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THE PRINCIPLE OF PROPORTIONALITY THE RULE OF LAW IN THE REGULATION OF TAX RELATIONS AND RELATIONS RELATED TO ENVIRONMENTAL POLLUTION

The article examines the relationship between such categories as the principle of proportionality and the principle of the rule of law in the regulation of tax legal relations.

It is indicated that tax disputes and tax legal relations are disputes that are considered in the order of administrative proceedings, which means the need to refer to the judicial practice of the activities of administrative courts. In this context, the establishment of the content of the rule of law principle and its correlation with the principle of proportionality as components of the implementation of state and regional tax policy, the formation of the revenue side of the budgets of different levels as a component of the administrative and legal mechanism of national security of Ukraine.

Ensuring the implementation of the balance of public and private interests is associated with the regulation and application of a set of tools and institutions that should regulate the relevant sphere of public relations.

The main means of achieving effective application of the rule of law principle include legal norms, in particular, constitutional provisions as an objective reflection of the contract between society and the state, that such proportionality of interests between the public and the private is acceptable for this historical and legal period in specific strategic conditions of development. The implementation of the rule of law principle means that the dominant principle of organising the activities of tax authorities should also be the priority of international law over national law, in its implementation, as well as the application of the relevant norms of the current legislation of Ukraine, the content of which should ensure the priority of human rights and freedoms as the highest social value.

It is noted that special attention should be paid to the fundamental approaches defined in Directive 2008/98/EC on the introduction of a hierarchy in addressing waste management issues. Also, provisions on determining the completion of waste status need to be enshrined in waste legislation and other regulatory legal acts of Ukraine. Regarding the issue of the correlation of Ukrainian legislation with the European one, the Ukrainian one only partially meets the requirements of the EU, it requires significant revision and as mandatory a prerequisite for the qualitative (not contradictory) implementation of European norms is the harmonisation of the terminological apparatus. All this is impossible without understanding and optimizing approaches to establishing the content of the principle of the rule of law and its relationship with the principle of proportionality in the researched areas.

It is concluded that the principle of proportionality does not negate the application of the rule of law, both under normal conditions and under martial law. The implementation of the rule of law in the tax sphere means the creation of conditions for ensuring the legal certainty of the taxation mechanism, including in the context of martial law, the inadmissibility of discrimination on property and other grounds, however, it is necessary to apply the principle of equality of economic opportunities as a basis for determining tax rates, and this already correlates with the need to legislate the principle of proportionality, that is, the balance of interests of private individuals and public interests.

Key words: principle of proportionality, environmental protection, environmental pollution, tax relations, tax code, tax system, rule of law, ecosystem, public interest, tax legal relations.

Ю. А. Волкова. Принцип пропорційності та принцип верховенства права у регулюванні податкових правовідносин та відносин пов'язаних з забрудненням довкілля

У статті проаналізовано співвідношення таких категорій як принцип пропорційності та принцип верховенства права у регулюванні податкових правовідносин.

Вказано, що податкові спори та податкові правовідносини та відносини пов'язані з забрудненням довкілля є спорами, що розглядаються у порядку адміністративного судочинства, що означає необхідність звернення до судової практики діяльності адміністративних судів. Таким чином, встановлення змісту принципу верховенства права та його співвідношення з принципом пропорційності як складових здійснення державної та регіональної політики та як складової адміністративно-правового механізму національної безпеки України є надважливими для оптимального розвитку публічної сфери.

Забезпечення реалізації балансу публічних та приватних інтересів, пов'язується із регулюванням та застосуванням комплексу інструментів та інституцій, що мають регулювати відповідну сферу суспільних відносин. До основних засобів досягнення ефективності застосування принципу верховенства права відносяться норми права, зокрема, конституційні положення як об'єктивного відображення договору між суспільством та державою, що саме така пропорційність інтересів між публічним та приватним є прийнятним для цього історико-правового періоду в конкретних стратегічних умовах розвитку. Реалізація принципу верховенства права означає, що домінуючим принципом організації

діяльності податкових органів має бути також пріоритет міжнародного права над національним, за умов його імплементації, а також застосування відповідних норм чинного законодавства України, змістом положень яких має забезпечуватися пріоритет прав та свобод людини як найвищої соціальної цінності.

