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TO UNDERSTANDING BEHAVIOR OF SUBJECTS OF FINANCIAL RELATIONS

Abstract: The article deals with peculiarities of behavior of subjects of financial relations. Specific features of legal behavior are analyzed. It also studies the signs of lawful and unlawful behavior. Abuse of law are considered within misconduct.

It is marked that public financial rights are protected by law, except when their implementation is contrary to the purpose of these rights in a legal state. Thus, subjects of financial relationships, exercising their rights act within legal behavior. Their action or inaction can be both lawful and unlawful.

It is summarized, that in practice, it is important causal link between the act and the effects that it has caused. With this in mind, it turns especially important and difficult for state–government agencies to prove the fact that actions or omissions of a subordinate subject of financial relationships have signs of illegibility, their behavior is illegal. And it is important to a subordinate subject to prove the legality of their actions. An arsenal of evidence is used for this purpose, as well as evidence is created.

Keywords: legal behavior, lawful behavior, misconduct, abuse of the law, the subject of financial relationships.

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ЩОДО РОЗУМІННЯ ПОВЕДІНКИ СУБ'ЄКТІВ ФІНАНСОВИХ ВІДНОСИН

Анотація. У статті розглядаються особливості поведінки суб'єктів фінансових відносин. Аналізуються особливості правової поведінки. Також досліджуються ознаки законної та незаконної поведінки. Зловживання законом розглядаються в рамках неправомірних дій.

Ключові слова: правова поведінка, правомірна поведінка, негідна поведінка, зловживання правом, суб'єкт фінансових відносин.

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ОТНОСИТЕЛЬНО ПОНИМАНИЯ ПОВЕДЕНИЯ СУБЪЕКТОВ ФИНАНСОВЫХ ОТНОШЕНИЙ

Аннотация. В статье рассматриваются особенности поведения субъектов финансовых отношений. Анализируются особенности правового поведения. Также исследуются признаки законного и незаконного поведения. Злоупотребление законом рассматриваются в рамках правомерных действий.

Ключевые слова: правовое поведение, правомерное поведение, недостойное поведение, злоупотребление правом, субъект финансовых отношений.

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Introduction. Ukraine's economy is liable to fluctuations – from development to a temporary decline and then to rise again. This is influenced by various factors of an objective reality, political and financial crises etc. All this alone with other circumstances require reconsideration of the theoretical problems of finance and law. Finance law of Ukraine is mainly rooted in science and legislation of Soviet period, and now admitted law concepts, categories, events in the sectoral aspect, in particular, subjective Finance, the limits of this right, legal behavior of subject of financial relations, misconduct, abuse of financial relationship etc. need reinterpretation.

Literature Review. Within the researches of finance and law (such as L.Voronova, M.Kucheryavenko, A.Monayenko, O.Muzyka–Stefanchuk, A.Nechai, S.Nischymna, O.Orlyuk, L.Savchenko, V.Chernadchuk) investigate problems of rights and behavior of subjects of financial relations on in their works. However, the overall view is still missing.

The purpose of this article is to highlight the rights and behavior of subjects of financial relations.

Research results. Implementation of rights by subjects of financial relationship is probably the biggest practical problem in law effectuation process.

Scientists emphasize that "the determination and setting of internal limits to implement subjective law – is one of the most confusing, difficult to understand and solve law problems. This mechanism of setting legal boundaries clearly shows the purpose of law – to give society civilized means to solve emerging contradictions and conflicts. Determining through a set of legal tools for subjects of law "standard" external limits, any step beyond which begins to affect specific subjective rights of other participants of legal relations, legislators have always tried to realize one of the brightest legal ideas that lie at the origins of lawmaking: the right itself shouldn't be an instrument for injustice "[1, p.III].

State owned entity has more legally vested rights than duties, and it gives more opportunities for abuse, unauthorized expansion of its powers. This, in turn, largely harms the interests of subordinate subjects and / or public financial interests. In practice, the question of justification of legality and proving unlawfulness of actions (inaction) both to authoritative, and subordinated subjects of financial relationships is particularly relevant. The process of proving is complicated by the fact that sometimes it turns unclear whether one should prove violation of financial and legal norms, whether there are actions (inaction) that do not break norms, but may have some significant negative legal consequences.

As for the concept of "subjective right", many scientists research the matter, and there exist various theories about the definition of this concept. The concept itself is based, for instance, on such categories as possibility, eligibility, interest, freedom, liberty, coercion, duty. Without going into depth of these theories here are some thoughts. It is believed that the content of the subjective right includes proper and permissible behavior. Proper behavior denotes not only the content of subjective rights but also limits, and the absolute limit of regulation as such. The latter one is a phenomenon of modality obligation, the parallel existent world of reality. When talking about behavior, we mean a standard of conduct, the ideal model, the actual behavior should be compared to determine its compliance with the standard [2, p.97]. Also, scientists include rights (possibilities), duties (acting reasonably and conscientiously not violating other persons' rights), purpose (evidence of valuable relations of a subject to their right) in the content of subjective rights [3, p.104–105, 160].

