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ECONOMIC AND LEGAL ANALYSIS OF THE CONCEPT «MONITORING»

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The strategic course of Ukraine nowadays is directed to the European integration. The existence of the efficient economic system, legal system and legislation is one of the main requirements of the EU. Taking into consideration this fact, a priority task for the government is monitoring which is designed to determine the degree of effectiveness and to assess the «quality status» of above mentioned objects in accordance with international norms and principles. Both in theory and practice often situations arise when laws and regulations contradict each other causing reduced degree of corresponding relations regulation; with the help of low quality of legal technique the competitive or conflict law rules are created and they cause the appearance of gaps in the legal regulation relations.

All this affects the way of Ukraine in reaching the main goal which it is committed over the past decade – to become a full member of the European Union.

The theoretical bases for the formation of the monitoring methodology are actively investigated in the global and domestic scientific literature. Researches in this area in recent years become more intensive among local scientists. Achievements of such scholars as A.M. Bandurko, O.M. Berezhny, S.A. Boutkevitch, N.M. Gurzhii,

S.O. Dmytrov, A.V. Yezhov, V.A. Zhuravl, V.S. Zelenetsky, A.V. Kravchenko, I.P. Prikhodko, V.V. Kovalenko, I.V. Kolomiets, V.L. Krotiuk, V.A. Nekrasov, V.A. Tymoshenko, D.A. Fayeira, A. Tikhomirov, I.L. Bachilo, Y.G. Arzamasova, D.B. Gorohova, E.I. Spector, V.M. Kosovych and others are significant.

Today scientists do not investigate monitoring from the perspective of interdisciplinary communication, although it is an important part of management mechanism both an economic system and legal system and legislation. Only collaborative approach of scientists (economists and lawyers) can offer to economic and legal science conceptually new research in the field of «monitoring» which will be characterized by consistency, integrity and completeness.

The purpose of the article is to analyze the genesis of the concept «monitoring», to explore its essential features: objectives, functions, principles and values for Economics and Law. Current approaches to the analysis of the concept «monitoring» are recognized from the perspectives of interdisciplinary approach in two ways: the legislative and doctrinal. Analyzing the legislation in Ukraine in terms of regulatory consolidation of the concept «monitoring» we should notice its complete deficiency. The Law of Ukraine «On prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction» is minor exception in which legislator determines state financial monitoring as a set of actions taken by entities of state financial monitoring and directed to meet the requirements of the legislation on prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction. We believe that this determination is sector-specific as const classic understanding of the concept essence «monitoring». From this perspective we can conclude about the lack of universal approach to the legal definition of the term. Comparing the laws of other countries (Russia, Kazakhstan) we find the legal consolidation of

the concept «legal monitoring» in the Law of Kazakhstan «On normative and legal acts» from 06.04.2016, in Russia – The Presidential Decree № 657 from 20.05.2011 «On Monitoring of law enforcement in the Russian Federation» and the Governmental Regulation of the Russian Federation from 19.08.2011 № 694 through which the Methods of implementation of law enforcement monitoring in the Russian Federation are accepted. The adoption of these acts shows the formation of the national concept of monitoring and state recognition of the importance and necessity of monitoring for the country.

State that the question of monitoring on the theoretical and practical levels envisaged experts in the Institute of Legislation of the Supreme Soviet of Ukraine, among the main tasks of which according to the Instruction of the Head of the Supreme Soviet of Ukraine № 770 from 04.08.2003 «On Ratification of Regulations of the Institute of Legislation of the Supreme Soviet of Ukraine and its structure» is an organization of monitoring the effectiveness of the current legislation in Ukraine and the consequences forecasting of its use. Despite the functioning of the Institute of Legislation of the Supreme Soviet as a basic institution of research and legal support of legislative activity of the Supreme Soviet of Ukraine that should form the scientific basis of monitoring, the development of the legal concept of the organization and monitoring is still not available.

Regarding doctrinal approach both in law and in the economy there is pluralism of definitions. In legal science there are different approaches to the definition of «monitoring» in the legal field. The scientists use a variety of terms in relation to monitoring, e.g. «monitoring of legal practice», «monitoring of regulations» and «monitoring of legal space» that eventually leads to even more confusion in the understanding of this notion. The use of different concepts of «monitoring» or narrows or expands the activities of its use, and to ensure the terminological unity it should be used the term «legal monitoring» which includes an assessment of the quality and effectiveness of

law-making process, operating legislative acts and law enforcement practice. This concept does not limit the boundaries of the monitoring facility (law, regulation, law practice) without applying the abstract concepts (constitutional state, legal field). The adjective «legal» in this case focuses on the using of monitoring, its «specialization» (as opposed to financial, environmental and other types). The universal nature of the given concept allows not only to interpret unilaterally monitoring activities by different agents but also to use common terminology in the normative legal acts that establish bases, the order of legal organizations and monitoring [1, p.26].