Зазначено, що окремої уваги потребують принципові підходи, визначені у Директиві 2008/98/ЄС щодо впровадження ієрархії у вирішенні питань поводження з відходами. Також, потребують закріплення в законодавстві про відходи та інших нормативно-правових актах України положення про визначення завершення статусу відходів. Щодо питання співвідношення українського законодавства з європейським, українське лише частково відповідає вимогам ЄС, воно потребує суттєвого перегляду і як обов'язковою передумовою якісної (не суперечливої) імплементації європейських норм виступає узгодження термінологічного апарату. Все це неможливо без розуміння та оптимізації підходів щодо встановлення змісту принципу верховенства права та його співвідношення з принципом пропорційності у досліджуваних сферах.

Зроблено висновок, що принцип пропорційності не заперечує застосування принципу верховенства права, як в звичайних умовах, так і в умовах воєнного стану. Реалізація верховенства права в податковій сфері та у сфері відносин пов'язані з забрудненням довкілля означає створення умов до забезпечення правової визначеності діючого механізму, в тому числі в умовах воєнного стану, неприпустимості дискримінації за майновими та іншими ознаками, однак при цьому необхідним є застосування принципу рівності можливостей, а це вже корелюється із необхідності законодавчого закріплення принципу пропорційності, тобто збалансованості інтересів приватних осіб та публічних інтересів.

Ключові слова: принцип пропорційності, захист довкілля, забруднення довкілля, податкові відносини, податковий кодекс, податкова система, верховенство права, екосистема, публічний інтерес, податкові правовідносини.

In accordance with Article 8 of the Constitution of Ukraine, the current principle of the rule of law is established, which until 1996 was not actually applied and the principle of legality was dominant. Beginning from the 2000s, the issue of applying the rule of law as a priority principle of law implementation and law enforcement has arisen.

The constitutional consolidation of the principle of the rule of law, the establishment of its place in the national legal system is of priority in general and, in particular, as a component of the establishment of the principles of tax legal relations in the system, which meant the vector of development of legal science in Ukraine.

In the conditions of rapid development of energy consumption, growing technogenic and anthropogenic load on the environment, the issue of solving environmental problems ceases to be a domestic problem and requires the effective use of international and interstate levers of influence.

Research and application of the experience of public management in the field of use of natural resources of the EU countries can help in the modern optimization of the national environmental protection system.

At the present stage, considering the problematic aspects of the state of the natural environment, it is advisable to point out that the environment is a system that exists independently and at the same time directly affects the livelihoods of humankind. The increasing consumer demands for various goods affects the change in the viability of ecosystems as a whole. As the historical course of civilization shows, even imagining and understanding the detrimental effects of the results of their activities, a person is not able to cope with the temptation of his own enrichment and accumulation of benefits. That is why most of the problems in the natural environment are the result of human activity.

Therefore, the constitutional consolidation of the principle of the rule of law, establishing its place in the national legal system has priority in general, and in particular, as a component of the establishment of the principles of tax legal relations in the system, which marked the vector of development of legal science of Ukraine.

The content of the principle of the rule of law includes the substantial aspect (establishment of a person, his life and health as the highest social value) and the procedural aspect (as the implementation of the principle of compliance of law-making and law enforcement with the established requirements of the prohibition of the retroactive effect of the law, the inadmissibility of the application of responsibility that worsens the property or personal situation a person who has already been arrested for a committed offence, etc.). Therefore, the main content of the principle of the rule of law is the establishment of restrictions on the activities of the government, its establishment of coercions, prohibitions, and restrictions on the activities of private individuals. Whereas the implementation of the principle of proportionality in environmental legal relations is in a synergistic relationship with the principle of the rule of law.

According to Article 4 of the Tax Code of Ukraine, the principle of the rule of law is established as the principle of tax legal relationship. The introduction of the principle of the rule of law as a principle of tax legal relationship has an ongoing history of development and formation, which is based, among other things, on the consideration of judicial practice materials on ensuring and protecting the rights and interests of private and public law persons. The implementation of the rule of law principle in Ukraine, according to the results of an independent assessment conducted by the European Commission, indicates a low level of effectiveness of the measures taken to implement the rule of law requirements.

