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ИНФОРМАЦИЯ ОБ АВТОРЕ

Бачинская Ольга-Мария Игоревна – аспирант кафедры теории права и государства Киевского национального университета имени Тараса Шевченко

INFORMATION ABOUT THE AUTHOR

Bachinskaya Olga-Mariya Igorevna – Postgraduate Student at the Department of Theory of Law and State of Taras Shevchenko National University of Kyiv

ombachynska@gmail.com

УДК 346:330:341:1

THEORETICAL ASPECTS OF FORMATION AND FUNCTIONING OF THE SYSTEM OF PROVIDING OF ECONOMIC SECURITY OF UKRAINE

Yevgeniy BELOUSOV,
Candidate of Legal Sciences, Associate Professor,
Assistant Professor at the Department of International Law of Yaroslav Mudriy
National Law University

SUMMARY

The author examines the role of doctrine in the state economic security providing, it is established that scientific-legal doctrine is the determining factor for a state act-doctrine in the field of economic security of Ukraine. It also establishes the forms of the scientific doctrine reflection in state policy, in particular, by adopting concepts and strategies that embody the main theoretical aspects of the formation and functioning of the state economic security system providing.

Key words: economic security, economic security providing, concept of economic security providing, strategy of economic security providing.

ТЕОРЕТИЧЕСКИЕ АСПЕКТЫ ФОРМИРОВАНИЯ И ФУНКЦИОНИРОВАНИЯ СИСТЕМЫ ОБЕСПЕЧЕНИЯ ЭКОНОМИЧЕСКОЙ БЕЗОПАСНОСТИ УКРАИНЫ

Евгений БЕЛОУСОВ,
кандидат юридических наук, доцент,
доцент кафедры международного права
Национального юридического университета имени Ярослава Мудрого

АННОТАЦИЯ

Автором исследована роль доктрины в обеспечении экономической безопасности государства, в том числе установлено, что научно-правовая доктрина является определяющей для государственного акта-доктрины в сфере экономической безопасности Украины. А также установлено, в каких именно формах научная доктрина находит своё отображение в государственной политике, в частности путём принятия концепций и стратегий, в которых воплощаются основные теоретические аспекты формирования и функционирования системы обеспечения экономической безопасности государства.

Ключевые слова: экономическая безопасность, обеспечение экономической безопасности, концепция обеспечения экономической безопасности, стратегия обеспечения экономической безопасности.

REZUMAT

Autorul a investigat rolul doctrinei în securitatea economică a statului, inclusiv, a constatat că doctrina ştiinţifică şi juridică este decisivă pentru actul de stat, doctrina în securitatea economică a Ucrainei. De asemenea, a constatat ce forme specifice doctrinei ştiinţifice îşi găseşte reflectare în politici publice, în special prin adoptarea unor concepte şi strategii care intruchipeaza aspectele teoretice de bază ale formării şi funcţionării sistemului pentru a asigura securitatea economică a statului.

Cuvinte cheie: securitatea economică, asigurarea securităţii economice, conceptul de asigurare a securităţii economice, strategia asigurării securităţii economice.

Problem setting. Providing the regulatory influence on the state economic security system, economic law is implemented in two planes:

1) practical – a set of normative and legal acts;

2) theoretical – the initial and basic principles of functioning of the state economic security system providing.

Despite the fact that the first one has extraordinary and objective utilitarianism and practicality, the second one, the

theoretical plane, is more interesting, because it is the quintessence of the initial principles that form the system of legal norms.

Theoretical aspects of ensuring economic security of Ukraine are revealed by means of scientific instruments at the level of doctrinal understanding of the initial provisions aimed at providing comprehensive knowledge of nature and mechanisms of economic security and ways of its ensuring.

Analysis of recent researches and publications. The theoretical aspects of the formation and functioning of the state economic security system providing have been studied by such scientists as Baturina S.V., Ismailov B.I., Malinovskiy O.O., Kalitskiy B.A., Semenikhin I.V., Tertyshnik V.M. and others. However, in our opinion, some aspects of this topic have not been studied to the fullest. Therefore, the purpose of this article is an attempt to determine the main aspects.

