

Conceptual legal framework of financial legal responsibility for violating the legislation in the field of budget revenue execution

Концептуальні правові основи фінансово-правової відповідальності за порушення законодавства у сфері виконання бюджетів за доходами

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financial legal responsibility, budget process, budget revenue execution, budget violations, financial sanctions.

Ключові слова:

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Budget revenue execution is the most important stage in the execution of the budgets of all levels of the budget system of Ukraine. The quality of the organization of this process, which is primarily ensured by legal financial regulation, determines such indicators as awareness of the state of revenues to different budgets of the consolidated national budget system, operational responsiveness and monitoring of financial flows, intended, rational and efficient use of budget funds and, consequently, affects all areas of public financial activity.

Due to the budget revenue execution, the relevant periodic rules of the budget law are implemented, namely, the law "On the State Budget of Ukraine" and the decisions on local budgets. In addition, the effectiveness of the whole budget policy, which must be aimed at ensuring the economic and financial stability of the state, local self-government and the proper level of social protection of citizens, depends on the successful budget revenue execution. In its turn, the efficiency of the distribution of revenues between the state budget and local budgets now requires much more attention than in most developed countries to improve legislative regulation, especially during the present period of intensification of fiscal decentralization due to the formation of united territorial communities and providing them with greater authority in the field of budget revenues and expenditures.

These processes can be hampered by various factors, including financial violations. Therefore, a special instrument, which is financial legal responsibility for violating the legislation in the field of budget revenue execution, is necessary for their control and prevention.

The imperfection of Ukrainian legislation is clearly manifested in the absence of well-defined grounds for establishing financial responsibility for this type of offense, the theoretical justification of its use is controversial, but it has yet to become the subject of numerous scientific studies. Moreover, a clear definition of financial legal responsibility in this field is still unavailable.

Thus, the study of the peculiarities of financial legal responsibility for violating the legislation in the field of budget revenue execution is a topical issue at present.

The problem under investigation has not been devoted enough attention by a large number of researchers. However, to a certain extent, it was discussed in the works of the scientists who studied the budget revenue execution and the responsibility for budget violations in general. These researchers include Volodymyr Antypov, Petro Andrushko, Lidiia Voronova, Olha Hetmanets, Oleksandr Dudorov, Mykhailo Mats, Daryna Mitrofanova, Ihor Trubin, Tsezar Ohon, Valerii Oparin, Klavdiia Pavliuk, Vira Khomutenko, Viktor Chernadchuk, Serhii Yurii and others.

It is well known that legal responsibility is the kind and extent of losses of personal, organizational, and material benefits by a person, prescribed by law and coerced by the state, for the offense he/she committed¹. That

¹ Кельма М.С., Мурашин Г.О. Загальна теорія держави і права: підручник. К.: Кондор, 2006. С. 475.

is, the essential elements of legal responsibility are: the occurrence of the offense; the occurrence of losses of personal benefits or restrictions on the person who committed the offense; the causal link between the offense and the measures of state coercion.

As for the types of legal responsibility, the scholars traditionally distinguish disciplinary, administrative, constitutional, criminal and civil responsibility. And is the financial legal responsibility a type of legal responsibility? There is no unambiguous answer to this question, since scientific discussions on this issue have been taking place for more than a decade. Therefore, this point should be considered in more detail.

First of all, it has to be noted that at present the scholars have not yet reached a common position on the name of this legal category. Thus, in the scientific literature there are the following names are used: "financial and legal responsibility"²; "financial responsibility"; "responsibility for violating the rules of financial law"³; "responsibility for violating financial legislation"⁴. We believe, the notion of "financial legal responsibility" is the most adequate, and it was met with the greatest support in scientific research⁵. The definition, in our opinion, most completely characterizes the main features of this type of responsibility, distinguishing it from other responsibilities, since its first part – "financial" – points to the field of the offense to which the responsibility is applied, and the second part – "legal" – to the regulation of social relations under study by legal norms and, accordingly, capturing of sanctions in the normative form.