The content of the principle of the rule of law includes a substantive aspect (the establishment of a person, his life and health as the highest social value) and a procedural aspect (as the implementation of the principle of compliance of law-making and law enforcement with the established requirements of the prohibition of the retroactive effect of the law, the inadmissibility of applying liability that worsens the property or personal situation of a person, which has already been brought for a committed offence, etc. So, the main content of the principle of the rule of law is the establishment of restrictions on the activities of the state, the establishment of coercions, prohibitions, and restrictions on the activities of individuals. Whereas the implementation of the principle of proportionality in tax relations is synergistically linked to the rule of law.

At the present stage, considering the problematic aspects of the state of the natural environment, it is advisable to point out that the environment is a system that exists independently and at the same time directly affects the livelihoods of humankind. The increasing consumer demands for various goods affects the change in the viability of ecosystems as a whole. As the historical course of civilization shows, even imagining and understanding the detrimental effects of the results of their activities, a person is not able to cope with the temptation of his own enrichment and accumulation of benefits. That is why most of the problems in the natural environment are the result of human activity.

For most of us, the concept of «waste» is understood within household waste. But we must be aware of the real volumes and dangers that waste poses to our health and the environment.

Despite the urgency of the waste problem, today the problems of imperfection of the legislative and regulatory and methodological framework for waste management in the process of adaptation of national legislation to the requirements of the European Union remain resolved.

Tax disputes and tax legal relations are disputes that are considered in the order of administrative proceedings, which means the need to refer to the judicial practice of the activities of administrative courts. Thus, the establishment of the content of the rule of law principle and its correlation with the principle of proportionality as components of the implementation of state and regional tax policy, the formation of the revenue side of the budgets of different levels as a component of the administrative and legal mechanism of Ukrainian national security.

Ensuring the implementation of the balance of public and private interests is associated with the regulation and application of a set of tools and institutions that should regulate the relevant sphere of public relations. The main means of achieving the effectiveness of the application of the principle of the rule of law include the rules of law, in particular, constitutional provisions as an objective reflection of the contract between society and the state, that such a proportionality of interests between public and private is acceptable for this historical and legal period in specific strategic conditions of development. The implementation of the principle of the rule of law means that the dominant principle of organising the activities of tax authorities should also be the priority of international law over national law, in its implementation, as well as the application of the relevant norms of the current legislation of Ukraine, the content of which should ensure the priority of human rights and freedoms as the highest social value.

The principle of the rule of law, as noted in the Report on the measure of rule of law adopted by the Venice Commission in March 2016, is a criterion for the effectiveness of the implementation of democracy in the country, the main value of the European Union [1, p. 8].

The understanding of the principle of the rule of law in the scientific literature is ambiguous and is in a state of scientific discussion. In particular, the principle of the rule of law is defined through the concept of rule of law, which is a criterion for the effectiveness of the implementation of the functions of the state [2]. Difficulties in adapting the principle of the rule of law, understanding its essence are associated with the need to apply a lexical interpretation of the English term and its implementation in the current legislation of Ukraine. Therefore, the content of the principle of the rule of law requires the definition of an understanding of two categories – the rule and the law [3, p. 3–16]. The Western European tradition is guided by the need to apply the Rule of law principle, relayed to the Ukrainian legal space, to the national legal system as the principle of the rule of law. The development of European law is gradually bringing together such two categories as legal and rule of law. European law sets as priorities for the development of a modern state such three constituent elements as the introduction of the implementation of the rule of law, human rights, and ideas of democratic values [4, p. 24–28]. At the same time, the implementation of the rule of law cannot contradict the implementation of the principle of proportionality, but rather complements each other.

The implementation of the principle of proportionality as the achievement of a balance between the interests of private individuals and the public interest is possible by proclaiming the idea of developing a legal social democratic state as a dominant, because if such a requirement is not observed, then there is virtually no regulatory basis for limiting the arbitrariness of state power. Consequently, in fact, the realisation of the freedom of the people, that is, in essence, the establishment of the principle of public interest, while not violating the isolated interests of a private person, is impossible within an authoritarian or totalitarian state.

