



принципов уголовного процесса, проявляются через диалектическое единство и борьбу противоположностей, взаимно дополняя друг друга, вступают в гармоничное взаимодействие, создают дополнительные гарантии истины, защиты прав и свобод человека, правосудия.

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FINANCIAL SAFETY IN UKRAINE: CONCEPT AND LEGAL FOUNDATION

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Summary

On the basis of the fact that the financial safety is the new phenomenon for Ukrainian state, the determination of its legal nature is an actual task of legal science. This paper is devoted to the research of financial safety and its legal component. There are considered the modern scientific views of determination of the category financial safety to determine its characteristics and to identify the key features that should be a basis of legal regulation of financial safety in Ukraine. There is offered the determination of financial safety in its legal aspect and characteristics of its legal nature in the article.

Key words: financial safety, financial interest, legal financial interest, legal nature, economic entities.

Аннотация

Принимая во внимание то, что финансовая безопасность – это новое явление для украинского государства, определение ее правовой природы является актуальной задачей правовой науки. Статья посвящена исследованию финансовой безопасности и ее правовой составляющей. Рассмотрены современные научные взгляды на определение категории «финансовая безопасность» с целью определения ее характеристики и выделения ключевых признаков, которые должны быть положены в основу правового регулирования финансовой безопасности в Украине.

Ключевые слова: финансовая безопасность, финансовый интерес, законный финансовый интерес, правовая природа, субъекты хозяйствования.

Formulation of the problem.

The financial safety – is a new concept for Ukrainian science, although it is already widespread in the practical activity for considerable time. A concept “financial safety” was separated from a general concept “economic safety”. The financial safety is a separate subsystem of the system of economic safety. During the crisis the question of securing the financial safety gained relevance and substantial practical importance. In the economic area of the Former Soviet Union the problems of financial safety were not substantially considered, and thus, Ukraine does not have a historical experience to secure the financial safety both in country in the whole and economic entities and citizens.

States of the study. In accordance with this goal, it was decided the following task – to determine the legal specifics of the financial safety. To solve this problem we used methods of common scientific and special-scientific nature. The research methodology includes the use of the following methods: dialectical ones by disclosure of financial safety, deductive – by determining the legal nature of financial safety. Also, the method of abstraction and generalization is used during disclosure of the legal financial interest.

Presenting research results.

Let us find out what should be understood under the concept “financial safety”? Concerning the fact that scientists share their opinion that the financial safety is a component of economic safety, it can be determined whether the unity of views of the concept “financial safety” exists. For this purpose, let’s analyze the expressed in literature views of definitions of such concepts as “financial safety”, “enterprises financial safety”, “bank financial safety” and etc. This way, there is a conception of financial safety in the Concept of “Financial Safety of Ukraine” as a component of economic safety that characterizes the state of protection of essential (key) interests of the state, regions, enterprise structures and citizens in the financial area from the influence of wide circle of negative factors(threats) [1]. Iu. Kim writes that the financial safety of enterprise is an activity of risk management and protection of enterprise from external and internal threats for securing a stable enterprise development and own capital increase in the current and strategic perspective [2, p. 65]. O. Baranovskyi affirms: “Commercial bank financial safety – is a set of conditions under of which potentially dangerous for



the financial state of commercial bank actions or circumstances are prevented or reduced to such level at which they are not able to harm to the established order of bank functioning, preservation and reproduction of its property and infrastructure, and to prevent the bank achievements of statute goals; a state of safety of financial interest of commercial bank, its financial stability, and also an environment in which it operates” [3, p. 12–13]. I. Blank under the financial safety of enterprise understands the qualitatively and quantitatively certain level of its financial state that secures a stable safety of its priority balanced financial interests from the identified real and potential threats of external and internal nature, the parameters of which are determined on the basis of its financial philosophy, and create the necessary conditions for financial support of its sustainable growth in the current and future periods [4, p. 24]. L. Perekhrest writes: “the bank financial safety is a dynamic characteristic of elements, cooperation of which allows to secure its sustainable development and to guarantee the protection of financial interests from internal and external threats both at present moment and in the long term” [5, p. 6]. V. Shlemko and I. Binko note that under the financial safety it should be understood such state of financial, monetary, exchange, bank, budgetary, tax systems, that is characterized by balance, by stability to the internal and external negative influences, by ability to secure an effective functioning of national economic system and economic growth [6]. A. Epifanov, O. Plastun, V. Dembovskiy consider that financial safety of business entities is an important component of financial safety and is an ability of business entity to engage in economic, including the financial activity, effectively and stable during indefinite time. It is implemented by use of set of interrelated diagnostic, instrumental and control events of financial character that should optimize the use of financial resources, secure the proper level of their realization and negate the risk influence of internal and external environments [7, p. 25]. E. Dmytrenko asserts that the financial safety is a state of security and providing essential financial interests of person, society, state or separate political units with legal, economic, political,

informative, scientific, operational and other events both in the middle of the state and abroad that guarantees the financial independence of Ukraine and protection of its financial system from internal and external threats [8, p. 17].