Article's main body. The primary, initial basis is the doctrine itself. With regard to economic security, it is difficult to speak clearly about the legal doctrine of economic law, since most provisions relating to certain aspects of such security providing are not legal in nature, but contain an exclusive economic content. Therefore, it is advisable to say that the doctrinal principles of the formation and functioning of the system of providing economic security of Ukraine and the methodological tools of its management are derived from the legal (economic-legal) and economic doctrine.

The doctrine itself is the essence of the science (in our case, economic and legal), embodied in the system of views and principles that formed the regularities of its functioning [1, p. 4]. This definition makes it possible to conclude that the doctrine is the initial generalization or general notions (possibly pre-defined or conditionally acceptable by all scholars) in relation to the regularities of the system's development.

B.I. Ismailov and K.Z. Gaziyev point out that «the doctrine is a scitnce or world-view system established in society and commonly used to develop the mechanisms for regulating social processes» [2, p. 182]. Consequently, doctrinal provisions do not have a general obligation for society as a whole, and they are only a certain opinion on a specific issue that faces the scientific community in the process of optimizing and rationalizing economic processes. Even taking into account the fact that the doctrine can be formed from the opinions of different scholars, it will always exist in two dimensions: traditional (general) and special (doctrine that has an alternative point of view, but which does not have sufficient justification, although it is logical and objective). The latter testifies to the existence of two doctrines: a national one that is determined at the state level, but is not recognized as a source of law; special-scientific – that exists within the scientific community and act as the source material for further scientific knowledge.

But to re-think or reformat the doctrine of state policy in the field of economic security providing is not possible as quickly, because the doctrine is formed by established and verified conclusions of scientific knowledge. As a rule, such a cognition took place for a long period when the search for a new solution to the problem was undertaken, taking into account past experience in relation to the functioning of the system of relations where such a problem had been.

The legal problem does not mean the presence of a conflict, it is rather a matter of optimizing or increasing the effectiveness of law-governing influence of management subject on the object.

V.M. Tertishnik suggests interpreting doctrine as a concepts, ideas and scientific theories of public-law reality and understanding of the mechanisms of practical implementation and realization of social relations in a particular field. At the same time, the views that underlie the doctrine have a fixed nature, verified by time and experience, and therefore require due attention and should be studying by the court due to the circumstances of the case [3, p. 148]. The last thesis reveals the content of the legal doctrine and the consequences that can be inflicted on the subjects of relations with the active use of doctrinal positions as indicators of the desired state of the system.

However, doctrinal provisions are only ideas and concepts developed by scholars, and oftenly it require special experience to substantiate and understand them. We couldn't use the results of doctrinal researches for optimizing social processes by means of legal regulation, in which the doctrine is embodied, if it is not agree on its admissibility for other parties to the relationship. Instead, the use of the results of scientific knowledge in further law-making and law-enforcement activities reveals the main purpose of the legal doctrine - the formation of basic principles of legal thinking and legal regulation.

From this perspective, the economic-legal doctrine of economic security provision can be defined as a model of political-legal activity aimed at regulating social processes that reflects the real level of the needs of society, embodied in the framework of a generally expected outcome. In other words, the doctrinal maintenance of the process of achieving the economic security is revealed through the expectation of ensuring the security needs of society.

«The doctrine is created, reproduced, developed through the intellectual and creative efforts of the professional community of lawyers (primarily scholars), that always exists in specific economic, legal, cultural, political conditions, which in one way or another affect the nature and content of its activities, and also on the demand and implementation of the results of scientific research in legal practice» [4, p. 8]. Such an approach to understanding the essence of the economic-legal doctrine of economic security providing makes it possible to say that the economic nature of relations is primary to its legal provision and regulation. Instead, legal regulation is impossible without understanding the nature and mechanisms of the influence of the law to economic relations. Such an understanding is achieved at the doctrinal level, since it implies the inaccuracy and modeling of conclusions regarding the laws of development of the system of state economic security providing.

