenko, 2017).

A serious concern is caused by problems in the mechanism of financial and legal regulation, the influence on the order of implementation of the rules of financial law of various determinants, which determined the relevance of the topic.

2. Analysis of recent research and publications

It is common knowledge that the problem of implementing the rules of law and finance, in particular, is far from new. However, the complex analysis and study of the norms of financial (tax) law and their implementation (law enforcement) were developed very recently. However, despite this aspect, a wide range of issues in this area remains unresolved. Representatives of both the theory of law and branch sciences were engaged in the development of this topic, for example, S. Alekseev, P. Nedbaylo, V. Nersesiants, A. Korenev, N. Kucheryavenko, M. Marchenko, I. Mikhailovsky, G. Tolstopyatenko, R. Khalфина, L. Yavych, and others.

3. Main material

In today's theory of law, tradition has developed the idea that the realization of law is a definite process, the transformation of the requirements of legal norms into concrete actions of subjects. These prescriptions are made through lawful conduct, which does not go beyond the scope permitted by law (regulatory acts). Such a vision of the problem focuses on the legitimacy of the activities of the subjects and on the standard of the said lawfulness – the norm, which is enshrined in the law (another act), while regardless of the understanding of the right of the researcher (narrow or broad). The norm acts as the main installation, which in a given situation will determine the behaviour of subjects of the application of normative provisions.

The norms of financial law, as well as the norms of any branch of law, are a general rule, a certain scale of due or proper conduct established by the state and protected by special state methods. These norms fulfil the function of the regulator of social relations. Financial and legal norms differ from the norms of other branches of law in that the subject of their regulation are the social relations that arise in the process of planned formation, distribution, and use of the state (local governments) of public money necessary for the state to carry out its tasks and functions. Most scholars in the field of financial law point out that the rules of financial law are always linked with the regulation of relations in relation to the distribution, control and stimulating functions of

the state in the process of financial activity of the state in the distribution of the social product and national income in cash (Horbunova, Hracheva, 2003). None of the financial-legal norms act in isolation, without interaction with the rest or with a group of other financial law. The indicated norms are in interaction and interconnection and form a single branch, namely: financial law.

Analysing the issues of implementing the rules of financial law, the author first of all, faces the problem of the implementation of the rules of law in general. At the present stage, there is a large amount of educational, scientific monographic literature devoted to the analysis of this issue. It is common knowledge that the rules of law require their embodiment in life, their realization, so as not to become dead, formally defined rules. M. Marchenko rightly emphasizes the fact that the legal norm exists and makes it possible to know about itself only when it is not only formally adopted, compiling the content of a normative legal act, but also in reality, in the behaviour of people and their organization institutes, is carried out (Marchenko, 2004). The famous scientist L. Yavytch deliberately points to the special role of the realization of law and draws attention to the fact that the exercise of law has always been, and will always be, while it is in society, a special way of life of the legal form of social relations. In the opinion of the author, the exercise of the right is a way of its existence, action, fulfilment of its main social function. One cannot understand the right, if we distract from the mechanism of its realization in the life of society (Yavych, 1976).

It should be borne in mind that the provision of subjective rights to the participants in social relations, the assignment of legal obligations to them is related to the effect of legal norms. It is common knowledge that the law can act and be implemented in various forms, taking into account information psychological and instrumental aspects. At the present stage, the implementation of the norms of the financial (tax, budget) law can be considered rather weak in the whole legal chain, since the existing stereotypes of the act's act, due to the fact of its adoption or legal disobedience of citizens, as before, are deformed by their legal consciousness and behaviour. The manifestations of legal nihilism remain stable enough. Also, various financial and legal acts are being implemented improperly.

The financial and legal norms are one of the levers, with the help of which the set goals are achieved. The content of these rules is entirely dependent on the goals that the legislator sets himself in developing these rules. The condition for the realization of the norm of financial law can be considered the achievement of its final result: ensuring the formation, distribution, and use of public funds of the state, the implementation of financial control, the attraction of violators of financial and legal norms for liability, etc.

