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ЗАГАЛЬНА ХАРАКТЕРИСТИКА НОРМАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ДЕРЖАВНОГО УПРАВЛІННЯ ГОСПОДАРСЬКОЮ ДІЯЛЬНІСТЮ В УКРАЇНІ

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GENERAL CHARACTERISTICS OF REGULATORY FRAMEWORK FOR STATE MANAGEMENT OF ECONOMIC ACTIVITIES

Interaction between state and economy is a topical issue for any state, at any development stage. It takes place, first of all, in the implementation of state management of economic activities. The basis for such interaction is the regulatory framework developed in the state. State management of economic activities in Ukraine has its own specifics resulted from the operation of state enterprises and recognition of state economic authority in the field of economy. At the same time, the state implements relevant functions through the subjects of power. It determines the need for treating the state management of economic activities both in terms of economic and administrative law, either of which has its own regulatory framework which is addressed in this article.

Keywords: state management, economic activity, sources of administrative law, sources of economic law, legislation.

Introduction.

Following declaration of economic independence in 1990 and state independence in 1991, Ukraine chose the new development path – a path of developing democratic state of law. Liberalization of economic activities, development of a market economy in the Ukrainian state has led to the need of the new state policy formation. It was the state authorities that were called to ensure the implementation of state economic policy, the effectiveness of which is one of the preconditions for the state activity and its establishment in the international economic system. Development of an independent economy, a new system of governmental authorities, the need for privatization of the economy and management of the rest of the state sector of the economy, transition to market relations, rise of entrepreneurship required development of an effective regulatory framework.

However, "constant fluctuations in economic policy, rushing from command to market methods and vice versa, immediately reflected on laws and other acts, caused divergent regulation of economic relations, knocked together private and public interests"¹. Depending on the task priority in foreign and domestic policy, appropriate legislation was elaborated, which had some particular features at each stage of formation and development.

Early 1990s can be regarded as the initial stage in the development of specific regulatory framework for both economic activities in general and state regulation of them, which was probably the most difficult and the most responsible for the young Ukrainian state. The Declaration of State Sovereignty of Ukraine, the Law of the USSR "On the Economic Independence of the Ukrainian SSR" created the prerequisites for the transition of the Ukrainian state to market economy. Adoption of the Constitution of Ukraine in 1996 laid the foundation for the new stage of legislative reformation. Working on existing scope of legislation

¹ Знаменський, Г.Л. (2008). Економічна політика і законодавство. *Право України*, 7, 42.

was aimed primarily at its harmonisation with constitutional provisions. Preparation and adoption of the Economic Code became an important step in the development of the legal system of Ukraine, since following its entry into the force (on January 01, 2004) we may speak about the beginning of the next stage in the development of regulatory framework for state management of the economic activity. The main purpose of the codified law is "conferring social orientation to market transformations, which expresses itself in state influence on the management processes, on harmonization of private and public interests and on the regulation of economic relations in the public interest based on the provisions on the procedure and limits of state influence"¹. Beginning from the adoption of the Law of Ukraine "On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union" of March 18, 2004, active work in respective direction was set up, which undoubtedly influenced the whole scope of regulatory acts.

Sources of regulatory framework for state management of economic activities.

Taking into account the fact that state management of the economic activity may be considered as a process of implementing power, and as a process of implementing economic competence; the relations which develop for its implementation are the subject of regulation of various branches of law, such as administrative and economic, it can be concluded that the regulatory framework for state management of economic activities at process of implementing power is represented by the sources of administrative law, while at process of implementing economic competence – by the sources of economic law.

After the adoption of the Constitution of Ukraine and the recognition of the rule of law in our state as well as with the beginning of the European integration process, the system of administrative law sources has experienced significant modification primarily due to increase in their types. In this case, we may speak about supplement of the standard list of the sources of administrative law, represented by legal acts, court decisions, as well as so-called unformalized sources of law (morality norms, traditions, customs, etc.)². The sources of administrative law in foreign states are: regulatory acts, legal judgment and case law, as well as customary law³. However, nowadays there are no cases of direct approval of customary law by state authorities in the field of state administration, since they have been transformed into existing administrative law earlier⁴. In fact, among the sources of administrative law, the regulatory framework for state management of economic activities is represented by regulatory acts, that is, formalized sources of national and international administrative law.

