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THEORETICAL AND LEGAL PRINCIPLES OF ENSURING RIGHTS AND LEGITIMATE INTERESTS OF TAXPAYERS

Наукові праці МАУП, 2017, вип. 52(1), с. 124–132

The paper discusses issues of theoretical and legal improvement of mechanism aimed to ensure the rights and legitimate interests of taxpayers.

Theoretical and legal protection of rights and legal interests of taxpayers involves improving the mechanism of regulation of tax relations at different levels of its legal operation: politico-legal, institutional, constitutional, judicial, administrative and legal, and so on. In this regard, particular attention shall be paid to scientific issues related to clarifying priorities of activities of state and local governments, the essence of national interests.

Actuality of problem. Clarification of the status and prospects of improving the rights ensuring and realization of the legitimate interests of the taxpayers is of particular importance for the formation of a favorable business climate in Ukraine, making of middle class as the foundation of civil society.

State of research. Scientific analysis of the range of problems concerning the rights of legitimate interests of taxpayers is performed by representatives of various sectors of socio-humanitarian knowledge — jurisprudence, philosophy, economics, including: Bevzenko V. M., Volynka K. H., Harkusha V. S., Dreval Yu. D., Kaliuzhnyi R. A., Kovalchuk T. T., Kopylenko O. L., Kostytskyi V. V., Muza O. V., Nalyvaiko L. R., Nediukha M. P., Onishchenko N. M., Stefanchuk M. M., Frytskyi O. F., Khavroniuk M. I., Shemshuchenko Yu. S., Blauberg I. V., Nersesiants V. S., Syrykh V. M. et al., which scientific efforts made theoretical and methodological foundation of this article.

The purpose and objective of the article is to elucidate the theoretical and legal foundations for further improvement of ensuring the rights and legal interests of taxpayers.

In scientific literature there are known different definitions of the essence of such concepts as "theoretical law model" and "theoretical and legal mechanism", as well as their key components, i.e. such terms as "model" and "mechanism". In particular, the latter is "the internal structure, the system of anything", "method, manner", "set of conditions and processes that make up a particular physical, chemical, and other phenomenon" [1, *665*]. This assumed that the elements of the system are relatively independent structural formations of the predetermined lo-

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cation, characteristics and functions of their subordinate tasks of achieving system quality as the most important features of the system, which (system quality) can not be reduced to a plurality of qualities of its structural elements.

With the system approach the essence of the "mechanism" concept, its main meaningful properties suggest availability of at least the following features: a) consistency of its structure, interconsistency of its elements; b) their purposeful functioning as a kind of integrity; c) hierarchy, which is identified as the presence of multi-level structural elements and interconnections — vertical and horizontal; d) the existence of system quality that can not be reduced to "individual qualities" embodied by the system components; e) ability to self-improvement and self-development, including on the basis of self-subordination to external influence, management decisions, etc. [2].

Meaningful properties of the term "mechanism" in its legal sense, social sense are often associated with the "functional characteristics of the object" [3, *567*], its "legal provision" [4, *55*], "the constitutional and legal bases of the organization and implementation of the state power" [5, *227*], "value of legality" [6, *19–20*], the state mechanism as an integrated hierarchical system of "all government organizations that virtually perform the tasks and functions of the state" [7], "legal mechanism of government control" [8] or as a set of "public bodies that exercise the state authority and implement the state functions" [9, *48*], and so on.

The above points of view are brought together, despite their different approaches, through their dependence upon the task of legal regulation of human behavior, some spheres of activity of society, social relations in general. The term "mechanism" is used as a component of various legal structures — "legal mechanism", "constitutional and legal mechanism", "administrative and legal mechanism", "mechanism of legal regulation", "functional legal framework", "mechanism of democracy", "mechanism of the state", "mechanism of modern legal state", "political and legal framework", and so on. Sometimes the term "mechanism" is used to describe "illegal means of influence", including lobbying activities.

Instead, the term "theoretical law model" is much less accepted in scientific vocabulary, its meaningful properties are associated mainly with formation and development of the modern state system in Ukraine, ensuring the functioning of the Ukrainian state as an institutional element of the political system [10, *14*]. However, this term has not found the proper utilization in the activities of state and local governments, including the State Fiscal Service of Ukraine, in particular, as to delegation of authority to the lowest possible level where they can be best implemented in accordance with the principle of subsidiarity.

