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THE NATURE OF ECONOMIC LAW AS A BRANCH OF LAW

It is investigated the problems, that are connected with the definition of the legal nature of economic law and its role in the legal system of Ukraine. It is observed the features and correlation of Civil and Economic Codes in Ukraine. It is suggested the proposals for decision collisions between separate norms of these codes.

Keywords: legal system of Ukraine, branches of law, legal nature of Economic law, decisions of legal collisions.

Крупка Ю. Отраслевая природа хозяйственного права. *Исследованы вопросы, связанные с определением правовой природы хозяйственного права, его места в системе права Украины. Рассмотрены особенности и соотношение Гражданского и Хозяйственного кодексов Украины. Внесены предложения по разрешению коллизий между отдельными нормами этих кодексов.*

Ключевые слова: система права Украины, отрасли права, правовая природа хозяйственного права, разрешение правовых коллизий.

Background. In the complex of today's issues in economic law, there is a fundamental question in relation to confession the economic law as an independent branch of law, and also determining it in the legal system of Ukraine. In relation to it, there are different consideration and positions in domestic legal science, maintenance and the key of that is determined, first of all, by belonging different legists to civil or economic legal schools.

The decision of this question has not only the theoretic and cognitive, but also practical value, as it creates pre-conditions for the removal of collisions between the norms of the different branches of law, contiguous (straight or mediated) with adjusting relations in the field of manage.

The analysis of the last researches and publications. Although the scientific works of S. Alekseev [1, p. 23–45], I. Kras'ko [2, p. 34–40], V. Laptev [3, p. 61–69], V. Mamutov [4, p. 19–24], O. Pushkin [5, p. 28–35] and other are devoted to the range of problem in the determining the legal nature of economic law, however the only position is not attained up to this day. At these terms, it appears the necessity of continuation the scientific discussion of the marked problem.

The conditioned purpose is resulted from the article, which relies on the definition of legal nature of economic law and its place in the legal system of Ukraine.

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Results. In relation to the mentioned problem, two principal terms were formed among the representatives of economic law school. The supporters of the first (I. Kras'ko, V. Laptev, V. Mamutov, I. Pobirchenko and other) examine an economic law as an independent branch of law, that has nothing in common with other branches. However, an economic law, as O. Vinnyk noticed justly, as it is the specific phenomenon, but related to other branches of law (civil, administrative, financial, land, labour and other) [6, p. 50]. So, most property relations in the field of managing are regulated by the norms of civil law.

According to it, researchers of theory of the state and law stress on relative independence of the branch of law [7, p. 241–242]). Khalfina considers, that an attempt to convert branches into close, isolated, self managing systems conflicts with the objective necessity of permanent expansion inter-branch connection, that are the conditional process [8, p. 179–181].

In accordance with the second position, an economic law is the complex branch of law and it combines the legal norms of the basic branches of law, that regulate economic activity (O. Pushkin, S. Alekseev, V. Scherbitina, O. Vinnyk).

Thus, in the field of a ménage, special norms and institutes of economic law (institute of defense of economic competition, institute of bankruptcy, institute of state registration of business entities, etc) operate also with the norms of other branches of law.

Such position is based on classification of the branches of law, offered by S. Alekseev, who distinguishes from their number the profiling (primary, fundamental), special and complex formations. He takes a constitutional, administrative, civil law to the first, because these branches concentrate the essential legal model and primary legal facilities, and that is why they form a legal kernel and legal basis of maintenance of all branches of law. On his opinion, the special branches are the branches, which legal models are based on the models of profiling branches. Thus is marked on, that they play a no less important role in the meaningfulness of society life. Such branches can rely on the mode of the centralized (financial law) or decentralized type (family law). And they don't recreate them simply. Speech goes that the special branches create the special legal mode, which finds expression in the special method of adjusting and major in the special status of subjects. In turn, for complex branches (economic law) "repeatedy" of participating in adjusting is a characteristic feature. It takes place here the doubling of the structure association of profiling and special branches inherent to complex branches.

S. Batryn notices in this connection, that to examine an economic law as a complex branch of law, means to erect economic law to the set of heterogeneous relations (as the object seems not to have homogeneity), that don't have an initial legal kernel, they are not systematized and don't have present integrity and unity, and tear permanent copulas in the legal system. But it does not respond to reality. On such conditions, it should be asked what kind of role economic law is played and why it is needed as a specific part of a legal system. Thus, the complex branches of law do not exist in

such consideration. Taking into account this, S. Batryn can not agree with the conclusion of S. Alekseev, that there are branches, which form the own legal mode (profiling and special branches) and complex branches (that, to all appearances, do not formed, but repeadly use stranger tools). S. Batryn considers, that the branch exists as relatively independent (thus, it is possible to carry out the division into fundamental and special branches at the theoretical level) or it is not in the legal sense at whole [11, p. 94].