The presented views of financial safety indicate that authors mainly determine this concept through interests, financial state, independence, ability to resist the threats. However, they are painted by economic sense of financial safety and do not reflect its legal nature. We believe that to secure the financial safety is not enough the economic mechanisms, and in the aspect of legal research one should note the following key feature of financial safety as securing of financial interest. To better understand the importance of financial interest, it should be taken that the financial interests of the state, economic entities and separate citizens do not always coincide and sometimes are contradictory. However, all of them reflect the financial needs of subjects. The financial interests are motivated by the necessity of existence (functioning) that goal for humans is a need in existence, self-expression and personal development. For economic entities the goal is in economic development that provides, first of all, the financial interests of owners. The social and economic development is the goal for state existence. Speaking about an interest as a legal phenomenon, it should be noted that the interest has been analyzed in the researches of ancient Roman lawyers by the study of problem of dissociation of private law from public law [9, p. 1]. In the literature it can be found such approach to the interest: a law is the form of realization of social interests [10, p. 89]; a law is a result of fair interests’ estimation [11, p. 28]. Thus, the interest and the law are interdependent phenomena.

An interest is a purposeful attitude of human to any object of its necessity. The interest depends on the conditions of human beings, reflects a necessity for their life of subjects of the world [12, p. 107]. Thus, the interest should be considered through a necessity and need. In 1943 a psychologist Abraham Maslow expressed his opinion that human behavior is determined by a wide spectrum of necessities. He offered five categories of such necessities and defined their hierarchy in basis of which he put the needs (food, water, accommodation).

And on the top of necessities he defined high individual needs (confession, self-expression) [13]. It is methodologically important to realize that a key subject in legal relationships with securing of financial safety is human being who plays the role of citizen, public servant of economic entity or government body. The existence of state and economic entities is not possible without human being (people). Thus, any financial interests, first of all, are conditioned by objective biological bases of the person as a result of which it is obliged to eat, to drink, to get dressed, to have an accommodation etc. So, in an order to satisfy these necessities, the person should have financial resources getting from its own labour, property, its results and income. “Human activity is characterized by motives, goals, and also means by which it is realized. The motives are something for the sake of what is an activity, those necessities and interests it satisfies. A person attitude to an activity, and therefore, how it is executed, is mostly determined by motives. The purpose is such result for achievement of which the activity is directed. The methods of its realization have an important role in activity near the goal and motives. These include not only instruments used by human but also skills and abilities for the efficient use of these instruments” [14, p. 160–162]. Thus, one of necessary conditions of human activity is a motive because the process of activity is anyway subordinated to conscious purpose. The external subjective and objective factors influence on human psyche and thus mature its behavior. The interest, in its turn, is mediated by necessities, motives, goal, realization means, abilities and skills.

Concerning the financial interests we fully agree to the statement of E. Dmytrenko, who writes, that financial interests are essential financial necessities of person, society and state, which protection and providing with the help of the system of legal, economic, political, personnel, informative, scientific, investigation and search operative and other events both in the state and abroad guarantees the financial independence of Ukraine and protection of its financial system from internal and external threats [8, p. 16]. Thus, the satisfaction of any financial interests mediates by means of protection and providing that, in its turn,



closers us to such important question as a role of the state in the process of satisfaction of financial interests of all its economic entities (under the economic entity understand both individual and collective entities that realize an economic, economical activity, as for example a person, household, businessman – physical person, enterprise, establishment, organization, state). Relying on stated, if we talk about financial interests, they should be examined from the position of public interest. There is consistently suggested an idea in the literature, that under the public interest is understood the concentrated expression of common social necessities and aspirations [15, p. 86]. Iu. Tihomirov writes that from the legal point of view the public interest is characterized by certain normative signs, fixing of its priority, establishing of order and guarantees of providing, fixing of guard methods and responsibility events [16, p 6]. K. Totiev reasonable notices that the public interest specifies on the state responsibility to realize the corresponding to its interest activity [17, p. 25]. Thus, if the financial interests that have public character specify on their legal nature, it should find out the state's role in satisfaction of such interests.

A state is as sovereign, political and territorial citizens association which is created with the purpose of providing of social and group interests of society's members. After its social nature it should provide the maximal compromise of interests in the socially heterogeneous society. As a tool of this compromise in the democratic state is a law. Appointing a right of private property (p. 41), right on entrepreneurial activity (p. 42) and right to work (p. 43) to the Constitution of Ukraine [18], the state took the obligation to define the legal forms of realization and protection of these rights through the additional laws. Thus, with the purpose of implementation of its assignment in society, one of interests of the state in the financial area is a requirement in creation of legal conditions for achievement of interests' compromise of economic entities. But somebody can mark that the persons' needs are endless, and the financial interests almost cannot be satisfied in full. It is twofold, because the state in law form determines the necessary type and measure of rights and obligations of economic entities during realization of their economic activity.