Based on the priority claim, according to which the rights and freedoms of a human and citizen, their legitimate interests constitute the fundamental principles of the legal order, determine the relationship of the state and bearers of rights and freedoms, legitimate interests, it can be argued that the activity of the state as public administration in terms of implementation of the legal framework to meet social demands and needs, the legitimate interests of taxpayers includes, in particular, development of small and medium business, formation of favorable invest-

ment climate, filling state and local budgets as an indicators of efficiency of regulation of social relations.

The legal literature rightly argues that the process of regulation of relations between the state and taxpayers is preferably of mandatory nature, and relates to the sphere of administrative and legal protection. The above condition does not allow to define properly the structure of the legal mechanism and specific features of its action: prospects for its improvement are associated usually with the approach to EU regulations and standards, with implementation, in particular, of the European model of respect and human dignity protection. This means that the mechanism of legal regulation must be multi-level, provide for protection of rights and freedoms, implementation of the legitimate interests of taxpayers at different levels of legal support: legal and constitutional, politico-legal, administrative and legal, institutional and others.

At that the constitutional level of the rights and freedoms protection, realization of the legitimate interests of taxpayers involves their consolidation in the Fundamental Law as components of power-managerial relations. Thus, in accordance with the above provisions, protection of rights and freedoms of a human and citizen in Ukraine in accordance with the constitutional provisions of Art. 55 is executed by the court: "Everyone has the right to appeal court on decisions, actions or omissions of state authorities, local governments, officials and officers" [11, Art. 55].

The judicial review of rights and freedoms, legitimate interests of taxpayers as power-management relations provides a number of other requirements enshrined as constitutional provisions. In particular, the Constitution of Ukraine may carry provisions that recognize a human as the highest social value, and the people — the only source of power and the bearer of sovereignty. "Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State" — declares Art. 3 of the Fundamental Law.

Power-managerial nature of consideration of the rights and freedoms, legitimate interests of taxpayers makes a number of other constitutional provisions, which is embodied in particular in Art. 6, according to which the "bodies of legislative, executive and judicial power exercise their authority within the limits established by this Constitution and in accordance with the laws of Ukraine," and in Article 8, which states that "in Ukraine, the principle of the rule of law is recognised and effective." The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it. The norms of the Constitution of Ukraine are norms of direct effect. Appeal to court to protect the constitutional rights and freedoms of a human and citizen is guaranteed directly on the basis of the Constitution of Ukraine: Article 15 argues that "social life in Ukraine is based on the principles of political, economic and ideological diversity"; Article 17 sets out fundamental novels on protection the sovereignty and territorial indivisibility of Ukraine, national security and protection of state borders, social protection of citizens of

Ukraine who are entrusted to the Armed Forces of Ukraine and to the respective military formations, and their families; Article 19 stipulates that "the legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not envisaged by legislation. Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine." Article 24 stipulates that "citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics." Articles 28, 29, 34, 35, 36, 41, 42, 50, 64, 67 and others of the Constitution of Ukraine argue in particular that everyone has the right to respect of his or her dignity; every person has the right to freedom and personal inviolability; everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs, has the right to freedom of personal philosophy and religion, the right to freedom of association in political parties and public organisations; everyone has the right to own, use and dispose of his or her property, and the results of his or her intellectual and creative activity; • everyone has the right to entrepreneurial activity that is not prohibited by law; the rights and freedoms of a human and citizen are protected by the court. In Ukraine there is guaranteed the right to challenge decisions, actions or omissions of state authorities, bodies of local self-government, their officials and officers. Everyone has the right, after exhausting all domestic legal remedies, to apply for protection of their rights and freedoms to the relevant international organizations, in which Ukraine is a member or party; everyone must pay taxes and fees in order and amount prescribed by the law, etc. [11] — Articles 28, 29, 34, 35, 36, 41, 42, 50, 64, 67, 92, 124, 128, 129 and others.

As noted by local researcher O. V. Muza, "the normative level of administrative and legal mechanism for protection of the rights, freedoms and interests of individuals and legal entities includes legal rules of administrative law that ensure the participation of powerless subject in relations of power-managerial nature. This level provides a set of regulations issued or adopted by the bodies of state power and bodies of local self-government. That is, this case refers to the administrative legislation, which specifically defines scope of rights and freedoms of individuals and legal entities in relations with public authorities" [12, *33–34*]. According to the scientist, the required level of administrative and legal mechanism of protection the rights, freedoms and interests of individuals and legal entities, which is identified also according to the laws of Ukraine, Decrees of the President of Ukraine and the Cabinet of Ministers of Ukraine, regulations of central executive bodies and local governments, authorised entities, "includes a set of administrative and administrative and judicial procedures aimed to implement rights, freedoms and interests of the powerless subject of administrative law" [12, *35*]. In close connection with rights and freedoms, legal interests are the responsibilities of individuals and legal entities, as well as responsibilities of government agencies.