In the views of scientists also pluralistic approaches to the understanding of legal monitoring are observed:

- 1) as one of the types of public authorities which is based on the analysis of the regulatory material, generalization of the practice of normative legal acts and proposals for improving regulation [2, p.217];
- 2) as the information observation system that enables opportunity to analyze and assess;
- 3) the type of legal control;
- 4) institute.

For our study we have an attitude regarding the understanding of monitoring as the systematic activities conducted by special agents and includes monitoring, analysis, assessment of the law quality and practice of their application, as well as forecasting of legislation improvement way.

In economics the lack of a common approach to the definition of «monitoring» among scientists is observed [3, p.259]; that is why there are differences in the understanding of this notion. Thus, Plikus I.Y. defines monitoring as «specially organized, systematic and continuous monitoring of the financial condition of the object and its operational assessment». However, monitoring should be considered not only as a collecting, systematization and analytical activities. This system should be understood as a set of accounting operations, analysis and diagnosis of revealed results and the creation of forecasts for the future. A.G. Zavgorodniy,

G.L. Voznyuk and T.S. Smovzhenko believe that «monitoring of current financial activities is a system of continuous supervision of the most important current financial performance of the enterprise in a rapidly changing financial market. The purpose of this monitoring is: early detection of deviations of actual financial performance of the company which results to deteriorating of the financial condition of the company [4, p.145]; ascertain the reasons for these deviations; development of the proposals for appropriate adjustments to specific areas of financial activity in order to normalize and improve the efficiency».

«This definition does not foresee ranking information on the degree of importance, frequency changes, correspondence to goals and objectives of monitoring studies and, therefore, does not foresee the creation of a single database. In addition, the system should be aimed on identification not only negative but also positive aspects of the company, as it will enable to determine more thoroughly the factors

influencing the final outcome of studies, to find hidden reserves of economic growth [5, p.23]. Monitoring should reflect all the processes in dynamics and include a database to compare current performance to forecasts; this system should provide different levels of management structure in accordance with their requirements by necessary information. This very system should be the basis for the creation of plan system.

Therefore, in our opinion, «monitoring» in the economy should be identified as a single system of continuous collecting, organizing and processing of information and creating on its basis predictive performance indicators for decision making.

Understanding and expression of the concept through the same methods used during the monitoring is common in author's definitions of «monitoring» concept. According to the results of our research the types of monitoring are systematized, which are based on the following criteria:

Table - Classification of monitoring types depending on the application area

| Types of monitoring | Application area | Objectives | Definition |
|----------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| legal monitoring | law making, law enforcement | evaluation of the efficiency of the legal provisions of regulations | evaluation of the quality and efficiency of legislative process, existing legal acts and law enforcement practices |
| state financial monitoring | law making, sphere of efficiency of the national financial system | reducing internal and external threats for both single financial system and the international financial system (a combination of national financial systems) as a whole | a set of measures undertaken by agents of financial monitoring in prevention and counteraction to legalization (laundering) of proceeds from crime or financing of terrorism, including state financial monitoring and initial financial monitoring |
| financial monitoring | sphere of the subject efficiency of monitoring | identification of «bottlenecks» in the entity activities, granting the opportunity of more accurate prediction compared to the «classical» methods. | the system of continuous collecting, organizing and processing information and creating on its basis predictive performance indicators for decision making. |

Within the frame of the development of methodic basis of the legal monitoring there is a question of the goal determination of studied process. Analyzing the purposes of monitoring we must distinguish between legal monitoring goals and economic monitoring goals (financial) in order to understand better its meaning.

1) The purpose of the legal monitoring is to assess the efficiency of the law rules and regulatory legal acts.

Effectiveness of law rules are defined as the ratio between the actual results of their actions and those social goals for the achievements of which these rules have been adopted. The objective statement of the law rules provides the determining of their effectiveness indicators [6, p.17]. That is why the standard operation is considered as quantitative indicator reflecting the degree of correlation real relationship to the typical measure existing in a specific act. Herewith, some authors note that regulation is effective in case if the achievement of these objectives is provided at minimum possible expenditure for all members of the society [7, p.11].

The effectiveness of regulatory acts are defined as the ratio between the amount of acts approved by the legislator and quantitative composition taking into account the criteria of necessity and importance for the society and the state, creation of feedback permanent system between the subject of legislative, rulemaking performance and law enforcement.

2) Creation of a permanent system of feedback between the subject of law-making, regulatory and enforcer. Law-making is generally regarded as a part of the mechanism of legal regulation that results in the appearance of legal standard aimed at regulating of the different social relations. «Lawmaking is a special activity of the competent authorities that accomplish the process of lawmaking as a result of which legal force is obtained and the law becomes effective» [8, p.52].

Improvement of law-making activity in the process of which in the legal standard public interests will be showed and those laws under which they will operate are possible through the

use of legal monitoring at all stages of lawmaking [9, p.78].

Law enforcement activity is an activity of state authorities that ensures the implementation of the law standards that are contained in the laws and other legal acts through the issuing of law acts.

Law enforcement as activity of competent state bodies and officials consists in the individualization of legal norms relative to specific subjects and specific life cases in the act of law administration. S. Alekseev believes that law enforcement is the second most important factor after the law-making factor that has an impact on the quality of the law regulation.

