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# **НАУЧНИ ТРУДОВЕ**

**Том 50, серия 7**  
**Правни науки**

# **НАУЧНЫЕ ТРУДЫ**

**Том 50, серия 7**  
**Правные науки**

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She substantiated the conclusion on the probability and necessity of using the typical juridical constructions of Finance Law as an integral immanent criterium of the definition of finance-legal institutions and the systematization of positive Finance Law by its interior qualities – legal characteristics. The same methodological approach to the investigation of the phenomenon of the Institution of the Finance Law allowed L.V.Vakaryuk to reveal some objective laws of legal material and to formulate **the law of system separatism of juridical constructions of the Finance Law** (different-quality building elements of juridical constructions of Finance Law as the system are always structurally independent among themselves), **the law of optimum structure of juridical constructions of Finance Law** (the essence is that no one juridical construction of Finance Law by its origin can contradict or expand infinitely both in time and in space – they are always strictly determined by the purpose of the existence of the corresponding juridical construction and its functions depending on a given purpose, i.e. legal phenomena), and to enrich the science of Finance Law with a series of another substantial regulations, values and conclusions. In their aggregate they turned out to be so non-traditional, qualitatively new, revolutionary, in another word – paradigmaly different, that Ukrainian finance-legal scientific community, being mostly in captivity of linear methodological approaches, did not perceive positively these results of the investigation represented in the form of Candidate dissertation “Institution of Finance Law: problems of theory and methodology” in 2008, it was silently sabotaged [5].

The main distinctive peculiarity of **the second paradigm of the system analysis** is the transition from the investigation of conditions of the equilibrium of the systems, their symmetry to the analysis of unbalanced and irreversible states of complex and super-complex dynamic systems. All these systems formed of a number of subsystems – the sphere of Finance Law with its numerous branches, much more numerous complex institutes, still more numerous institutes, sub-institutes, and so on, are not the exception in this qualitative series and are able to fluctuate. I.e., the considered parameters of these systems are subjected not only to natural changes but also to occasional deviation from typical values of parameters.

But if in the aspect of stability of these systems, as a great experience obtained by the science in investigation of a given phenomenon proves, the fluctuations decrease to minimal values tending to zero, then in the direction of instability these fluctuations, due to the positive inverse link of the system with external medium, - in the Finance Law, for example, relations of any finance-legal institute with an adequate reality of public finance become from time to time so strong that cause an inevitable destruction of a corresponding legal system. The task of an effective legislator is to foresee, to calculate this moment of destruction of a corresponding legal system and to prepare its substitution with another adequately new or quantitatively renovated external medium (and post-crisis societies are exactly so), with the system of finance-legal norms of a proper aim direction.

This process can and should be effectively governed, as by the data of common theory of systems in such a critical moment, at the point of bifurcation it is enough the smallest influences on the system that it should transfer, by means of negation of negation, from one previously stable state which became unstable in consequence of continuous development (in our case of Finance Law and financial-legal reality) into a new stable state. Consequently, the system becomes still more differentiated, regulated. It proves practically quantum origin – availability of mutually exclusive characteristics – in complex dynamic legal systems, also including Finance Law.

In a given situation the existence of so complex systems as the phenomena of Finance Law, different among each other and functioning under the condition of irreversibility of time, should be estimated rather as indefinite than a definite one. As any complex system, according to modern postulate of general theory of systems, is able to generate order and organization from disorganization and chaos in the result of the process of self-organization where the most important role is played by the occasion. In addition the sci-

ence of Finance Law has not yet elaborated enough principles by means of which the further state of a given system could be determined on the basis of accounting the internal state of the system, for example, the juridical construction of a concrete tax, and the aggregate of factors of influence on it, a corresponding external medium. A huge field of the appliance of attempts extends before the science, though there are already some interesting results.

For example, from methodological positions of the second paradigm of the system analysis I.I.Babin investigated such extra-complex and extra-dynamic legal system as the juridical construction of a tax. As the result, the author obtained a series of conclusions principally new for the science of Finance Law which essentially enriched modern imaginations of legal origin and the essence of a tax. The author came to a convincing conclusion that fundamental systematization of internal organization of juridical construction of a tax, the system of its relations with the corresponding external medium, with the mechanisms of governing the taxation and their development, functioning of juridical construction of a tax in general are based on organic internal and external relations of the elements of juridical construction. I.I.Babin also found that two groups of internal and external relations of a tax as a juridical phenomenon with corresponding external medium are inherent for juridical construction of a tax as an instrument of the law. Regulated by the Tax Law, the alienation of legislatively established part of property of a private subject from him, is executed by means of fiscal elements of juridical construction of a tax. Meanwhile, an organic internal relation and mutual dependence exists between each of fiscal elements of juridical construction of a tax and other elements of this group. At the same time the relations of the whole given group of fiscal elements of juridical construction of a tax and juridical construction of the law of private property of a subject of taxation are incontestable and according to the Tax Law, belong to external relations. This hierarchy structure of juridical construction of a tax is aimed to create rather legitimate conditions for withdrawal of legislatively definite part of private property from its producer and directing it to a corresponding public fund of means.