I.V. Semenikhin notes that the doctrine affects the consciousness of the lawmaker. In addition, the doctrine influences the process of developing methods of legal understanding and law perception in public consciousness [4, p. 10]. S.V. Baturin considers the problem of doctrine much simpler - defining the doctrine «as a complex system category, including legal knowledge, legal values, legal dogma, legal traditions, legal experience, that ultimately determine a certain model of legal regulation in

a specific state-legal space» [5, p. 46]. In turn, V.V. Sorokin defines doctrine as «the spirit of law» and the content of legislation, the dominant type of legal thinking» [6, p. 360]. Thus, the main quintessence and essence of the doctrine in the context of regulating the process of state economic security providing lies in the fact that it forms the system of fundamental principles and determines the genesis of legal regulation of relations in a particular field. In addition, based on the uniqueness of the acquired experience, the doctrine extrapolates the specificity of the object of regulation and determines the future nature of the legal regulation of processes. This is called legal culture and tradition.

Consequently, the doctrine is a systematic knowledge, a set of principles on which the system of legal regulation of a certain field of social relations is based. From the point of view of state economic security system, doctrin is a combination of the experience and achievements of economic and legal sciences, determined and elaborated in such a way, when the results of such achievements will turn into the fundamental principles of legal regulators with a predetermined of effectiveness of influence level on the object of management.

However, as O. Bratel and B.A. Kalitsky notes, not all generalizations and scientific studies of the problems of legal thinking and legal perception can simultaneously turn into doctrinal positions [7, p. 38; 8, p. 20]. The mechanism of action of the scientific and legal doctrine is that the legislator by himself chooses what to perceive as a basis for lawmaking activity, what to based on during elaboration of the rationale for legislative acts. The scientific doctrine can not be considered as a source of mandatory regulations on the regulation of the state economic security, but it can be presented as a certain system of principles or even a certain set of principles that may be the basis of the regulatory influence of the state.

The scientific doctrine is a decisive factor for the state act of doctrine in the field of economic security of Ukraine. Ye. M. Evgrafova emphasizes that «scientific and legal doctrine is often an autonomous, self-sufficient phenomenon whose action and influence are not limited by the time and borders of national states. The emergence of a new doctrine in science begins with the nomination of original ideas for solving certain problems around which the process of formation of a corresponding theory or doctrine is caried out» [9, p. 53]. In the case of state economic security providing, legal science, producing its own doctrine, extrapolates its achievements to economic doctrine, achieving a certain dualism of fundamental principles. Subsequently, these principles become the basis of the state act-doctrine that implements the state policy in one or another sector.

However, as V. Krylenko emphasizes, «in the field of economic security there is no single comprehensive state act-doctrine that would contain the main provisions and principles for its maintenance. But at the same time, there is a scientific and legal doctrine aimed at state national security providing as a whole and economic security in particular» [10, p. 26]. However, such a situation can not meet the needs of social development and state-building processes. It should be noted that even today the scientific and legal doctrine of economic security providing requires substantial improvement.

Instead, there is a need for the development of an appropriate Doctrine of Economic Security, which would be in the form of a legal act and detailing the economic component of Ukraine's national security. Such component is disclosed within the framework of the general Strategy of National Security of Ukraine, approved by the Decree of the President of Ukraine «On the decision of the National Security and Defense Council of Ukraine dated May 6, 2015» On the Strategy of National Security of Ukraine» [11]. If a scientific-legal doctrine is a set of general theoretical and methodological principles concerning the scientific substantiation and knowledge of nature and mechanisms of social processes in a particular sphere, and the state act-doctrine is a conceptual embodiment of principles developed by the science of principles in legal regulation, then a strategy is a definite form detailing certain provisions of scientific doctrine. The strategy is based on those outline principles that contain in doctrine approved in the form of a legal act, but a strategic document is limited by its action in time, since it has a clearly defined mission, purpose, and set of goals. The strategy, in the form of a legal act, is more likely to be a general declaration of intentions and the will of the state to achieve the desired indicators of the development of a particular field of social relations.

Such a strategy is adopted or approved by the regulatory act of the entity of power and includes a general plan of action with a delimitation of the areas of responsibility and functional load between different public authorities.