The practice of application of court decisions that are wrongly equated with legal judgments became rather popular. In practice, when regulating such relations the authorized entities do not use legal judgments directly. Only judicial authorities refer to such judgments when resolving disputes. By separating court judgments from other sources of administrative law, scholars^{5,6} include in them judgments of the Constitutional Court of Ukraine, the Supreme Court, the European Court of Human Rights, and other judicial institutions. Analysis of the legal nature of these judgments supposes their diversity. Only judgments of the European Court of Human Rights, application and execution of which is mandatory in Ukraine under the Law of Ukraine "On Implementation and Application of the European Court of Human Rights Case Law" of February 23, 2006, No. 3477-IV⁷, which reads in Article 17 as follows: "The courts shall apply the Convention and the Court's practice as a source of law when hearing of the cases", may be defined as legal judgments. The similar is provision of Article 11(4) of the Economic Procedural Code⁸. At

¹ Притика, Д. (2001). Роль арбітражних судів у забезпеченні законності в економічних правовідносинах і протидії економічним правопорушенням. *Право України*, 1, 9.

² Мельник, Р.С., Бевзенко, В.М. (2014). *Загальне адміністративне право*. Київ: Ваїте, 90.

³ Кузьменко, О.В. (ред.) (2014). *Адміністративне право зарубіжних країн: курс лекцій*. Київ: Юрінком Інтер, 31.

⁴ Авер'янов, В.Б. (2004). *Адміністративне право України. Том 1. Загальна частина*. Київ: Видавництво «Юридична думка», 141.

⁵ Галуцько, В., Діхтєвський, П., Кузьменко, О., Стеценко, С. та ін. (2018). *Адміністративне право України*. Херсон: ОЛДІ ПЛЮС, 52.

⁶ Галуцько, В.В., Курило, В.І., Короєд, С.О. та ін. (2015). *Адміністративне право України. Т.1. Загальне адміністративне право*. Херсон: Грінь Д.С., 59.

⁷ Закон про виконання та застосування практики Європейського суду з прав людини 2006 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/3477-15>>.

⁸ Господарський процесуальний кодекс України 1991 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/1798-12>> (2017, December, 15).

the same time, the Code of Administrative Justice¹ has slightly different wording in Article 6(2): "The court applies the rule of law with due consideration to the court practice of the European Court of Human Rights." However, Article 7, "Sources of Law Applicable by the Court" does not mention practice of the European Court of Human Rights at all. Too, the application of relevant judgments has its own peculiarities.

The sources of economic law have their own specifics. As it appears from the literature, "it is quite easy to distinguish three sources of economic law in the Economic Code of Ukraine and the Civil Code of Ukraine, which currently can be recognized to some extent as a part of the economic law: 1) economic legislation; 2) contract; 3) custom"². The Economic Code of Ukraine³ in Article 7 "Legal regulation of economic activity" states that "Relations in the field of economic activity are regulated by the Constitution of Ukraine, this Code, laws of Ukraine, regulatory acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, regulatory acts of others state authorities and bodies of local self-government, as well as other acts". Other regulatory acts according to the opinion expressed in the Scientific Practical Commentary to the Economic Code of Ukraine include the local regulatory acts, in particular, the constituent documents of the economic entity and state standards or technical specifications, other rules, mandatory for the participants of the economic relations and violations of which entail legal implications⁴. We share the position that integrating local regulatory acts (articles of incorporation, memorandum of association, etc.) of economic entities and technical regulatory acts in the field of economy referred to in Article 15(1) of the Economic Code of Ukraine (technical regulations, standards, codes of practice and technical specifications) into one group is unfounded, since the first govern social relations in the field of economic activity, while the latter are regulatory documents, that is, they establish rules, guidelines or description of the activities or their results⁵. Thus, the sources of economic law should be distinguished as follows: 1) regulatory acts; 2) regulatory documents; 3) local acts; 4) contract; 5) custom; 6) practice of the European Court of Human Rights.

When analysing the regulatory framework for state management of economic activities, it should be also mentioned that it has specific features depending on what powers the state implements in these relations. Particularly, the legal framework for state management of economic activities that provides implement of power, primarily, regulatory acts defining the competence of state authorities. When it comes to the state implements its economic legal personality, acts as a subject of organizational and economic authority, then the regulatory framework for state management of economic activities may include, primarily, regulatory acts that stipulate specific features for the state as participant in economic relations. The specificity of this case is that local acts (constituent documents, decrees of enterprises, etc.), which are not incorporated into the legislative system, though mediate the implementation of organizational and economic powers, may become the sources of regulation. They are adopted based on and subject to the provisions of legislation in force and are valid for participants of such enterprise only.