The second group of internal relations in juridical construction of a tax is represented by the relations formed between actually organization elements of juridical construction of a tax. In its turn, between the group of organization elements as qualitatively separated substance of juridical construction of a tax, on the one hand, and juridical construction of the law of public property for tax income into budget or another public fund of money resources on the other hand, there formed stable external relations, the purpose of which is providing tax income in money or another form in corresponding public fund and including this tax income into the balance of a given fund. By means of the second paradigm of the system analysis I.I.Babin determined that juridical construction of a tax consists of constant and variable values. The subjects of Tax Law relation – taxpayer and public subject – tax receiver belong to the stable values. The change of even one of them causes the change of the corresponding juridical construction of a tax by its other construction. All other elements – elements of taxation are not stable and can change within one and the same juridical construction of tax. The investigation of the whole aggregate of relations of elements of juridical construction of tax allowed the author to substantiate and to propose the concept of primary and secondary qualities of group of elements of this construction [6]. I.e., the investigation of a priori system phenomenon according to corresponding methodological approach allowed I.I.Babin to cognize those substantial characteristics of the investigated phenomenon which, for example, with elementaristic approach always slipped away from the scientist.

Thus, we consider that there are enough reasons to make a conclusion that applying the system for cognition of finance legal reality promotes the reveal of principally new knowledge on Finance Law, and forms if not a completely new image of Finance Law than, at least, illuminates it with numerous new facets, apart from, that it contributes to overcom-

## System Approach in Law Cognition (the experience of Chair of Constitutional, Administrative and Finance Law of the Faculty of Law of Yuri Fedkovich Chernivtsi National University)

P.S. Patsurkivsky

Law, including positive, is an attributive system phenomenon in its origin. Its essence was understood and demonstrated on the example of its juridical constructions by ancient-roman lawyers. Nevertheless, as the analysis of the world jurisprudence development proves, its history is so far formed in such a way, that system investigations of Law as the phenomenon of an objective reality, especially its system characteristics, were performed from time to time and only by some scientists. Obviously, that is why no one home or foreign scientific school of Finance Law exists able to elaborate the experience of applying the system approach to finance-legal reality so necessary for modern science of Finance Law. In this situation any rational way out but applying the methodological experience of system investigations of other sciences doesn't exist.

The analysis of methods and results of applying the system approach to cognition of an objective reality for many centuries, especially for more than a hundred year evolution of general theory of systems and results of its applying in different sciences in many countries of the world, convincingly testifies to availability of several steady methodological models (paradigms) of the system approach to objective reality cognition. As far back as ancient times, on the first stage of development of system investigations there was formulated the **first paradigm** of the system approach to cognition of objective reality, according to which **basic tasks of system investigations are on the plane of finding the ways of equilibrium, balance of analyzed systems**. In this very clue there are constructed the technology by A. A. Bogdanov, "general theory of systems" by L. von Bertalanfi, cybernetics by N. Viner, mathematical theory of systems by M. Mesarovich, system-cognition concepts by K. Boulding, A. Rapoport, U. Ross Eshby and many others. This paradigm such as the following ones, has its distinct characteristics, though the genre of a given scientific work does not allow to reveal them more in detail.

I will give a concrete example of the results of applying the first paradigm of the system thinking in the science of Finance Law. So, by means of this cognitive model Tax Law has been investigated by R.A.Gavrylyuk for about ten years. The most concentrated and generalized results of this work became her substantiation of the egalitar (instrumental-demand) concept of the Tax Law [1], the conclusions on availability of mutually exclusive characteristics ("quant superposition") in public finance and their ability to satisfy common needs of a socium or private needs of an individuum depending on accidental circumstances [2], the principle of symmetry in private and public needs of an individuum as a theoretical nucleus of an egalitar paradigm of the Tax Law [3] and a series of other principle methodological and theoretical regulations. Specifically, she came to the conclusion that philosophy teaching on properties of symmetric sides of every dialectic contradiction is at the same time a theoretical nucleus of egalitar doctrine of the Tax Law, it forms in the aggregate the substance of the principle of symmetry of private and public needs of an individuum-taxpayer. Substantial characteristics of this principle are: the unity of symmetric opposites; their mutual exclusiveness, mutual negation; their interposition, interpenetration one into another; intertransformation, self-realization of symmetric opposites; inequality of symmetric opposites in the course of their interactivity, hierarchy of symmetric opposites [4].

New important scientific results were obtained by L.V.Vakaryuk in the investigation of the phenomenon of the **Institute of Finance Law** in consequence of applying the methodological model of the first paradigm of system thinking.

ing deep-seated economic determinism in understanding the origin of Finance Law, practically ignoring legal content in Finance Law and substituting it by economic, illegal material.

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