In general, the positions in the scientific literature regarding the nature of financial legal responsibility can be divided into the following two groups: 1) financial legal responsibility, which is a type of civil or administrative responsibility; 2) financial legal responsibility, which is an independent legal category and a separate type of legal responsibility.

As for the first group, one can distinguish the following theories. Maryna Karasieva compares this type of responsibility to civil responsibility⁶. From Valentin Sorokin's standpoint, financial responsibility with regard to the material criterion is a form of administrative responsibility⁷. In addition, as the researcher points out, financial responsibility has exclusive inherent features. This view is supported by other scholars, who, on the one hand, point to the administrative nature of financial sanctions, and, on the other hand, do not exclude the possibility of singling them out in the form of a new type of legal responsibility – financial legal one⁸.

In our opinion, the presence of exclusive inherent features warrants the separation of this category into an independent type of legal responsibility, for: 1) it is primarily the legal relationship between the state and the entity that committed a violation of financial legal norms; 2) the purpose of this category is punishment of the violator of financial legal norms, compensation for damages, restoration of the damaged party's rights, prevention of a new offense in this field.

To distinguish a separate type of legal responsibility, it is necessary that: 1) there exist a specific type of social relations; 2) the regulation of these relations be carried out using the legal norms, which operate to regulate these social relations; 3) the forms of responsibility be determined for different offenses. The type of responsibility in question fully agrees with the following requirements.

Some scholars deny the existence of financial legal responsibility, but note the existence of financial sanctions and a special type of responsibility, in which these sanctions are applied⁹. In our opinion, the existence of such gaps in scientific theory is primarily due to the lack of a unified approach and normative consolidation of these categories. As a result, a well-defined legal category exists either under different names or without a name at all.

² Лисенко В.М. Фінансові санкції і Конституція України. Право України. 1998. № 12. С. 32.

³ Кравченко Л.М. Проблеми відповідальності за порушення порядку здійснення валютних операцій в Україні. Вісник Вищого арбітражного суду України. 2000. № 2. С. 187.

⁴ Воронова Л.К., Кучерявенко М.П., Пришва Н.Ю. та ін. Фінансове право України: навч. посібник для студ. вищих. навч. закл. К.: Правова єдність, 2009. С. 110; Бех Г.В., Дмитрик О.О., Криницький І.Є. та ін. Фінансове право України: підручник / За ред. М.П. Кучерявенка. К.: Юрінком Інтер, 2006. С. 79.

⁵ Карасева М.В., Крохина Ю.А. Финансовое право. М.: НОРМА, 2001. С. 181; Орлюк О.П. Финансовое право. Академичний курс: підручник. К.: Юрінком Інтер, 2010. С. 187.

⁶ Карасева М.В., Крохина Ю.А. Финансовое право. М.: НОРМА, 2001. С. 182.

⁷ Сорокин В.Д. Административно-процессуальное право. М.: Юрид. лит., 1972. С. 49.

⁸ Туркіна Н.В. Деякі аспекти застосування заходів юридичної відповідальності за порушення бюджетного законодавства України. Вісник Запорізького державного університету. 2004. № 1. С. 69–73.

⁹ Лисенко В.М. Фінансові санкції і Конституція України. Право України. 1998. № 12. С. 32.

First of all, in our argument we would like to make reference to the decision of the Constitutional Court of Ukraine № 7-рп / 2001 dated 30 May 2001, which clarifies that the provisions of Clause 22 of Article 92 of the Constitution of Ukraine shall be understood as not directly imposing the types of legal responsibility¹⁰. Consequently, other types of legal responsibility can still be distinguished depending on the presence of essential features inherent in this legal category.

To sum up the analysis of the first group of views considering financial legal responsibility as a form of civil or administrative responsibility, we shall refer to Emilia Dmytrenko's reasonable claim that although today the given financial legal institution is formed objectively, it needs theoretical justification, in particular with regard to the name, content, relationship with other types of legal responsibility¹¹. That is, having in fact all the features of an independent legal category, this institute has not yet received the necessary normative and scientific consolidation, and therefore remains a rather contradictory concept in the legal theory.

The second group of views recognizes financial legal responsibility as an independent legal category and a separate type of legal responsibility. We support these theories, therefore, in our opinion, they should be considered in order to prove why these points of view are correct.