Along with other independent branches of considering domestic economic law administratyvisty [12]. V. Milash also acknowledges an economic law as an independent branch of law. On her opinion, this branch of law is the special system of rules that derive both from state (imperative and dispositive rules) and from the participants of relations in the field of a menage (from micro norms to local norms). Via these rules, the legal influence is carried out on the relations that appear between the subjects of economic law during the organization and undertaking the economic activity and it is necessary for carring out an effective functioning of economic turnover and social direction of public production with the purpose to adopt and assist to the public economic order [13, p. 15].

Civil lawyers (O. Ioffe, S. Bratus', R. Khalfina, G. Matveev, Yar. Shevchenko, A. Dovgert and others) adhere to negative position and they consider the economic law as not independent branch of law, but the simple combination of civil legal and administrative legal rules, that operate in the field of a menage.

However, "managers" deny, economic legal relationships, as integral educations can not be decomposed on civil legal and civil administrative ones. In addition, economic law has, considerable on a volume, its own normative material, that consists of legal norms and institutes, which belong neither to civil nor to administrative laws [14, p. 50].

On opinion of "managers", the institutes of defence of economic competition, bankruptcy and other belong to such institutes, which stipulated the selection of economic law into separate branch of law. However, if we analyse normative composition of these and other institutes of economic law, it will appear obvious and irrefutable the fact, that they include the norms of different branches of law (administrative, civil, economic procedural laws and other) and thus, they are complex inter-branch institutes. The last answers to the general thesis (conclusion) of civil lawyers, that an economic law is not branch, but inter- branch formation [15, p. 119–131].

Thus, an economic law can be examined as *complex inter-branch formation, which is based on its own qualitatively homogeneous base of economic relations. However, it is inwardly consolidates and homogeneous legal system with the legal mode (this inherent to the profiling branch of law) and uses for adjusting economic relations its own legal tools* (principles, methods (in particular method of equal submission of economic legal subjects to the public economic order) *and the tools of other branches* (in particular, non-mandatory and imperative methods).

In the context of examined range of problems, the question of decision of correlation Civil and Economic codes in Ukraine is actual one. A. Bobkova considers that it follows from confession correlation of the Commercial and Civil codes as the special and general laws, which have equal juridical force. Obviously, that Economic code of Ukraine (farther ECU) as the special law does not regulate and can not regulate property and individual unproperty relations in general, as it is functions of Civil code of Ukraine (father CCU), but the priority belongs to ECU at adjusting of features in the field of a ménage, that derives from the norms of both codes [16].

Examining the problems of property relation differentiation, those are the subjects of adjusting of Civil and Economic codes, V. Rotan' marks, that essence of correlation of their effect is shown in part 2 art. 9. CCU. According to that, all property relations are based on legal equity, free will and property independence of their participants and are regulated by the Civil Code (part 1 art. 1 CCU) and part 2 art. 9. CCU assumes possibility of legal establishment of features of adjusting of such property relations in the field of a ménage so that the Economic Code of Ukraine is such kind of law.

In particular, ECU can set the features of adjusting of the part of there relations, that are folded in the field of a menage. Rotan' specifies that, with accordance to the logical correlation of general and special provision of legislation, judicial practice always gave advantage to the special terms, when there were contradiction between position of legal acts during legal usage (if legal force of acts, in where these terms are formulated, is identical).

As ECU sets the features of adjusting of property relations in the field of a ménage, its provisions subject to the overwhelming application to these relations. Provisions of ECU to the last will be used in conditions, if CCU does not decide the appropriate questions. Part 2 art. 9 CCU comports with part 2 art. 4, which envisages the possibility of deciding the features of property relations by economic code. This coordination of two codes in defining the correlation of spheres of effect in Civil and Economic codes puts under a doubt provision of the second indention in part 1 art. 9 ECU. According to the indention, property and unproperty relations, regulated by CCU, are not the subject of ECU regulations [17, p. 3].

Thus, part 1 art. 175, part 7 art. 179, part 5 art. 182 and other articles of ECU point into the regulation of property relation by CCU with considering features of Economic code. Consequently, according to the general rules, those are set in part 2 art. 9 CCU, part 2 art. 4 and special rules of ECU, these two codes are correlated as such, that formulate general (Civil Code) and special (Economic Code) provisions and regulate property-economic relations, that emerge between participants of property relations during the realization of economic activity.

Thus, a substantive provision, that Civil lawyers lean on, is, that ECU has the matter of special law in the sphere of legal regulation those property relations, where a participant is a subject of ménage and ECU has the meaning of general law in considering to adjusting of the relations. In

addition, the provision means, that the appropriate legal rules can be applied by analogy to economic and property relations, which are not regulated by ECU [18, p. 16].

In accordance with that A. Nyzhnyi notices, that authors automatically define distribution of the Civil Code operations on economic relations determining correlation of the Civil and Economic Code as a general and special normatively-legal acts even though CCU is as general (unpriority) act. However, in such case, ECU as a special act is automatically carried to the system of normative act, where ECU plays general role i.e. to the system of acts of civil legislation. And that is why the effect of part 1 and part 2 art. 4 of Civil Code spreads on Economic Code as a special act of civil legislation According to this article, the main act of civil legislation in Ukraine is CCU and other laws in this field (including ECU) are adopted in accordance with the Civil Code [19].