By itself, the strategy has a certain peculiarity in relation to other normative or legal acts adopted by the authorities and institutions authorized to perform functions of the state:

1) the strategy is the implementation of comprehensive measures for the state policy providing in a specific area. State security policy is based on a number of principles and rules that includes a simultaneous combination of Ukraine's international obligations and non-compliance with its own national interests, the creation of conditions for the free development of man and citizen, and observance their constitutional rights. The domestic security policy is based on the National Security Strategy aims to implement the reforms envisaged by the Association Agreement between Ukraine and the EU, ratified by the Law of Ukraine of 16 September, 2014 № 1678-VII [11], as well as the achievement of the results of sustainable development in all fields of social existence. In addition, the state national security policy implements its complexity and fundamental nature through the institutional mechanism, a set of bodies included in the process of its provision: the Armed Forces of Ukraine, other military and paramilitary forces, law enforcement bodies, executive bodies of all levels, local self-government bodies and even institutes of civil society. Complexity does not always mean qualitative coverage of state-management influence of those fields of social relations, which are included in Strategy influence. Instead, the complexity of the measures and directions of state regulation defined in the Strategy significantly reduces the effectiveness of state policy, because the conditions for deconcentration of the use of state resources are created, its distribution to a large number of areas with a low level of effect from use;

2) the strategy has a single mission and prospect, defining the consecutive goals to achieve them. It determines

the stages of the strategy and creates the conditions for the required level of concentration of attention from the public authorities to the solution of specific sequential tasks. Such a goal-setting method correlates with project management and the strategic budgeting concept, that is the most effective instrument of state management today. In the field of providing economic security, rationalization of resource provision, optimization and concentration of potential, mobilization of hidden reserves provide the maximum effect in the process of implementing a strategic plan for its achievement and maintenance;

3) the strategy is always defined in time, and also involves the differentiation of the goals of the strategy by the time criterion. The strategy can not be permanent for the state, since in this case it becomes the content and purpose of the state apparatus existance. Instead, the strategy of economic security providing (speaking not about a specific government act, but about the content of government-management measures), in its essence, and actually in the content of the subject matter, should and could be considered permanent. Even such a strategy involves the state becoming aware of the new quality of economic processes management, which itself will provide the appropriate level of counteraction and prevention of financial and economic risks.

Consequently, theoretically, the strategy as a separate type of administrative act is a concrete embodiment of the doctrinal approaches and principles of the organization of the public administration process, in our case, in the field of economic security.

The strategy, due to the fact that it is a generalization document, and in the form of a regulatory act – a document that more likely resembles a protocol of intentions regarding the aspirations of the state, taking into account current realities and the minimum predictability of the development of the economic subsystem in the future, should be detailed in more specific and utilitarian regulatory documents. Concept can be considered as such document. In the context of the analyzed problem, such a concept should become the concept of providig the economic security of Ukraine. However, for today there is only the Concept of financial security of Ukraine developed and proposed by scientists.

The theoretical and methodological essence of the concept lies in the fact that it is a combination of purely scientific approaches and developments in the security field with quite real practical aspects of the existence of a managed subsystem, with threats and risks that exist for it, and the ways to overcome them.

The practical essence and value of the concept - particularly, potential Concept of economic security of Ukraine – lies in the fact that it defines and structures the following elements and components:

1) the object of state-management influence and activity of subjects of power authorities;

2) the structure of object-subjective relations in the field of providing economic security with the definition and delineation of the areas of responsibility, functions and methods of influence by state authorities on a specific element of the control object. In this case, the economic subsystem of the state wil be the general object of management;

3) threats and risks to the state's economic security. This component of the concept, like any other administrative act of a doctrinal nature, is entirely the result of the scientific elaboration of the problem of economic security providing. Identification of risks and threats is usually done on the basis of statistical observation and scientific analysis based on modern analytical and expert assessment methods. The importance of identifying threats in the concept is that if it is approved by the relevant act of the authority, these risks and threats will form the basis of state policy in one or another field. Even if such risks relate to the state economic security, as they originate from, for example , the problems of regional policy of the state, they will be implemented within the framework of the corresponding conceptual plans and strategies of the state regional policy;

4) the mechanism of state authorities, civil society bodies and economic relations subjects functioning is aimed at overcoming or leveling down negative threats to the economic security of the state. The mechanisms of such interaction determine and justify the existence of certain restrictions on the market activity of business entities. In particular, it is embodied in the justification of the principles of the permit policy of the state, as well as policies in the field of licensing, certification, etc., of certain types of economic activity.

