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PRINCIPLES OF ECONOMIC LAW IN A MECHANISM OF ECONOMIC AND LEGAL REGULATION

The leading role of principles in law is obvious. The values of principles of law consists in their ability to determine the content of a legal system and its structural elements, to be means for defining legal norms, and to be a direct regulator of legal relations, including overcoming gaps in law.

Principles of law influence a process of lawmaking as well as a process of law enforcement.

Depending on a sphere of activity within a law system, the principles of law are divided into underlying and general principles (being inherent to law in general), inter-sectoral and, respectively, sectoral, sub-sectoral, and institution principles.

Determining principles of economic law, it is worth mentioning that economic law is a complex industry of law and integrates public legal and private legal frameworks of normative regulation.

As we know, division of law into public and private ones is based on the following interests: public (state and social); private (particular persons). Respectively, there are different methods of legal regulation (imperative one for public law and dispositive for private one) and types of legal regulation (specially permitted regulation for public law and generally permitted for private law).

Certainly, such dichotomy of rights should be used as a basis of principles of economic law, depending on a type of those relations being subject to legal regulation.

For instance, the principle of freedom of contract and the principle of freedom of entrepreneurship are manifestations of the dispositive method, which is applied for legal regulation of private and public relations. At the same time, legal relations, which are of the public interest, mainly requires application of the imperative method of legal regulation and existing corresponding principles such as prevention of the abuse of monopoly power in a market, anti-competitive practices, unfair competition, etc.

Simultaneously, it is important to correctly determine existence of private or public interests in real legal relations and to find the optimal balance between them.

The private interest underlies a right to entrepreneurial activity. At the same time, providing a regime of freedom of entrepreneurial activity should be acknowl-

edged as the basic public interest. This interest should be a basis for various private legal relations. Correspondingly, a mechanism of providing freedom of entrepreneurial activity as well as a mechanism of restriction of this freedom should underlie the principle of freedom of entrepreneurial activity – one of leading principles of economic activity. Nevertheless, this duality should exist solely for the purpose of protection and providing other private and public interests.

The principles of economic law must provide the ideal balance of boundaries for governmental intervention in the economic sphere. Under conditions of systematically programmed competition between dispositiveness and imperativeness in regulation of economic relations, the method of dispositiveness should be generally prior.

It is necessary to determine an extent of governmental intervention in the economic sphere, having improved legislative technics of outlining their principle.

Regulating principles of economic activity, Article 6 of the Economic Code of Ukraine establishes principles of prohibition of unlawful intervention of governmental authorities, bodies of local self-governance, and governmental officials in economic relations.

Such formulation seems to be not completely appropriate, since an extent of intervention of governmental authorities, bodies of local self-governance, and governmental officials in economic relations have been not precisely determined. In turn, this provides unrestricted freedom for officials and results in the increase of a number of such interventions through adoption of corresponding legal acts.

Prohibition of unlawful intervention in economic activity and determination of a precise extent of such intervention requires legislative regulation and institutionalization on level of the principles of economic law.

Application of an idea of providing social orientation of the economy, which is indicated in Paragraph 5, Part 1, Article 6 of the Economic Code of Ukraine, as the basis for determination of the extent of intervention of governmental authorities, bodies of local self-governance, and governmental officials in economic relations seems to be not completely appropriate. Such idea is a very general property of the economic system, i.e. a term with wide latitude, which can lead to arbitrariness and unrestrictedness of such intervention.

A principle of providing freedom of entrepreneurial activity, which determines protection and providing other private and public interests as a case of such intervention, should be the basis for determination of the extent of intervention of governmental authorities, bodies of local self-governance, and governmental officials in economic relations.

There is a need to determine and legislatively institutionalize a comprehensive list of circumstances, under which intervention of governmental authorities, bodies

of local self-governance, and governmental officials in economic relations will be possible, in the main codified document rather than in particular piecemeal legislative acts and the theory of law. Such actions will be subject to precise legal qualification in each case.

At the same time, governmental officials must interfere in economic relations through the prism of the general principle of proportionality (includes three criteria: means intended for achieving a purpose should comply with this purpose; the officials should choose means, which least restrict a right of a business entity, among all the appropriate; loss of a business entity incurred on account of restriction of the right should be proportional to a benefit from achievement of the purpose).

Indicating the conceptual basis of the principles of economic law, it is worth mentioning that it should be based on general principles of functioning of a market economy.

The economic principle should become the principle of law if abusing the economic principle can produce legal effects. In such case, there is peculiar «convergence» of economic and legal principles.

There is a need to take considerable notice of a matter concerned with appropriate institutionalization of the principles of economic law in the Economic Code of Ukraine. Otherwise, they may remain on the level of ideas, views, and conceptions.

In the current Economic Code of Ukraine, there is Article 5, which regulates constitutional basics of the legal order in the economic sphere, Article 6, which indicates general principles of economic activity, Article 44, which regulates principles of entrepreneurial activity. Nevertheless, there is no article, which precisely regulates the very principles of economic law.

Obviously, it is a disadvantage, which indicates absence of a system approach to this issue.

The principles of economic law requires to be classified and systematized in the system of economic law.

In the process of regulation of the principles of law, it is important to use perfect legislative techniques for the purpose of formation of maximally understandable, precise, unambiguous, and non-contradictory rules.

Thus, in order to declare the principles of economic law as well as to apply them in the practice, the legislator must perform the following actions: conceptually define them, taking into account contemporary economic and legal reality; systematize and set out them in the Economic Code of Ukraine; formulate them precisely and clearly in such a way that they will be obvious for everyone rather than need additional explanations.

All the mentioned proposals will enable to extend and enhance the functional nature of the principles of economic law.