However, as it is caught out, there are not sufficient grounds to consider the Commercial Code as the act of civil legislation, as it has its own subject of adjusting, which is different from the subject of adjusting of the Civil Code. According to the art. 1, ECU this Code determines basic principles of ménage in Ukraine and regulates economic relations, which appear in the process of organization and realization of economic activity between the subjects of menage, and also between these subjects and other participants in relations in the field of a ménage. Thus, economic relations are characterized by specific maintenance (combination of illegal and public relations). It allows the representatives of economic and legal conception to defend position according to that; economic relations are regulated by the separate branch of law because of their specification [20, p. 34].

Coming from the stated, it is possible to confirm, that ECU is not special law in relation to the civil code; it is general code in the field of ménage, which contains the complex of interrelated civil legal and public norms, which regulate economic relations, which arise up in the process of organization and realization of economic activity.

As S. Ten'kov justly notices differentiation between codes shouldn’t rely on principle "general" for CCU and "special" for ECU; it should enplane competition of separate norms of these codes. Both the "general" Civil Code can contain the special norms and the "special" Economic can include general norms [21]. Thus, according to part 2 art. 4 of the Civil Code, civil legal norms of the Commercial Code must not contradict corresponding provisions of CCU. This approach allows to define the spheres of the Civil and Commercial Code effects and to decide collisions between the norms of these codes.

Many collisions, which are related to differentiation of spheres of the commercial and Civil Code effects, can be decided by correct interpretation of appropriate norms. Y. Smolin marks consequently, that for example, it is possible to discuss to what branches of law agreements taken to, which is messaged both in Civil and Economic Code instead of defining legal

personality of parties and the aim of conclusion of the treaty. Obviously, if the contract of purchase or the contract for delivery is drawn up to satisfy the needs of enterprises, it is civil and legal. If the contract is drawn up to manufacture and sell the finished products, fulfill the work or provide services with the aim to get a profit, it is economic and legal. If we speak about the special capacity of legal entities, that is the subject of a menage according to the art. 91 CCU, it is general for legal entities. And part 3 art. 55 ECU is special in relation to concrete subject of a ménage within special economic competence [22, p. 34].

Conclusion. Foregoing proves, that determining the problem of correlation the Civil and Economic Codes depends on definition of legal nature of economic law and its place in the legal system of Ukraine and also it depends on clearly distinction of objectives of correlation the Civil and economic laws.

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Крупка Ю. Галузева природа господарського права.

Постановка проблеми*. Запропоновану наукову роботу присвячено визначенню правової природи господарського права, його місця в системі права України. Вирішення цього питання має не лише теоретико-пізнавальне, а й практичне значення, оскільки створює передумови для усунення колізій між нормами різних галузей права, дотичних (прямо чи опосередковано) до регулювання відносин у сфері господарювання.*

Аналіз наукових джерел *з обраної тематики свідчить про відсутність серед науковців-правознавців єдиної позиції щодо визначення правової природи господарського права. За цих умов продовження наукового обговорення зазначеної проблеми є актуальним та формує основу* ***мети*** *дослідження.*

Результати дослідження. *Проаналізовано основні підходи до визначення правової природи господарського права з подальшим доведенням необхідності розв'язання зазначеної наукової проблеми шляхом класифікації галузей права, запропонованої С. Алексєєвим, який виокремлює з їх числа профілюючі (первинні, фундаментальні), спеціальні та комплексні утворення. З огляду на це, господарське право пропонується розглядати як комплексне міжгалузеве утворення, що ґрунтується на власному, якісно однорідному базисі господарських відносин. Проте воно не є внутрішньо консолідованою й однорідною юридичною системою з власним правовим режимом, притаманним для профілюючих галузей права і використовує для регулювання*

господарських відносин поряд з власним юридичним інструментарієм (принципи, методи, зокрема, метод рівного підпорядкування суб'єктів господарського права суспільному господарському порядку) інструментарій інших галузей (зокрема, диспозитивний та імперативний методи).

Висвітлено питання визначення співвідношення Цивільного і Господарського кодексів України. На підставі критичного аналізу існуючих в юридичній літературі підходів обстоюється позиція, за якою Господарський кодекс є не спеціальним відносно Цивільного кодексу законом, а загальним законом у сфері господарювання, що містить комплекс взаємопов'язаних цивільно-правових і публічно-правових норм, які регулюють господарські відносини, що виникають у процесі організації та здійснення господарської діяльності.

Висновки. *Проведене дослідження може стати складовою більш повного розуміння юридичної природи господарського права та його місця в системі права України.*

Ключові слова: система права України, галузі права, правова природа господарського права, правові колізії.