In the scientific legal literature, the following forms of the implementation of the rules of law are traditionally distinguished by the nature of righteous acts: (a) observance of prohibitions (involves passive behaviour of subjects, refraining from prohibited acts); (b) performance of duties (active behaviour of subjects in the execution of legal obligations of positive content); (c) the use of subjective law. Some scholars sometimes distinguish the 4th stage – the application of law as an active-power activity of the competent authorities (sometimes individuals) by the decision within the framework of the legal rules of specific cases, the publication of special legal acts.

In modern legal literature among scholars – legal scholars there is no unanimous opinion regarding the allocation and classification of forms of the realization of law. Thus, V. S. Nersesiants distinguishes: 1) from the point of view of the level (depth) of the implementation of the provisions contained in the regulations: the implementation of general provisions contained in the preamble of laws, articles, etc.; realization (outside of legal relations) of general norms establishing the legal status and competence; realization of specific legal relations of specific legal norms; 2) on the subject of realization of the right: individual and collective; 3) in the nature of righteous acts, due to the content of the legal norm: the observance, execution, use and application of law (Nersesiants, 2006). On the contrary, L. Yavich highlights several ways of exercising the right, namely: implementation of legal prohibitions, the use of legal rights and the fulfilment of legal obligations, the application of the rules of law, which involves state power interference in the process of implementing legal regulations (Yavych, 1976). According to M. Marchenko, for legal norms, there are specific methods for its implementation, the main forms of which are the use of the law, the fulfilment of obligations, the observance of prohibitions, the application of legal norms. The author rightly points out that there are two forms, namely: the use of law and the fulfilment of obligations, which represent the realization of legal relationships (Marchenko, 2004). Famous scholar S. Alekseev highlights only three forms of realization of the law, namely: execution, use, observance. According to S. Alekseev, the use of law is a special category occupying a special place. The application, in the opinion of the author, is not a stage of implementation. It characterizes not the outcome, but the process of implementation, participation in this process of the competent authorities, its provision and legal adjustment through the individual state and government activities of these bodies (Alekseev, 2009).

It should be noted that the implementation of financial and legal norms is carried out by the state as a whole, authorized by that state and local authorities and citizens. The implementation of the rules of financial law is carried out through a number of different methods,

namely: 1) legal facts; 2) acts of application of the rules of financial law; 3) explanations and interpretations of financial and legal norms, etc. In our opinion, for the state, the purpose of realization of the financial-legal norm is its interest in the sphere of fiscal saturation, systematic distribution, effective use of public money funds, regulation of economic processes.

Traditionally, in the theory of law, there was an opinion that the implementation of the rules of law is possible exclusively through legal relationships or outside legal relationships. It should be noted that the rules of financial law are aimed at regulating actual social relations, but this process they carry out through financial legal relations, which play the role of an intermediate link between the financial-legal norm and public relations, allocated as an object of legal influence. The financial legal norm not only enshrines certain interests of the participants of the relationship and displays compromises in their collision but also objectively anticipates measures for their implementation. In realization of a specific norm of financial law, it is possible to define the subjects of legal relationship, the object of legal relationship, the complex of mutual rights and responsibilities, the responsibility of certain subjects.

In our view, the implementation of the rules of financial law can be implemented in 4 forms, namely: compliance, execution, use, and application. Let's consider the most important features of them:

1. **Compliance** with financial and legal norms of law is not a violation of the established prohibitions. In other words, compliance acts as such a form of implementation of financial and legal norms, in which subjects of financial law refrain from prohibited financial action. As a rule, compliance with prohibited norms is enforced. For example, the current financial legislation of Ukraine contains a provision that subjects are prohibited from conducting currency transactions without acquiring licenses of the National Bank of Ukraine. The National Bank of Ukraine issues individual and general licenses for the execution of foreign exchange operations that fall under the licensing regime in accordance with the current legislation. In addition to this, the norm, which is contained in Art. 44.1 of the Tax Code of Ukraine (Nalohovui kodeks Ukrainy, 2011), which prohibits taxpayers from forming tax reporting, customs declarations based on data not verified by primary documents, registers of accounting, financial statements, other documents related to the calculation and payment of taxes and fees, which are provided for by law.