In addition, taking into account the fact of determination of state management of economic activities by economic and regulatory policies, the regulatory framework in these areas of state activity may be considered as the legal framework for state management of economic activities.

It should be mentioned that the Concept for the Development of Digital Economy and Society in Ukraine for 2018-2020, approved by the decree of the Cabinet of Ministers of Ukraine of January 17, 2018 No. 367-r⁶, shall be the basis for the regulatory support of economic policy, directions of which are

¹ Кодекс адміністративного судочинства 2005 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<https://zakon.rada.gov.ua/laws/show/2747-15>>(2017, December, 15).

² Прилуцький, Р.Б. (2010). Джерела господарського права за чинним законодавством України. *Форум права*, 2, 409–419. <<http://www.nbuv.gov.ua/e-journals/FP/2010-2/10prbczu.pdf>>.

³ Господарський кодекс України 2003 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<https://zakon.rada.gov.ua/laws/show/436-15>>.

⁴ Знаменський, Г.Л., Щербина, В.С. (заг. ред.) (2012). *Науково-практичний коментар Господарського кодексу України*. Київ: Юрінком Інтер, 20.

⁵ Джуринський, О.В. (2014). Нормативно-правові акти господарського законодавства в системі джерел господарського права України. *Адміністративне право і процес*, 3(9), 99.

⁶ Концепція розвитку цифрової економіки та суспільства України на 2018-2020 роки 2018 (Кабінет Міністрів України). Офіційний сайт Верховної Ради України. <<http://zakon.rada.gov.ua/laws/show/67-2018-p>> (2018, January, 17).

stipulated in Article 10 of the Economic Code of Ukraine. At the same time, implementation of the state regulatory policy, the legislative basis of which is the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity"¹, may not disregard the Concept of the Development of Electronic Governance in Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine of September 20, 2017 No. 649-r².

The Economic Code of Ukraine which was adopted on January 16, 2003 and came into force on January 1, 2004, should have become the basis for legal regulation of economic activity generally within the state.

This codified law, among other things, in its chapter 2 "Main directions and forms of the state's and local self-government's participation in the field of economic activity", which sets the scope of economic legal personality of the state and its authorities (Article 8), stipulates general requirement to formation of the social economic order (Article 9), gives conceptual definition of economic policy by characterising its main directions (Article 10), establishes the main means of state's regulating influence on the activities of economic entities (Article 12) and the basic principles of their application (Articles 13-17), as well as execution of state control and supervision of economic activities (Article 19), stipulates methods for the protection of the rights of economic entities and consumers (Article 20), as well as features of management of economic activities in state (Article 22) and municipal (Article 24) economy sectors. Some articles of the Economic Code of Ukraine define the principles of state regulation of certain types of economic activity or of certain spheres of economy management: securities market (Article 166), innovation activities (Article 328), foreign economic activity (Article 380). The Code pays particular attention to state enterprises (Chapter 8), in which the state, represented by its authorities, acts as the owner of property, executes its economic competence. However, implementation of the provisions of the Code, gave rise to a problem resulting from lack of conformity between the codified norms and other earlier adopted norms which were not subject to codification. Multiplicity of economic legislative acts became an increasingly serious obstacle to their effective implementation³. In addition, ongoing discussions on the repeal of the Economic Code reduce to some extent the significance of this codified act as a central element of state economic legislation.

The notable fact is that the state, creating a regulatory framework as subject of powers, introduces the foundations for economic activities in general and thus determines the conditions for implementation of potential economic legal personality, develops legislative framework which defines the field for state activity as subject of economic and organization authority. However, possessing the authority along with economic powers, the state may establish special conditions for itself as a participant in economic relations. Thus, the principle of incompatibility of entrepreneurship with state activities prescribed by the Constitution as regards individuals (Article 42 of the Constitution of Ukraine) and by laws as regards political parties does not apply to the state.

The "state enterprise" construction and its subtypes, which remained in the Economic Code of Ukraine, are actual attempt to preserve the concept of a Soviet socialist enterprise without due regard to the fact of the freedom of economic activity, with a lack of a balanced system of management and control entities, as well as lack of responsibility for the adopted solutions such constructions are well suited to seize property and profits through transactions with affiliated parties. The European states usually refuse from establishing special structures for the state sector, they strictly observe the principle of fair competition and prevent embodiment of market participant and state authority that performs regulatory functions on this market in one person (the exceptions are extremely rare). Therefore, in the context of the implementation of the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states, ratified with a statement by the Law No. 1678-VII of April 16, 2014, it is required to withdraw from such economic entities as state enterprises subject to some exceptions. The state shall manage those areas only, which poses a threat to the national security of Ukraine in case of transfer to the private sector, provided that it is impossible to prevent such a threat.