In the first place, let us turn to the norms of domestic legislation. Thus, Article 111.1.1 of the Tax Code of Ukraine stipulates financial responsibility as a form of responsibility for violation of laws on taxation and other legislation, the control of which is entrusted to supervisory bodies¹². That is, in this legislative act financial (financial legal) responsibility is listed along with administrative and criminal responsibilities, which are definitively and undoubtedly distinguished as separate types.

Moreover, Articles 111.2 and 14.1.265 establish the concept of financial sanctions as a means of influencing financial offenders¹³. Consequently, despite the lack of a definition and clear legal regulation, the legislator still foresees the existence of this type of legal responsibility and included it in an exhaustive list.

What is financial legal responsibility? The analysis of scientific literature makes it possible to distinguish the following concepts:

- 1) Financial legal responsibility is a special type of legal responsibility, which, in addition to the general characteristics of responsibility, has specific characteristics and qualities¹⁴;
- 2) Financial legal responsibility is a normative, formally determined, guaranteed and secured by financial legal coercion legal obligation for an offender to incur measures of state coercion in the form of financial sanctions for the offense he/she committed in the field of financial activity¹⁵;
- 3) Financial legal responsibility is a system of legal relations between the state, represented by the authorized bodies, and the offender, the provisions of financial legal norms, the content of which is to cause the offender certain negative consequences for a financial offense in order to punish the offender in the form inherent for the field of financial legal regulation, the protection of financial legal relations, the termination of the offense and the compensation for the damage done¹⁶;
- 4) Financial legal responsibility is the act of taking measures of state coercion towards the violator of financial legal rules by the authorized state bodies¹⁷.

From our point of view, each of these definitions has the right to exist, since they reveal one or several features simultaneously, which allow us to understand the essence of this legal category and to distinguish it as an independent legal institution at the same time.

¹⁰ Рішення Конституційного Суду України від 30 травня 2001 р. № 7-рп/2001. Бухгалтерія. 2001. № 25/2 (440). С. 5.

¹¹ Дмитренко Е.С. Місце та роль фінансово-правової відповідальності у механізмі правового забезпечення фінансової безпеки України. Фінансове право. 2011. № 4. С. 40.

¹² Податковий кодекс України: Закон України від 2 грудня 2010 р. № 2755-VI. Відомості Верховної Ради України. 2011. № 13–14, № 15–16, № 17. С. 556. Ст. 112.

¹³ Податковий кодекс України: Закон України від 2 грудня 2010 р. № 2755-VI. Відомості Верховної Ради України. 2011. № 13–14, № 15–16, № 17. С. 556. Ст. 112.

¹⁴ Пишний А.Г. Фінансово-правова відповідальність як інститут фінансового права. Науковий вісник Чернівецького університету. Серія: Правознавство. 1997. Вип. 14. С. 192.

¹⁵ Орлюк О.П. Фінансове право. Академічний курс: підручник. К.: Юрінком Інтер, 2010. С. 194.

¹⁶ Дмитренко Е.С. Місце та роль фінансово-правової відповідальності у механізмі правового забезпечення фінансової безпеки України. Фінансове право. 2011. № 4. С. 40.

¹⁷ Карасева М.В., Крохина Ю.А. Финансовое право. М.: НОРМА, 2001. С. 183.

Consequently, financial legal responsibility is an independent form of responsibility, because it is characterized by a specific range of subjects (which distinguishes it from administrative and criminal responsibility), a special type of legal relations in which it is applied (financial legal), exceptional coercive measures (provided by the budget legislation), a peculiar object (funds). Thus, we have every reason to distinguish financial legal responsibility as a separate form of legal responsibility.

The features of financial legal responsibility for violating the legislation in the field of budget revenue execution will be revealed in two aspects: theoretical and normative.

The study of the concept of this legal category is relevant in view of the fact that in domestic law it has recently formed as an independent scientific unit. Therefore, the theoretical part of this issue has not been studied to date. From our point of view, the essence of responsibility for violating the legislation in the field of budget revenue execution should be revealed through the formulation of the purpose, principles and functions of this phenomenon.