2. **The implementation** of financial and legal norms is the active observance of the requirements of these norms. As a rule, enforcement obeys the binding norms. In financial law, most norms are binding because there is an interest of the state in the financial provision of its activities. The essence of execution consists of conscious and active compliance with financial regulations. Yes, the implementation of the norm of Art. 64.5 of the Tax Code

of Ukraine, which obliges permanent representations of non-residents and separate divisions of foreign legal entities to apply within 10 calendar days from the date of their state registration (accreditation, legalization) in the established procedure or at the beginning of conducting business activity, if such registration is not obligatory in accordance with the legislation, to the bodies of the state tax service at their place of residence. The implementation of this norm consists of the active and purposeful actions of the obligated subject, who must apply to the tax authorities within the set deadlines with a statement on registration. The inactivity of the taxpayer qualifies as an offense that is, under the execution and compliance with the rules of financial law can be understood as the subordination of the subject of the right of financial and legal claims facing him. This is either the actions of the subjects of law for the implementation of obligations binding on them, authorizing financial-legal norms or refraining from actions prohibited by the rules of financial law. It is necessary to point out that actions aimed at compliance with the rules of financial law are rather different in their specific content since there is a certain difference between the specific content of the rules of financial law. And some of these actions are of a legal nature, while others do not have the same quality. As a rule, the implementation of binding and empowering norms is related to the need for legal action. For example, the implementation of the norm, which obliges to pay taxes in a timely manner and in full, provides for the implementation of legal actions (provision of documents on tax accounting and tax reporting).

3. **The use** of norms of financial law is realized at the discretion of the subject in the implementation of the requirements of financial and legal regulations. Use means the exercise by subjects of financial law of the subjective rights granted to them in the form of permissions, powers. For example, the use is made of the norm set forth in Article 17 of the Tax Code of Ukraine, which enshrines the rights of taxpayers. Thus, a taxpayer may represent his interests in the supervisory authorities on his own, through a tax agent or an authorized representative.

4. **The application** of the rules of financial law consists of a wide range of power actions of the bodies of financial activity in the manner established by law. One of the main forms of law enforcement is law enforcement. The law enforcement is carried out by the competent authorities of the state and local self-government and expressed in the

form of a special decision, which establishes on the basis of financial and legal norms – the rights and obligations of the participants of a particular financial legal relationship. For example, the application implements the norm of Art. 95 of the Tax Code of Ukraine on the forced collection of tax at the expense of the property of the payer. Thus, the body of the State Tax Service carries out, for a taxpayer and in favour of the state, an arrangement for repaying the tax debt of such a taxpayer by collecting funds that are in his ownership, and in case of their insufficiency, by selling the property of such a taxpayer who is in a tax pledge. The need for this form of implementation of financial law is due to the fact that the state plays a leading role in determining the circle and status of financial law subjects (Rossykhyna, 2013).

3. Conclusions

Before the young Ukrainian state, there are very difficult and important tasks of the task in the sphere of the economy. Our solution to our decision depends to a large extent on our progress towards integration into the European Union. Therefore, the realization of the economic program of the newest Ukrainian state must become the blood of every citizen. Therefore, Ukraine first of all should pay attention to the issues of combating corruption and returning citizens confidence to the state authorities, to the judicial and law-enforcement system. Until then, this is fraught with economic instability and the outflow of financial capital (Yunin, Sevruck, Pavlenko, 2018).

Due to this implementation of financial-legal norms is accompanied by a huge number of legal conflicts caused by various reasons. At the same time, the process of improving the financial legal system cannot completely eliminate conflicts of legal norms or contradictions between individual legal acts. The desire of the state to increase the volume of public financial activities and regulating its legal acts will inevitably give rise to legal realization disputes constituting the concept of a legal conflict. It is possible to resolve disagreements or maximally neutralize their negative consequences through the use of a mechanism for resolving legal conflicts (Krokhyna, 2008). The construction of a system of financial law on the basis of objectively existing financial relations allows the correct application of financial and legal norms and thus contributes to strengthening the legality and compliance with the financial law of regulatory and safeguarding functions.

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