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ИНФОРМАЦИЯ ОБ АВТОРЕ

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BUDGET LAW AS THE MAIN SUB-BRANCH OF FINANCIAL LAW

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SUMMARY

The article is dedicated to characteristics of Budget Law as the main sub-branch of Financial Law. A lot of general theoretical researches are devoted to the problem of Budget Law as the sphere of maintaining budgetary activity. But this question is in the center of scientists and practitioners' attention, especially, when it concerns specific branch researches. In the science of Financial Law this problem is complicated by the absence of strict understanding of Financial Law System, its division into general and special parts, the structures of both of these parts. Budget Law, according to traditional domestic scholars' views on the branches of law structure in general and Financial Law in particular, is a component of special part of Financial Law and its main sub-branch. Recently, the scholars began to pay their attention to the System of Financial Law, more often. So that, the scientists of Yaroslav Mudryi National Law University ask question, concerning the absence of general part of Financial Law, as a complex of financial and legal norms, which reveal in special part of Financial Law Institutes. Supporting division of Budget Law into two parts: material and procedural, it can be talked about the existence of budgetary-material and budgetary-procedural activity. In any case, Budget Law is the main sub-branch of Financial Law, which exists and is realized within budgetary activity.

Key words: Financial Law, Budget Law, sub-branch, budgetary process, budgetary activity.

БЮДЖЕТНОЕ ПРАВО КАК ВЕДУЩАЯ ПОДОТРАСЛЬ ФИНАНСОВОГО ПРАВА

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АННОТАЦИЯ

Статья посвящена характеристике бюджетного права как ведущей подотрасли финансового права. Проблематике бюджетного права, как сферы реализации бюджетной деятельности, посвящены многочисленные общетеоретические исследования. Однако и сегодня этот вопрос находится в центре внимания ученых и практиков, особенно, когда речь идет о специальных отраслевых исследованиях. В науке финансового права данная проблема усугубляется неоднозначным пониманием системы финансового права, его деления на общую и особенную части, структуры обеих этих частей. Бюджетное право, согласно традиционным взглядам отечественных исследователей на структуру отраслей права в целом, и финансового права, в частности, является составной особенной части финансового права и ведущей его подотраслью. В последнее время ученые все чаще стали обращать внимание на систему финансового права. Так, коллектив ученых Национального юридического университета имени Ярослава Мудрого ставит вопрос об отсутствии общей части финансового права, как совокупности финансово-правовых норм, касающихся особенной части финансового права. Поддерживая разделение бюджетного права на две части – материальную и процессуальную, можем говорить о существовании бюджетно-материальной и бюджетно-процессуальной деятельности. В любом случае, бюджетное право является ведущей подотраслью финансового права, которая существует и реализуется в рамках бюджетной деятельности.

Ключевые слова: финансовое право, бюджетное право, подотрасль, бюджетный процесс, бюджетная деятельность.



Target setting. Unlike some institutions and sub-branches of Financial Law, in relation to which the discussion about their inclusion or exclusion in or out of this branch is held (for example, Fiscal, Banking, Currency, Emission, Money Law), Budget Law is the central sub-branch of Financial Law and definitely is a part of its structure. Moreover, Budget Law is sometimes fully identified with Financial Law and public finances, that is characterized for French scholars' scientific position.

Actual scientific researches and issues analysis. Theoretical basis of the research are scholars-investigators' of Financial Law scientific papers, such as: L.K. Voronova, O.P. Hetmanets, O.O. Dmytryk, I.B. Zaverukha, S.T. Kadkalenko, L.M. Kasianenko, A.N. Kozyrina, T.V. Koniukhova, I.Ye. Krynytskyi, M.P. Kucheriavenko, T.A. Latkovska, A.A. Lukashev, O.A. Muzyka-Stefanchuk, A.A. Nechai, O.P. Orliuk, M.I. Piskotyn, N.Yu. Pryshva, L.A. Savchenko, A.I. Khudiakov, V.D. Chernadchuk, N.Ya. Yakymchuk, etc.

Unsolved earlier problems. A lot of general theoretical researches are devoted to the problems of Budget Law as the sphere of maintaining budgetary activity. But this question is in the center of scientists and practitioners' attention, especially, when it concerns specific branch researches. In the science of Financial Law this problem is complicated by the absence of strict understanding of Financial Law System, its division into general and special parts, the structures of both of these parts.

The purpose of the article is to reveal, to formulate and to solve fundamental theoretical and applied problems of Budget Law as the sphere of maintaining budgetary activity. It should influence positively on legal regulation of separate kinds and directions of this activity.

The statement of basic materials. Budget Law, according to traditional domestic scholars' views on the structure of branches of law in general and Financial Law in particular, is a component of special part of Financial Law and its main sub-branch.

