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THE NECESSITY OF LIVING LAW IN TAX-LAW ENFORCEMENT

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New forms of organization of tax-legal relations (for example, tax monitoring, tax planning, tax amnesty, tax compromise) are becoming one of the main objects of **scientific interest for socio-legal research**. In such relations, taxpayers and their interests come to the fore. In this perspective, it seems inevitable to return to the classical theories of sociology of law, and this should be the beginning of a revival of new interest in the works of its founders.

To characterize any tax-legal phenomenon, it is important to identify the basis, the **objectively determined principle**, according to which it was determined, determined and there is a high probability, which will further determine the legal regulation of the same or similar social relations. Therefore, the analysis of any principles or sources (basis, idea, source, primary source, the supreme idea) answers the question: how, on what basis is the legal regulation determined, what scientific ideas underlie it. So, if every good idea needs its time and opportunity to mature, now is the time. Sustainability can be defined as a fundamental principle of law and governance. It has reached a degree of maturity that allows for an examination of its meaning and legal status. This can be done in a similar way as other fundamental principles such as justice or freedom have been examined and promoted [1].

Therefore, the terminology and theory of the classics of sociology of law, in particular such as Eugene Ehrlich, can be useful today. Anyone who is responsible for building a legal system must take into account that it is necessary to observe only the right that is adequate for its time. After all, otherwise the law loses its flexibility, its ability to adapt to changing conditions or to changes in people's perceptions of values and justice. Thus, for example, today it is extremely important to use the Pro Bono Institute in Attorney's-at-Law Professional Activity, which confirms the need for the implementation of «**living elements**» in the legal regulation of any life situation [2].

The sources of knowledge of **«living law», according to Ehrlich**, are modern documents, direct observation of life, trade and entrepreneurship, habits, customs of all unions, both legally recognized and legally omitted and bypassed, as well as legally unapproved. The sociological method of legal science theoretically substantiates, although it sees certain shortcomings of this method: to give a perfect picture of the right life.

This can be demonstrated by the example of tax-law enforcement. Thus, from the standpoint of the principle of social naturalism (more about naturalism and its influence on society can be found in the article Łukasz Kurek, «Naturalism and the legal image of man» [3]), tax law has two sides – natural content and social form – normative expression. Form and content are attributes of each other, in their natural state they are impossible without each other. The most perfect is the legal structure of the tax, when its natural content is adequately embodied in the legislation.

What caused the expediency of rethinking the concept of «living law», proposed by Eugene Ehrlich in the current context of reforming tax legislation and the new social reality? This concept is endowed with the socio-legal core, which still has not

lost its relevance: the search for modern «associations», groups, communities, norms that control and determine their behavior - these searches have led to the theory of «living law», which tries to show the right not partially, not unilaterally, but holistically, comprehensively, to reproduce its real meaning.

The problem of finding ways to **improve the mechanism of tax-law enforcement**, determining its adequate model is, according to many scholars, really relevant, because adequate to the goals of social development and the corresponding state and legal reform changes the purpose of law enforcement and its possible form. This situation encourages change and the means to achieve it to increase the social value and effectiveness of legal institutions in order to implement effective legal regulation of public relations. Tax-law scholarship must adapt its paradigms and research techniques to this new reality. It must be prepared to study tax law less as a mechanical structure than as a market, where many intersecting negotiations take place. «To capture the new reality, comparative administrative law should be framed no longer as the rules and judicial-redress mechanisms that guarantee the effective working of administration, but rather as an accountability network through which civil servants are embedded in their liberal-democratic social orders» [4]. This approach requires paying more attention to the rules of change and to a different conception of tax law, which is to be seen not as a static set of rules and mechanisms, but as a dynamic system, capable of interacting with its environment.

In this perspective, in the field of national (Ukrainian) legal science we often note that in administrative law regulation, in contrast to the traditional view, uses not one of two types of classical methods – imperative and dispositive, and an independent method of a special nature, in which mixed elements and features of both the first and second methods. However, in the international space, too, approaches to legal regulation are changing, and the contractual form is preferred, conditions are created for mutually beneficial concessions, etc. Here is how this central assumption is described by Sabino Cassese: «On the contrary, according to the second point of view, held mainly by German observers, a new administrative law is developing, due to a process of change, modernization, and reform. This new, or postmodern, administrative law is more open than the old administrative law, and is focused on “steering” rather than on ordering. This new administrative law is-in this view-the product of the new role of the state as a promoter, as a facilitator, as a risk regulator, and as the helmsman of economy and society. It therefore requires a new, more interdisciplinary, approach» [5].

Attempts to master the new social reality of interactions in tax relations from the point of view of law will remain only a task to be pursued (for example, creating a mechanism for implementing a tax compromise, or opportunities and criteria for applying a tax amnesty). It may never be fully realized, but that is no reason to deny its importance.

References:

[1] Bosselmann, K. (2016). The principle of sustainability: transforming law and governance. Taylor & Francis. https://doi.org/10.4324/9781315553955 p.4 (272 pages)

[2] Podorozhna, T., & Vdovichen, V. (2019). Pro Bono Institute in Attorney's-at-Law Professional Activity: National Trends and Foreign Experience. Law Ukr.: Legal J., 179.

[3] Kurek, Ł. (2017). Naturalism and the legal image of man. Revus. Journal for Constitutional Theory and Philosophy of Law/Revija za ustavno teorijo in filozofijo prava, (32), 37-58. https://journals.openedition.org/revus/3871

[4] Bignami, F. (2011). From Expert Administration to Accountability Network: A New Paradigm for Comparative Administrative Law. The American Journal of Comparative Law, 59(4), 859-907.

[5] Cassese, S. (2012). New paths for administrative law: A manifesto. International Journal of Constitutional Law, 10(3), 603-613. https://doi.org/10.1093/icon/mos038