Based on the above constitutional provisions and their legal support, it is appropriate to distinguish between the concept of "mechanism of legal regulation"

and "mechanism to implement and protect the rights and freedoms of a human and citizen" that relate to each other as "general" and "specific". At least, there is no doubt of well known fact, according to which the acquisition, implementation and protection, including in terms of restoration of violated rights and freedoms, are implemented as components of the prescribed state mechanism of legal regulation.

Given the specific features of the aforementioned relationship between the concepts "mechanism of legal regulation" and "mechanism to implement and protect the rights and freedoms of a human and citizen" as "general" and "specific", it is viable, in our opinion, to complement the latter in that series with a wordgroup "legitimate interests" after the word "freedoms". Accordingly, the final version of the concept takes the following form: "mechanism of realization and protection of rights and freedoms, legitimate interests of a human and citizen."

Institutional level of protection of the rights of taxpayers, exercising their legitimate interests is stipulated in the activities of state and local authorities as public administrations, their officials and employees in terms of implementation by the latest of power-managerial functions to establish the principles of transparency and openness, dialogue fundamentals of cooperation in their subordinate to tasks of balancing the interests of the state/government (as public administration) with the subjective rights of citizens and their legitimate interests. In this sense, a significant potential of ensuring institutional protection of taxpayers' rights is associated with the decentralization of state authority, based on the priority of national interests as determinants in the state, central bodies of executive power. It is important to avoid so called simplified approaches that inevitably creates gaps in relations between the state and citizens of the country, the interaction of legal state and civil society. In this sense, interesting is the relationship between the defining concepts of legal science — "national interests" and "state interests". At least, V.M. Bevzenko analyzing the practices of national administrative proceedings stresses the need for a clear legal regulation of representation by a prosecutor of state interests, taking into account the absence of legally defined regulation norm "the state interests", its discrepancy with "subjective rights, freedoms and legitimate interests of individuals, the rights and legitimate interests of legal entities" that complicates their implementation, and does not meet the substantive purpose of administrative justice [13, *399*].

An opinion is expressed also about the excessive powers of the prosecutor with regard to representation of their interests of the state, particularly in administrative proceedings, which under certain conditions can create a precedent for appeal to the European Court of Human Rights [14].

At that the possible ways to overcome the above contradiction the native scientists, lawyers associate with the legislative activity of the Verkhovna Rada of Ukraine, in particular, with changes in the wording of Article 2 of Part 1 of the Administrative Procedure Rules (APR) of Ukraine as follows: "The task of administrative procedure is to protect the rights and interests of the participants of public and legal relations" [15, *4*]. Or, alternatively, says M. M. Stefanchuk, it seems appropriate to "define the tasks of civil procedure set out in Article 1 of the Civil Procedure Code of Ukraine [16], according to the contents of which the tasks

of civil proceedings are fair, impartial and timely consideration and resolution of civil cases to ensure the protection of violated, unrecognized or disputed rights, freedoms and interests of individuals, the rights and interests of legal entities, the state interests".

Similarly to procedural law and subject to the jurisdiction of administrative courts to resolve cases that define the content of this jurisdiction set out in Article 17 of the APR of Ukraine, ... Part 1 Article 2 of the APR of Ukraine could be formulated as follows: "The objectives of the administrative proceedings are fair, impartial and timely consideration and resolution of cases referred to the jurisdiction of the administrative courts for the protection of violated, unrecognized or disputed rights, freedoms and interests of individuals, rights and interests of legal entities, state interests" [17, *75*].

Agreeing in general with the aforementioned reasoning of the author, it seems important to determine the essence, meaningful description of the "state interest" concept. It seems the problem of the definition wording is that: a) each body of state power will conceive the specific content of the "state interest" and therefore inevitably relate it to its own tasks and functions as the agency; b) because of the "departmental" reading of the nature of the state interests, what original position a prosecutor should elect and be guided in administrative proceedings? Clearly, not narrow "departmental" one; c) the state interest can not be reduced also to a summary or plurality of interest of the bodies of state power. Not accidentally, the essence of the state interest in its Soviet interpretation was the class interest (the proletariat, the working class). Public interests define the basic content of state interest under conditions of the former Soviet Union, as were set out in this position and in terms of the Marxist intellectual tradition [18, *17–18*]. Countries that have chosen the path of democratic development are guided, as known, with national interests interpreted from the perspective of nonlinear intellectual paradigms. It is clear that national interests are determinative ones, and have the priority at all stages of social development, including the conditions of modernization of social conditions on which Ukraine is. Accordingly, the national interests must be "tied" to the specific features of socio-political situation peculiar to the state, society, citizens of the country, and these interests shall be defined as operating, tactical and strategic, long-term and short- and more. The state, therefore, is based and provides, implements the interests of subjects of relevant society, while performing organizational, institutional and functional responsibilities.