¹ Закон про засади державної регуляторної політики у сфері господарської діяльності 2003 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon.rada.gov.ua/laws/show/1160-15>>.

² Концепція розвитку електронного урядування в Україні 2017 (Кабінет Міністрів України). Офіційний сайт Верховної Ради України. <<http://zakon.rada.gov.ua/laws/show/649-2017-p>>.

³ Знаменський, Г.Л. (2010). Наукоємність сучасного господарського права. *Право України*, 8, 24.

Regulatory framework for state management of economic activities in general.

It should be noted that current legislative support of state management is generally "branch specific" to some extent: the Ukrainian legislator adopts the laws on the state regulation of certain areas of economic activity or of economic activity involving separate commodity groups (the Law of Ukraine "On State Regulation of Production and Turnover of Ethyl, Cognac and Fruit Alcohol, spirits and tobacco products"; the Law of Ukraine "On Financial Services and State Regulation of Financial Markets"; the Law of Ukraine "On State Regulation of the Securities Market in Ukraine", the Law of Ukraine "On State Regulation of Activities in the Field of Technology Transfer", the Law of Ukraine "On State Regulation of Imports of Agricultural Products" and others). At the same time, the Economic Code of Ukraine and basic laws (Law of Ukraine "On Foreign Economic Activity", Law of Ukraine "On Transport", Law of Ukraine "On Regulation of Urban Development", Law of Ukraine "On Insurance", Law of Ukraine "On Road Transport" and others) define the principles of state regulation for the majority of economic activities.

Regulatory framework for state governance of economic activity may be represented by a large number of regulatory acts: laws, decrees, orders, and acts of central executive authorities. We consider it appropriate to focus on some general comments on the regulatory acts which constitute the regulatory framework for state governance of economic activity.

Analysis of both law-making practice and regulatory acts shows that the legislative framework for state governance of economic activity in Ukraine develops mainly by means of adaptation to the provisions and requirements of the international community. Ukraine implements WTO and EU legislation disregarding the specific of the state economic activity. Current economic situation requires strengthening the role of the state in formation and achievement of focal development directions of economic relations and creating modern mechanisms for their regulation, while securing workable conditions for the development and stability of the national manufacturer. In fact, legal regulation should pay due consideration to the specifics of our own economy and factors that may facilitate market transformations in the economic sphere, instead of thwarting them. However, as it was mentioned in scientific works, "unfortunately, our law-making activity in practice is aimed rather at preparation and 'serial' issue of new laws without proper enforcement and improvement of many hundreds of earlier adopted laws than the filigree mastering of legislation"¹. Thus, the state governance of economic activity has sufficient legal and regulatory framework in terms of quantity, which nevertheless requires its qualitative improvement and introduction of efficient implementation mechanisms in the context of modern integration processes in Ukraine and the economic situation in the state.

Conclusions

Today the issue of reformation of state management of economic activities with due regard to current scientific developments, finding a compromise between the scholars of administrative and economic law, practice of implementation of applicable regulatory acts of Ukraine, which should be determined based on monitoring of the effectiveness of any particular regulatory act is of high importance.

The issue to be resolved is also the systematization of the regulatory acts of Ukraine in the field of state management of economic activities in order to ensure a system approach to the implementation of an appropriate area of state activity, identification of the directions, ways of further democratization of state management of economic activities, as well as a place of state regulatory policy and regulatory activity of particular state authorities in state management of economic activities, definition of a limiting list of basic and supplementary means of state regulation of economic activities used in the implementation of state administration in the relevant field, as well as mechanism of their application, which facilitate the prevention of undue interference of state authorities and local self-government in the activities of economic entities and provision of progress and efficiency of state management of economic activities in general². Organizational and economic state powers also require the systemic approach due to significant gaps in their regulatory framework. Subject to the need for a differentiation between the state as a power entity and the state as a subject of organizational and economic authority, such systematization should have different basis.

¹ Мамутов, В.К. (2010). Загальні проблеми науки господарського права на стику XX та XXI століть. *Право України*, 8, 9.

² Бевз, С.І. (2014). Державне регулювання господарської діяльності: сучасний стан та тенденції розвитку. *Доктринальні засади розвитку держави та права: національні та міжнародні тенденції*. Київ: Видавництво Ліра-К, 228.

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