Conclusions and prospects for the development. Consequently, utilitarianism of the concept is that at the present stage of development of Ukraine, taking into account the aspiration to the EU and the development of its own statehood on the principles of democracy and the primacy of a free market, the definition of the conceptual principles of state policy in a separate regulatory act provides for the further management activity of the state apparatus. The presence of a concept or even a strategy in the form of a regulatory act immediately determines the activities of central and regional levels of state authorities, as well as local self-government bodies in the field of economic security. The state can not impose the will on local self-government bodies and economic entities, but it can create such conditions of legal regulation, which by themselves will ensure fulfillment of tasks in the field of achievement of the state of economic security and its support. However, the existence of the concept embodied in the regulatory act makes it possible to initiate the necessary reforms in the field of economic processes management that, in turn, will be implemented in the specific principles of state policy, including policies of economic and legal provision of economic security of Ukraine.

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ИНФОРМАЦИЯ ОБ АВТОРЕ

Белоусов Евгений Николаевич – кандидат юридических наук, доцент, доцент кафедры международного права Национального юридического университета имени Ярослава Мудрого

INFORMATION ABOUT THE AUTHOR

Belousov Evgeniy Nikolayevich – Candidate of Legal Sciences, Associate Professor, Assistant Professor at the Department of International Law of Yaroslav Mudriy National Law University

i.n.kurashova@gmail.com

УДК 343.241.4

ПРОБЛЕМЫ ПРАВОВОЙ РЕГЛАМЕНТАЦИИ ПРИМЕНЕНИЯ КОНФИСКАЦИИ ИМУЩЕСТВА В УГОЛОВНОМ КОДЕКСЕ УКРАИНЫ

Оксана БИДНАЯ,
аспирант кафедры уголовного права № 1
Национального юридического университета имени Ярослава Мудрого

АННОТАЦИЯ

В статье рассматриваются вопросы, связанные с проблемами установления в санкциях уголовно-правовых норм такого вида наказания, как конфискация имущества. В частности, исследуется вопрос целесообразности включения данного дополнительного наказания в санкции за преступления против национальной и общественной безопасности. Осуществляется обзор зарубежных уголовно-правовых норм и правовых позиций Европейского суда по правам человека в вопросе ограничения права на мирное владение имуществом. На основе международного опыта, научных позиций и судебной практики анализируются недостатки законодательной регламентации применения наказания в виде конфискации имущества.

Ключевые слова: наказание, санкция, конфискация имущества, национальная безопасность, общественная безопасность.

PROBLEMS OF LEGAL REGULATION APPLICATION OF CONFISCATION OF PROPERTY IN THE CRIMINAL CODE OF UKRAINE

Oksana BIDNAYA,
Postgraduate Student at the Department of Criminal Law № 1
of Yaroslav Mudryi National Law University

SUMMARY

The article deals with issues related to the problem of establishing penal sanctions in the sanctions of this type of punishment as confiscation of property. In particular, the issue of the expediency of including this additional punishment in sanctions for crimes against national and public security is being considered. The review of foreign criminal law norms and legal positions of the European Court of Human Rights in the issue of restricting the right to peaceful possession of property was carried out. On the basis of international experience, scientific positions and judicial practice, the shortcomings of the legislative regulation of the use of punishment in the form of confiscation of property are analyzed.

Key words: punishment, sanction, confiscation of property, national security, public safety.

REZUMAT

Articolul se referă la aspecte legate de problema stabilirii sancțiunilor penale în sancțiunile acestui tip de pedeapsă, precum confiscarea proprietății. În special, este investigată problema oportunității includerii acestei pedepse suplimentare în sancțiuni pentru infracțiunile împotriva securității naționale și publice. Se revizuiește norme de drept penal străin și a pozițiilor juridice ale Curții Europene a Drepturilor Omului în problema restricționării dreptului de posesie pașnică a proprietății. Pe baza experienței internaționale, a pozițiilor științifice și a practicilor judiciare, sunt analizate deficiențele regulamentului legislativ privind utilizarea pedepsei sub forma confiscării proprietății.

Cuvinte cheie: pedeapsa, sancțiunea, confiscarea proprietății, securitatea națională, siguranța publică.