Certainly, maintaining such a balance between private and public interests is a fairly dynamic category that cannot be normatively described by a certain list of socio-historical circumstances of the development of an individual state, and therefore is subject to constant revision both at the level of rule-making activity, and at the level of law implementation and law enforcement. However, it is obvious that the most important priority public interest for a modern civilised society is actually the development of a social legal state, based on democracy, recognition of a person as the highest value [5, p. 70–77]. Consequently, the recognition of the expediency of observing public interests as normatively permissible can only be in the conditions of the development of the rule of law. Also, the pursuit of meeting private interests, their priority for the state can be proclaimed as a strategy for the development of the state, when the understanding of a person as the highest social value is consolidated. Consequently, the implementation of the principle of the rule of law is in synergy with the implementation of the principle of proportionality, which generally correlates with the need to introduce the doctrine of the rule of law and the priority of the rights and interests of the individual as the highest social value. In this regard, it is worth supporting the view that the rule of law is understood as the ability and capacity of significant social groups to protect and enforce the laws in force in a given country [6].

Within the tax legal relationship, the implementation of the rule of law principle is associated with the definition of the boundaries of the discretionary powers of tax authorities and other executive authorities. The scope of discretionary powers of the tax authorities is to establish tax benefits, conduct tax audits and exercise other forms of tax control, etc.). The exercise of discretionary powers by state executive authorities should not create obstacles to ensuring the effective functioning of the tax system of Ukraine, the understanding of the essence of which is again debatable. Thus, in accordance with the legislative content, the tax system of Ukraine is understood as a set of “general state and local taxes and fees levied in accordance with the procedure established by the articles of the Tax Code of Ukraine”.

The defining characteristic of the tax system is the interconnection of national and local taxes and fees, principles, forms, and methods of their regulatory determination, functionally capable of ensuring their collection of measures, the creation of a control mechanism, including through the control and supervisory activities of tax and fiscal authorities, as well as responsibility for violation of tax laws.

Indeed, an extended interpretation of the tax system such as its comparison with the legal system, then its composition should include not only taxes and fees directly, but also the principles of taxation, the mechanism for calculating these payments, the establishment of benefits when they are collected, etc. Only such a complex set of interrelated elements is able to ensure the effectiveness of the system of formation of the revenue side of the state and local budgets, one of the sources of which is national and local taxes and fees.

The functional direction of the implementation of the state fiscal policy of Ukraine should correspond to the vector of European integration, established in accordance with the content of the Association Agreement between Ukraine and the European Union, which laid the foundation for the implementation of the rule of law and proportional balance of public and private interests.

An encyclopaedic approach to understanding the essence of the principle of the rule of law, based on taking into account the results and judicial practice in particular, as well as generalising the results of scientific research, consists in understanding it: as a certain way of organising the life of society on a legal basis; a certain set of moral values of law, correlated with the categories of justice, proportionality, equality, conscientiousness, purposefulness, reasonableness, etc.; is a criterion for building a legal system; is a means of limiting the state. That is, such an approach to understanding the principle of the rule of law is determined by scientists through the principle of proportionality.

According to the provisions of the Report of the Venice Commission 2011 [1], such elements of the rule of law are defined as: 1) legality in the understanding of transparency and validity of the development and adoption of legislative acts; 2) legal certainty; 3) prohibition of arbitrariness; 4) access to justice, that is, the independence and impartiality of the courts, including during the trial of tax disputes; 5) observance of human rights; 6) inadmissibility of manifestations of discrimination and ensuring equality before the law.

Based on the analysis of the Copenhagen criteria [7], it is possible to substantiate the conclusion that the implementation of the rule of law principle in tax legal relations should be based on the observance of such main criteria as: achieving the stability of the tax system of institutions; creation of equal economic opportunities as a condition for creating a favourable investment environment and sustainable development of society; implementation of an effective administrative reform of the tax authorities, among the effectiveness criteria of which is the achievement of transparency, openness, convenience, “usefulness” of taxation based on the prevention of corruption.

According to the results of the analytical survey “Business Climate in Ukraine: Year of Lockdown” conducted by the American Chamber of Commerce in Ukraine, non-belonging to the implementation of the rule of law principle (66 %) was established. The low efficiency of the tax system became especially acute in the context of the external military aggression on the part of the Russian Federation, when one of the urgent problems was to ensure the financing of the needs of the Armed Forces of Ukraine, which, despite the introduction of the military tax introduced over the past years, were not properly implemented. way.

The implementation of the principle of the rule of law in Ukraine requires the introduction of priorities for the government’s executive policy, which should be directed to the creation and implementation of mechanisms for mandatory liability for committing offenses in general and, in particular, in the tax sphere. Achieving the implementation of the principle of the rule of law in tax relations is the creation of conditions for the adaptation of the current national legislation of Ukraine to the adaptation of EU legislation in Ukraine, however, the effectiveness of law formation in this direction is minimal.