Legal monitoring in law enforcement is aimed at identifying of gaps and contradictions of those defects in the realization of legal norms and determines the effectiveness of responsibility and stimulation measures, and in general – effectiveness of law regulation (the ratio between the result of law regulation and the purpose). The systematic use of legal monitoring in the law-making and law enforcement activity will provide flexibility and versatility to legal regulation in general and minimizes disruptions and failures in the force of law [10, p.33].

3) Formulation of proposals on improvement of legislation.

Economics forms targets regarding the monitoring not only surveillance and operational monitoring changes in the dynamics of key indicators but also quick signaling about the possibility of and / or the emergence of sectoral problems.

Monitoring as economic and legal category reveals its essence and intrinsic properties through the following functions: observation; preventive; prognosis; conciliation; analytical.

The supervisory function is primary in the collection and systematization of data required and it helps efficiently in both qualitative and quantitative criteria to select a sufficient number of objective information.

Preventive function can prevent and identify the main factors influencing internal and external environment on the object of monitoring, determine the most significant of them and offer

some strategy options taking into consideration these factors.

Expected function is embodied in creating data-based analytical calculations and predictive models that would determine the future condition of the monitor and answer whether the tasks are available for resources for a specific period of time.

Matching function (callback function) can compare the earlier planned indicators with actual performance and create on the basis of identified trends more precise forecasts that could meet modern events.

The analytical function deals with the analysis and assessment of the observed object that are directed to detailed investigation, examination of some properties and relations found out during monitoring and it creates a general epistemological understanding of the observed object [11, p.13]. The analytical function is one of the key features of the legal monitoring. Its basic meaning is to determine the degree of effectiveness of the law in practice and to develop proposals in order to improve the effectiveness of regulatory requirements in the future [7, p.14].

Monitoring organization that meets the objective requirements provides a lucid account of its *basic principles*.

The monitoring methodology should be based on the following key principles: *the principle of the necessity of objective analysis* and forecasting for initial stage of management, that is, holding a preliminary prediction on the analysis basis is the most important instrument and method of compliance determination of the outlined objectives and programs of the presence and movement of resources;

the principle of comprehensiveness foresees forecast coordination of different business units, as well as forecasts for the various levels of government in order to achieve a common goal – to clarify the status of monitoring for a certain period of time;

the principle of effectiveness reflects the qualitative aspect of the process and directs it to achieve positive results for certain operations of business units and to achieve the desired effect;

the principle of science should provide the reality and effectiveness of planned activities,

enables to determine the forecast indicators, identify key and expected impact factors and justify the chosen model for prediction.

The value of monitoring for the economy resides in the fact that it: effectively informs about changes in business; allows you to make forecast and to bring predicted indicators closer to real estimates; serves as a basis for planning and budgeting; stores information about key performance indicators and changes of predicted indicators in dynamics in a single database.

Thus, the main objective of financial monitoring is monitoring of impact factors on the final indicators and identification of new predicted indicators at a certain time on the basis of deviations.

The importance of monitoring for the law: improves the quality of legal technology, laws and regulations; strengthens control of quantitative indicators of «accepted norms, laws and regulations»; serves as the basis for planning and coordination of law-making, law enforcement of the authorities; contributes to improving the practice of law and the timely amendments of necessary changes and additions to the law and regulations; promotes legal culture and increases legal awareness of the agents who carry out law-making and standard-setting activities which are created as a result of the law.

The conclusions and perspectives of further researches in this direction.

Taking into consideration above mentioned, we would like to conclude that in the present conditions with regard to European integration governmental policy for the assessment of the effectiveness and efficiency of the economic system, legal system and legislation should always be used not only monitoring as a phenomenon or an instrument, but it is necessary and advisable from the perspective of our requirements to introduce the concept of economic and legal standards of monitoring. In this case the most consistent and logical steps are as follows:

- 1) to develop the concept of monitoring;
- 2) to create its application methods, taking into account the spheres of use;
- 3) to pass the process of institutionalization with all successive stages: typing, objectification and legitimating;

4) to develop a national model of monitoring in the most important spheres of applications.

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In this article the authors carry out a comprehensive analysis of the concept «monitoring» using an interdisciplinary approach (economics and law). Moreover, they reveal the essence of monitoring, its objectives, functions, principles and importance for the economy and law.

Панасюк О.В., Маркова О.О., Сюркало Б.І. Економіко-правовий аналіз концепту «моніторинг»

Виконано комплексний аналіз поняття «моніторинг» з використанням міждисциплінарного підходу (економіко-правового) з метою формування загальної концепції моніторингу, як для економіки, так і для права. Розкривається сутність моніторингу, його цілі, функції, принципи

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Выполнен комплексный анализ понятия «мониторинг» с использованием междисциплинарного подхода (экономико-правового) с целью формирования общей концепции мониторинга, как для экономики, так и для права. Раскрывается сущность мониторинга, его цели, функции, принципы.