Hence, in the absence of legal science definition of "state interest", it seems appropriate to amend Article 1 of the Law of Ukraine "On Prosecution", which refers to the implementation by the Prosecutor's Office of Ukraine of the functions (established by the Constitution of Ukraine) "to protect the human rights and freedoms, the general interests of society and the state" with provisions that would define the meaning of the concepts "general public interest" and "general interests of the state". This seems important to emphasize that the essence of the above legal terms is pended by national interests. According to Article 23 of the Law of Ukraine "On Prosecution" to supplement the provisions on representation

by a prosecution of "general public interest", and to determine the representation range of the above of interests [19].

Mechanisms of functioning and improvement of legal regulation of relations in the tax area, including the realization of the legitimate interests of taxpayers, should provide direct dependence of rights and duties of subjects of tax relations: each right of the taxpayer has to comply with the corresponding duty of tax authority or a body of local self-government, and it hardly seems appropriate to implement without taking into account the potential and possibilities of theoretical and methodological principle of subsidiarity, at least in the part of authorities delegation [20]. Conversely, it should be taken into account the form of direct and indirect effects (type of dependence) of any change in the duties of the tax bodies, local authorities or their officials on the ability of realization by taxpayers of their rights and freedoms, legitimate interests. At that the forms of dependency of rights and obligations of the tax relations subjects shall correlate accordingly, thus avoiding legal gaps in the domestic tax laws, thereby ensuring the balance of private and public interests.

Competence of functioning of the above-mentioned legal framework should apply to the whole area of tax relations, taking into account the activities of all the acting subjects, including lawmaking and legislative, judicial, and acting in the sphere of human rights.

The legitimate interests of business entities should be understood and realized by the mentioned legal mechanism as an independent object of legal protection, that is considered on a par with the subjective rights of taxpayers. In this connection it seems appropriate to provide constitutional protection of the "right to exercise the legitimate interests" by amending the Constitution of Ukraine. The above mentioned will provide the legitimate interests with the same legal regime as for the subjective rights, the rights and freedoms of a human and citizen.

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Механізми функціонування і вдосконалення правового регулювання відносин у податковій сфері, у тому числі реалізації законних інтересів платників податків, повинні забезпечувати пряму залежність прав та обов'язків суб'єктів податкових відносин: кожне право платника

податків має відповідати певним обов'язкам податкового органу або органу місцевого самоврядування, і це навряд чи доцільно здійснити без урахування потенціалу і можливостей теоретичного і методологічного принципів субсидіарності, принаймні у частині повноважень делегації. З іншого боку, слід брати до уваги форму прямих і непрямих ефектів (типу залежності) від будь-яких змін в обов'язках податкових органів, органів місцевого самоврядування або їх посадових осіб про можливість реалізації платниками податків своїх прав і свобод, законних інтересів. При цьому форми залежності прав і обов'язків суб'єктів податкових відносин повинні корелювати відповідно, що дає змогу уникнути правових прогалин у національних податкових законах, тим самим забезпечуючи баланс приватних і громадських інтересів.

Механизмы функционирования и совершенствования правового регулирования отношений в налоговой сфере, включая реализацию законных интересов налогоплательщиков, должны обеспечивать прямую зависимость прав и обязанностей субъектов налоговых отношений: каждое право налогоплательщика должно соответствовать соответствующей обязанности налогового органа или органа местного самоуправления, и вряд ли представляется целесообразным его реализация без учета потенциала и возможностей теоретического и методологического принципов субсидиарности, по крайней мере в части делегирования полномочий. И наоборот, следует учитывать форму прямых и косвенных эффектов (типа зависимости) любого изменения обязанностей налоговых органов, местных органов власти или их должностных лиц относительно способности реализации налогоплательщиками их прав и свобод, законных интересов. При этом формы зависимости прав и обязанностей субъектов налоговых отношений должны соотноситься соответствующим образом, что позволяет избежать правовых пробелов в национальном законодательстве по налогообложению, обеспечивая таким образом баланс частных и общественных интересов.

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