Scientists see opportunities or eligibility covered by subjective right differently:

- one competence – legal possibility to a lawful agent to claim within the prescribed limits of behavior from an obligated person "[4, p.9];
- two competences – measure of possible behavior assigned to a lawful agent to meet his interests in given relationships and competence, provided by laying duties to other persons [5, p.45–46];
- three competences – competences for their own behavior, the ability to require certain behavior from obligated persons, the possibility to use forces of state apparatus when necessary [6, p.108–109; 7, p.14];
- four competences – the possibility of certain behavior of a lawful agent, the ability to require certain behavior from other persons, the possibility to resort to forces of state apparatus when necessary, the opportunity to have some social service [8, p.115–124].

As M.Stefanchuk rightly emphasizes, eligibility of requirements which makes part of any subjective right can be realized only by an obligated person behavior – behavior that is a part of the material content of the corresponding subjective right. In order that determination of subjective right would reflect legal and financial content of stated phenomenon, it should fix a competence on their own and others actions. In turn, competences on others actions are provided by the power of state coercion [7, p.16].

When it comes to subjective rights of subjects of financial relationship, we should mainly consider the public–legal nature of the relations, the fact that public powers are practically deprived of the option to choose their own behavior, because their authority and competence are clearly defined in legislation. This does not take the subordinate subjects of financial relations, which act on the principle all is permitted that is not prohibited by law.

As to the possibility to demand certain behavior from obligated persons, it is inherent to state subjects of financial relations. Subordinated subjects may require from the power subjects only actions that are foreseen in the legal acts.

It should also be distinguished between subjective rights in the material aspect and subjective procedural rights. Thus, according to V. Reznikova, the very peculiarity of subjective procedural rights, as opposed to subjective rights in the material sense is seen that the bulk of them has the character of competences for unilateral declaration of intend we mean – provided in law opportunities to perform legal proceedings. In respect of procedural subjective rights of a claimant, a defendant or other person involved in the process meets the obligation of the court, and vice versa ... Unilateral competences are realized through eligible subjects' own behavior, are determined by law and represent for each participant in the process means of executing their subjective rights. Responsibilities of other participants correspond to rights of the Court, and vice versa [9, p.126]. With financial law perspective, the above may be illustrated by procedural tax relations between the taxpayer and the tax authority. Such relations show all signs of legal proceedings, settlements of complaints in the courts and so on.

It is important to define internal limits of law related to the subject of financial relationships, as they are crucial in determining whether the conduct is justified, illegal, or there are signs of abuse of the law. According to V. Kruss, "any ideal model of subjective rights is already certain

limitation ..." [10, p.25–26]. For behavior were lawful and fair, one must consider the current restrictions do not go beyond the permissible exercise of rights and not violate the rights of other subjects of financial relationships.

The exercise of subjective rights by a subject of financial relations is always a certain behavior of such subject and such behavior is intended to meet the subject's own interests. "Objective laws" category is more appropriate in use concerning state owned subjects of financial relationship because they are fixed normatively; subjective rights of subordinated subjects are additionally disclosed and even guaranteed by the responsibilities of state subjects.

Having considered subjective rights in financial and legal aspect, let analyze legal behavior within which these rights are realized. Thus, legal behavior is one of a type of social behavior, type of human activity and has a number of features:

- social significance (legal behavior acts as a catalyst for financial relationships between legal entities and individuals (as subordinate entities of financial relations), state, public authorities – subjects of public financial activities);
- falls under control of will and consciousness of a person (in the case of individuals – subjects of financial relationships);
- is prior to legal consequences (legal behavior in some relations, such as of a contractual nature precedes tax and banking relationships);
- guarantee of lawful conduct (a state encourages such behavior, especially when it comes to integrity of tax relations);
- legislative securing of legal responsibility for misconduct (banking, budget, tax legislation contains specific provisions on liability for breach of the relevant legislation).

Law theory distinguishes the following types of legal behavior: 1) lawful behavior; 2) contravention of law 3) abuse of right; 4) objectively wrongful act [11, p.279–280]. The last three types can, in our view, be combine under the concept of "undue behavior" (not to be confused with the term "unlawful behavior" because the abuse of the law is not always contrary to law or against).

Obviously, lawful is behavior that fully meets the regulatory requirements, does not violate public financial interests, does not harm the private interests of financial relationships.