In our studies, we have already covered the theoretical aspects of financial legal responsibility for violating the legislation in the field of budget revenue execution. Therefore, we shall illustrate the main points, in general. The purpose of the responsibility for violating the legislation in the field of budget revenue execution has to be considered in a broad and narrow sense. In the broad sense, the responsibility for violating legislation in the field of budget revenue execution is a form of legal responsibility, and therefore it is aimed at protecting the law and order, preventing offenses and punishing the perpetrators. In the narrow sense, its purpose is to protect the interests of the state in the process of mobilizing taxes, fees and other statutory budget revenues.

Regarding the principles, we believe that both the general principles of legal responsibility and the principles of financial legal responsibility are inherent in this legal category.

The general principles of financial legal responsibility for violating the legislation in the field of budget revenue execution include: the principle of legality; the principle of reasonableness; the principle of justice; the principle of inevitability of punishment; the presumption of innocence principle; the principle of the right to legal aid of a person charged with an offense, and the non bis in idem principle¹⁸.

In addition, the financial legal responsibility for violating the legislation in the field of budget revenue execution is definitely characterized by the principles of financial legal responsibility as an independent form of legal responsibility. These include: the principle of distinguishing between financial legal sanctions and financial legal obligations; the principle of correlation between the financial legal responsibility and other responsibilities; the principle of legal expediency; the principle of timeliness; the principle of individual punishment, and the principle of regulation.

In their turn, the functions of financial legal responsibility for violating the legislation in the field of budget revenue execution should be divided into two groups: the first group, the general one, includes penal (punitive), restorative (compensatory), precautionary (preventive) and educational (stimulating) functions; the second group, the special one, includes signaling, regulatory and control functions.

At the same time, it is the special functions of financial legal responsibility for violating the legislation in the field of budget revenue execution that we should focus on. Thus, analyzing the measures taken to influence the violators of budget legislation, provided in the Budget Code of Ukraine, we noted that their primary goal is to minimize the detrimental effects of financial violations, and only then to impose sanctions on persons who committed the given financial offense. Thus, the signaling function of financial legal responsibility for violating the legislation in the field of budget revenue execution is aimed at warning the subjects of the budget process about improper budget revenue execution with the requirement to eliminate the identified shortcomings.

The next function we put forward is regulatory. Financial legal responsibility is used to direct the activities of persons in charge of budget revenue execution so as to make them beneficial to the state and society.

The last function that should be included in the list of special functions of financial legal responsibility for violating the legislation in the field of budget revenue execution is control. This function is manifested in the application of the necessary methods by the competent authorities to oversee the progress of the given stage of the budget process.

Having outlined the theoretical components in general terms, let us turn to the analysis of the normative aspect of the peculiarities of financial legal responsibility for violating the legislation in the field of budget revenue execution.

¹⁸ Грек Т.Б. Правова природа юридичної відповідальності: поняття, принципи та види. Адвокат. 2010. № 10. С. 43–44.

The financial legal responsibility is incurred for the violation of the budget law (in other words, for a budget offense). It should be noted that the term "budget offense" is not used by the legislator, however, in particular, Article 116 of the Budget Code of Ukraine, establishes the legal grounds for taking financial legal responsibility for budget violations¹⁹. The list includes 40 types of violations and is not exhaustive. As for the stage of budget revenue execution, we shall distinguish from the list the following types of possible financial violations: 1) inclusion in the special fund of the budget the revenues from sources not attributed to such in the Budget Code of Ukraine or the law on the State Budget of Ukraine (Clause 9 of Article 116 of the Budget Code of Ukraine); 2) crediting budget revenues to any accounts, except for the single treasury account (except for funds received by Ukrainian institutions operating abroad, own revenues of state and communal higher educational institutions, scientific institutions, and cultural institutions received as payment for the services, provided by them according to their main activities, charitable contributions and grants), as well as their accumulation in the accounts of the authorities controlling the collection of budget revenues (Clause 10 of Article 116 of the Budget Code of Ukraine); 3) transferring budget revenues to a budget other than defined by the Budget Code of Ukraine or the law on the State Budget of Ukraine, including as a result of the distribution of taxes and fees and other revenues among the budgets in violation of the specified amounts (Clause 11, Article 116 of the Budget Code of Ukraine); 4) making state (local) borrowings, providing state (local) guarantees in violation of the requirements of the Budget Code of Ukraine (Clause 12 of Article 116 of the Budget Code of Ukraine); 5) adopting decisions which led to exceeding the maximum amount of state (local) debt or the limits of the provision of state (local) guarantees (Clause 13 of Article 116 of the Budget Code of Ukraine); 6) other budget violations at the stage of budget revenue execution²⁰.