One of the most effective ways to ensure the rule of law is to create conditions for access to justice, including in martial law. Access to justice is a key condition for the real operation of the rule of law. At the same time, the accessibility of justice is not only the possibility of filing an application with the court. This and the creation of a system of guarantees for the protection of violated rights by an unbiased independent court, including the factors of accessibility of the court, there is a justification for the use of so-called cassation “filters” [8]. At the same time, the accessibility of justice should be proportional to the burden on the judicial system, while creating effective mechanisms for protecting the property and personal non-property interests of a private person – for example, in an administrative manner. The administrative procedure for appealing against actions, decisions or inaction of public authorities and local self-government in Ukraine is not an imperative requirement, including based on the position of the Constitutional Court of Ukraine, set out in Decision No. 15-rp/2002 of 09.07.2002 on pre-trial settlement of disputes.

It is necessary to agree with the conclusion that the implementation of the principle of proportionality, in fact, is the implementation of certain legal tools for establishing indicators of compliance with the rule of law principle not only

in the public sphere, but also related to public legal relations. That is, reaching a conclusion about the proportionality of the actions of the subject of power means reaching a conclusion to the balance of private and public interests in a particular administrative case.

The test for the proportionality of a decision, action or inaction in tax legal relations is a search for answers to three questions (the so-called “three-complex test”): 1) is there a basis for state interference of the tax authority in the activities of a private person due (factual aspect); 2) whether the purpose of the intervention of the tax authority is legitimate (substantive aspect); 3) whether intervention is necessary (procedural aspect). The application of the proportionality test in the framework of the judicial protection of the rights of a private person in the tax sphere should be considered as an element of the rule of law.

The proclamation of martial law justified the need to amend the Tax Code of Ukraine, aimed at ensuring the administration of the collection of obligatory payments and fees. The administration of taxes under martial law requires amendments to the current legislation aimed at stopping the deadlines for fulfilling the tax obligation, which is justified by the existing force majeure circumstances. Thus, these regulations pursue the observance of the principle of proportionality, aimed at ensuring a balance of interests of business entities, that in the conditions of martial law (certain force majeure circumstances), the state determines that the priority will be to preserve their functioning, that is, taking measures to support entrepreneurship in conditions the crisis of production, the loss of markets, which creates obstacles to the creation of economic opportunities for the collection of taxes and fees. Thus, the principle of proportionality has a priority application in the regulation of tax legal relations in wartime conditions.

Thus, the analysis of European and Ukrainian legislation shows that Ukrainian legislation partially meets the requirements of Directive 2008/98/EC (the degree of the compliance is low). To harmonise with the Directive, the legislation of Ukraine in the field of waste management requires significant modification. A significant drawback in this area is the inconsistency and variety of waste definitions. The study of the interpretation of the concept of “waste” from different points of view made it possible to generalize their characteristics and disadvantages. The refined concept will contribute to a better understanding of their essence, which in the future will allow to develop and scientifically substantiate the classification of these objects in order to account for and control them.

Special attention should be paid to the fundamental approaches defined in Directive 2008/98/EC on the introduction of a hierarchy in addressing waste management issues. Moreover, provisions on determining the completion of waste status need to be enshrined in waste legislation and other regulatory legal acts of Ukraine. Regarding the issue of the correlation of Ukrainian legislation with the European one, the Ukrainian one only partially meets the requirements of the EU, it requires significant revision, and the harmonisation of terminological apparatus is a prerequisite for the qualitative (not contradictory) implementation of European norms.

However, the application of the principle of proportionality under martial law does not mean giving up the priority of achieving the rule of law in the tax legal relationship and relations related to environmental pollution, because the latter should be aimed at taking measures to limit the absolute power of the state to ensure the protection of both private and public interests. Therefore, the principle of proportionality does not negate the application of the rule of law, both in conventional circumstances and under states of martial law. The implementation of the rule of law in the tax sphere means the creation of conditions for ensuring the legal certainty of the mechanism, including in the context of martial law, the inadmissibility of discrimination on property and other grounds, however, it is necessary to apply the principle of equality of opportunities as a basis for determining tax rates and relations related to environmental pollution, and this already correlates with the need to legislate the principle of proportionality, that is, the balance of interests of private individuals and those of the public sphere.

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