Lawful behavior is characterized by certain features:

- 1) compliance of behavior requirements with the law (which stems from the concept of "legitimate");
- 2) social usefulness of this behavior, as it is desirable or necessary for the functioning of society;
- 3) this behavior has subjective side, which is manifested in the following components such as: motive (behavior focus); degree of awareness of the possible consequences of the act; person's inner attitude to the caused consequences. In our opinion the given concept is not a feature, as the subjective aspect is inherent both to undue behavior and illegal behavior;
- 4) objective necessity of lawful actions for society function and development (finds its form as peremptory norms in the form of duties, the implementation of which is provided by coercive power of the state);
- 5) forms of realization of lawful behavior associated with forms of the right realization (compliance, performance, use and application of the law);
- 6) social admissibility of behavior, i.e. possible law behavior provided by state agents [11, p.282].

Professor O.Skakun leads such signs of lawful behavior:

- 1) is a socially useful (necessary and desirable) social behavior – makes social life organized and harmonious, provides stable order; serves as an important factor in solving tasks and functions of state and society; promotes the interests of law;
- 2) does not contradict the norms and principles of law and does not violate normatively vested restrictions;
- 3) is consciously willed, as expressed in the conscious voluntary motivation of lawful acts to achieve goals;

4) is expressed in actions or omissions made in the form of the right realization – compliance, performance, use (by citizens), law enforcement (by officials)

5) consists of elements – lawful actions;

6) causes legal consequences, as is evident in the legal facts that rule the law, change the law, forfeit a right and which are preconditions of law relations;

7) is protected by state by means of licensing, commitment and security standards driven by norms of recommendation and incentive regulations [12, p.450].

Also Professor O.Skakun offers the following types of lawful behavior according to (subjective side – depending on the mental attitude of a person to his or her actions):

1) active (conceptional) – purposeful activity of citizens, public officials as to their rights, duties and competence within the legal provisions related to the additional costs of time, energy and sometimes of material means; its motive is conviction to do legitimately;

2) typical – the kind of law-abiding behavior, reflected in daily official, domestic and other human activity that meets requirements of law is a habit and needs no additional cost and effort. In our view, this behavior can also be named as "passive";

3) conformist (from Lat. – similar) – a kind of passive-adaptive behavior that is different from that of the others (the principle of "do as others do"), subject to the group standards and requirements (of colleagues, management, informal leader, relatives and others) and subjected to psychological pressure and manipulation;

4) marginal (from the Latin. – border, intermediate) – type of "intermediate" (balancing) behavior between legitimate and illegal conditions of a person, resulting in readiness for illegal actions in the event of supervision of his or her behavior is weakened. Herewith this behavior does not become anti-social, does not cause offense because of fear of legal liability [12, p.450–451] (for example, bank cashier issued a check to the client and indicated where that should definitely sign, although he could sign it himself and any verification will never discover this for the person took the payment by the bank for the first and last time).

Rendering to degree of activity lawful behavior is divided into a number of actions (for example, the timely filing of the income declaration, tax transfer) and omission (failure of an agency manager and accountant to find and give certain documents to inspection subject if such provision is inspector's right, and if submission of documents is required, and a person does not give it, here we say about undue behavior).

In the context of financial relations, we don't consider as lawful:

– excess of powers by public authorities – subjects of financial relations in their exercising of public financial activities;

– action of public authorities – subjects of financial relations, their officials that contradict to public financial interests, objectives and principles of state financial policy;

– action of public authorities – of financial relations, their officials, that contradict the constitutional rights and freedoms of citizens, the rights of other subordinated of financial relationships.

– In practice, there are cases of abuse of rights within lawful behavior, characterized by the following features:

– behavior of a subject is in accordance with the law, including cases where it is abstractly permitted or is not directly prohibited;

– behavior of a subject does not correspond to the aims of vesting legal norms and assignments given to him or her by the right of subjective law;

– measures of legal responsibility are not imposed on a subject for committing acts of this kind [13, p.158].

Conclusions. Abuse of rights in the form of financial offenses has features that characterize respectively, financial offense (or infringement of financial legislation in respect of which the person may be subject to financial, administrative, criminal, civil liability), namely: the unlawfulness; public danger or harm; culpability; guilt. Although this feature as culpability is not always attributable to the financial offense, as there can be liability without fault.

Unlawful abuse of the law differs from the usual offense that a subject in this case carries a wrongful act by implementing their subjective right. In other words, a subject implementing provided his or her subjective right, violates the provisions of the current legislation (goes beyond the scope of this law).

In practice, it is important causal link between the act and the effects that it has caused. With this in mind, it turns especially important and difficult for state–government agencies to prove the fact that actions or omissions of a subordinate subject of financial relationships have signs of illegibility, their behavior is illegal. And it is important to a subordinate subject to prove the legality of their actions. An arsenal of evidence is used for this purpose, as well as evidence is created.

Public financial rights are protected by law, except when their implementation is contrary to the purpose of these rights in a legal state. Thus, subjects of financial relationships, exercising their rights act within legal behavior. Their action or inaction can be both lawful and unlawful.

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