Of course, this list of offenses is not exhaustive, as explicitly provided for by the Budget Code of Ukraine. However, even the five types of financial legal violations of the budget laws make it possible to highlight the peculiarities of financial legal responsibility for violating the legislation in the field of budget revenue execution:

- 1) financial legal responsibility for violating the legislation in the field of budget revenue execution occurs when the budget law is violated, the list of violations is determined by the Budget Code of Ukraine, but it is not exhaustive;
- 2) the objective side of the given offenses consists in the actions or inactivity that led to the receipt or distribution of budget revenues in a way that contradicts the rules of the budget law, or the actions or inactivity which led to the funds being not credited to the appropriate accounts;
- 3) the subjects of the offenses in this field are legal entities that are endowed with budgetary powers and are the participants in the budget process at the stage of budget revenue formation;
- 4) the subjective side is manifested in the intent or negligence that caused a breach of legislation in the field of budget revenue execution;
- 5) the budget law provides two types of measures of influence for violating the legislation in the field of budget revenue execution: a) a warning about the inadequate implementation of the budget law with the requirement to eliminate the breach of the budget law – applies in all cases without exception; b) suspension of operations with public funds – in the case of crediting budget revenues to any accounts, except for a single treasury account or the implementation of this process in violation of the statutory limits.

As for the aforementioned measures of influence, we believe that their provision and implementation is another confirmation of the existence of financial legal responsibility as an independent type. Some researchers who studied this issue have identified these measures as specific types of financial legal punishment. The existence of special types of punishment is one of the most important features of separate types of legal responsibility.

So, let us note that financial legal responsibility for violating the legislation in the field of budget revenue execution is a special type of legal responsibility.

The definition of the concept and the features of this issue are both theoretically and practically significant. The theoretical significance is manifested in the need to allocate this legal category to an independent legal phenomenon, clearly establish its boundaries, and study its links with other elements of the budget process. The practical significance is, first of all, the formulation of the necessary algorithms for bringing to justice the persons who committed an offense at the stage of budget revenue execution.

¹⁹ Бюджетний кодекс України: Закон України від 21 червня 2001 р. № 2542-III. Відомості Верховної Ради України (ВВР). 2001. № 37–38. Ст. 189.

²⁰ Бюджетний кодекс України: Закон України від 21 червня 2001 р. № 2542-III. Відомості Верховної Ради України (ВВР). 2001. № 37–38. Ст. 189.

Consequently, by applying the means of financial legal responsibility to the subjects of the budget process, the legislator influences the aforesaid relations, which as a result fully satisfies the interests of both the state and society, since at this stage the revenues to the budget are mobilized. Therefore, compliance with the law, prevention of offenses and control over the implementation of measures to eliminate the negative effects of misconduct serve as an important foundation for the functioning of the budget process as a whole.

Summary

The article is devoted to the study of the conceptual legal framework of financial legal responsibility for violating the legislation in the field of budget revenue execution. Attention is paid to financial legal responsibility as a special type of legal responsibility. It is argued that the concepts and features of the studied category have both theoretical and practical significance.

Анотація

Стаття присвячена дослідженню концептуальних правових основ фінансово-правової відповідальності за порушення законодавства у сфері виконання бюджетів за доходами. Приділяється увага фінансово-правовій відповідальності як особливому різновиду юридичної відповідальності. Аргументується, що поняття та особливості досліджуваної категорії мають як теоретичне, так і практичне значення.

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