After that it is necessary to find out, how to define the maximal measure of mutual requirements of economic entities which strive to get the high level of own financial security? In our opinion, such measure can be a "legal financial interest", it is the main sign that gives a legal maintenance to the relations of economic entities for providing of financial safety. The legal interest as a legal category is not new for science. Thus, under the legal interest is usually understood permission of certain behavior and connect it with the legal right [19, p. 15]. In its turn, the legal and public interests are united by that they both are legally meaningful interests, satisfaction of which is based on the law. However, their maintenance, realization and protection methods are different [20, p. 120–123]. Without paying attention to availability in law of scientific researches works from researches of legal and public interests, the current legislation of Ukraine does not contain the determination "legal financial interest" [21, p. 42]. We already marked in our researches that the research of legal nature of financial safety gives an opportunity to provide financial safety with the help of administrative and legal of facilities Therefore, the methodology of description requires stating a concept "legal financial interest".

Thus, if the financial interest is a subjective attitude of economic entity to its necessities (necessary and desirable), then the law is a normative act that has the highest legal force, adopted in special order with the aim of getting the legal principles in regulation of socially meaningful relations in the state, and the relations between economic entities are regulated by a law on conditions of beginning of certain legal relationships between them. We conclude that the "legal financial interest" has following characteristics: it begins in legal relationships; it is based on fixed rights and obligations in law; provides the necessary and desired financial necessities appointed by the state; it is characterized by plenty of financial resources, balance of income and expenditure; it is limited by legal possibilities appointed in law.

Conclusion. Thus, the above presented gives us a reason to believe that:

1. The legal financial interest is the aspiration of participants of legal

relationships to satisfy their financial necessities based on appointed in law rights and obligations.

2. In a legal aspect the financial safety is a condition, in which an economic entity realizing the economic freedom is able responsibly to ensure its functioning (existence) and protection of own legal financial interests from internal and external threats in current and future periods with the purpose of sustainable development.

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ДЕЦЕНТРАЛИЗАЦИЯ ПУБЛИЧНОЙ ВЛАСТИ В УСЛОВИЯХ ФОРМИРОВАНИЯ ГРАЖДАНСКОГО ОБЩЕСТВА И ЕВРОИНТЕГРАЦИИ УКРАИНЫ

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Summary

In this article we analyzed the problems of the decentralization of public power in Ukraine in the context of building a democratic civil society and European integration. There was conducted a retrospective analysis of its development in European countries. There were explored the benefits of decentralization for the establishment of the Ukrainian state. We emphasized the necessity of creation of a new effective model of local and regional self-government in Ukraine. We made a conclusion that decentralization offers Ukraine the opportunities of providing the rule of law, inviolability of frontiers, improvement of the management of society and quality of life.

Key words: civil society, local community, local self-government, regional self-government, power, democracy, decentralization.

Аннотация

В статье анализируется проблема децентрализации публичной власти в Украине в условиях развития демократического гражданского общества и евроинтеграции. Проведен ретроспективный анализ ее развития в европейских странах. Раскрыты преимущества децентрализации для становления Украинского государства. Отмечена необходимость формирования в Украине новой эффективной модели местного и регионального самоуправления. Сделан вывод, что децентрализация открывает перед Украиной возможности обеспечения верховенства права, неприкосновенности государственных границ, повышения эффективности управления обществом и качества жизни населения.

Ключевые слова: гражданское общество, территориальная громада, местное самоуправление, региональное самоуправление, власть, народовластие, децентрализация.

Постановка проблемы. Местное самоуправление как в Украине, так и в других демократических государствах мира играет фундаментальную роль в реализации одной из главных задач – сочетание интересов и потребностей государства, общества и личности. Ни одна страна не может считаться демократической, если она не имеет территориальной децентрализации публичной власти.

Актуальность темы децентрализации публичной власти в контексте формирования гражданского общества и современных евроинтеграционных процессов в Украине не вызывает сомнений, поскольку современная общегосударственная система управления с учетом определенных достижений все же сосредоточена в едином центре. Существуют противоречия между

местными органами власти, что значительно уменьшает их эффективность функционирования и, в результате, обуславливает отстраненность ответственности от власти и дальнейшую политическую нестабильность. Соответственно, на современном этапе в нашем государстве пришло время для создания новой модели местного и регионального самоуправления, ориентированной на реализацию принципов Европейской хартии местного самоуправления, регламентирующей не только право, но и способность территориальных громад реализовывать те задачи, которые на них возлагаются. Идея децентрализации публичной власти должна восприниматься как неотъемлемая часть общего процесса модернизации Украины и развития гражданского общества в ней.