Budget Law is considered to be a complex of financial and legal norms, which regulate financial relations, which arise in connection with mobilization, distribution and using of centralized money funds. Academician L.K. Voronova defended this position in her scientific works. She determined Budget

Law as a sub-branch of Financial Law and characterized it as a complex of legal norms, which regulate budgetary system, structure and order of division of income and expenses of budgetary system, state's and local authorities in branch of budgets and budgetary process [2, s. 115].

Based on this fact, circle of relations, which act as a subject of Budget Law, can be determined. This circle contains relations, connected with:

- establishing of budgetary order and system;
- establishing of income and expenditures structure of budgetary system and their division among budgets of different levels;
- differentiating of budgetary competence between the state and local communities;
- budgetary process organizing and budgets execution control maintaining.

The first scholars, who investigated the problems of Financial Law, were M.I. Piskotin and Yu.A. Rovinskyi, who insisted on the expediency of sub-branches selection in Financial Law System. M.I. Piskotin can be regarded to be the first, who focused attention at the revealing in Financial Law such sub-branch as Budget Law [3, p. 69].

V.V. Bezcherevnykh regarded that bigger elements, compared to institutes, make up Financial Law System. He meant division of Budget Law and state's incomes [4, p. 34].

Place of Budget Law, as a complex of legal norms, which regulate budgetary relations in different states' juridical systems, is determined in different ways. In states of Romano-Germanic juridical system, Budget Law is considered to be a sub-branch or a part of Financial Law. In states of Anglo-Saxon law the norms, which regulate budgetary relations, are more often scattered in different acts of Constitutional and Administrative Law [5, s. 33-34]. But there are examples of relating of Budget Law to complex branches of law [6, s. 92-93].

In foreign states Budgetary Law systematize knowledge about legal regulation of public finances according to the principle of planning and annual (periodical) imposing a veto (examination, voting) by representative (legislative) authority body of the main financial act – the budget [5, s. 33].

Recently, the scholars began to pay their attention to the system of Financial Law,

more often. So that, the scientists of Yaroslav Mudryi National Law University ask question, concerning the absence of general part of Financial Law, as a complex of financial and legal norms, which concern and reveal in the institutes of Financial Law special part [7, s. 105].

Characterizing the components of Financial Law special part, the researchers focus their attention at the fact, that "uncondition feature of emergency within financial-legal branch of institute, which transforms into sub-branch or, in future, into separate branch, is not only quantitative accumulation of financial and legal norms, but qualitative transformation, complicated structure of existed norms and of those, which should be accepted. Separation of Budgetary and Fiscal Law in sub-branch of Financial Law is one of vivid examples of this is" [7, s. 101].

L.V. Vakariuk thinks that in modern conditions of state's development Budget Law has been finally formed as a sub-branch of Financial Law. That was caused by following factors:

- 1) coverage of its regulative influence a wide range of social relations;
- 2) the result of budgetary and legal relations development was accepting of Budget Code of Ukraine [8, s. 101, 105].

Peculiarity of Budget Law of Ukraine as a sub-branch of Financial Law is that:

– it includes a great number of financial and legal norms, which are placed in plenty of budgetary standard and legal acts: Budget Code of Ukraine, annually laws about State's budget, decisions about local budgets, etc.;

– it consists of budgetary and legal norms and is a kind of financial and legal norms;

– relations appear while fulfilling budgetary activity, they regulate the process of forming, distributing and using state and local municipality's money funds;

– subjective compound of budgetary legal relationships has its own specificity and includes the state as specific subject, territorial formations, which are owners of the budgets of appropriate level and executive bodies within their authorities.

A.I. Khudiakov divides Budget Law into general part (it covers budgetary system, control in budget branch; legal bases of budget planning; legal bases of budget control) and special part (it covers institutes of legal regulation of budgets incomes; legal



regulation of budgets expenditures; legal regulation of state's credit) [9, s. 24].

T.V. Koniukhova considers Budget Law to be a sub-branch of Financial Law and for A.I. Khudiakov's support, divides it into two parts – general and special [10]. So that, the institutes of general part of Budget Law are: budgetary powers of the state, its subjects' and of municipal formations, budgetary system. The scholar regards budgets incomes, budgets expenses, budgets balance, State and municipal debt, external debt claims, interbudgetary transfers, state extrabudgetary funds to be the institutes of special part (material character).

To the institutes of special part (organizational character) relate the following: budgetary process, budget accounting, state and municipal financial control, responsibility for breaking fiscal legislation. In our opinion, selection of mentioned institutes is not very correct. For example, budget accounting is activity or relationships, which is maintaining within budgetary process. Their synthetic dividing from the institute, named "budgetary process", to our mind, is unfounded. The next remark concerns the institute, named "state and municipal financial control". We think that, while describing Budget Law Institutes, it is worth pointing out budget control as a kind of public financial control.

To T.V. Koniukhova's mind proposed system of Budget Law Institutes allows reveal inextricable connection of Budget Law Institutes with each other and also with the institutes of other Financial Law sub-branches. So that, Institute of Budgets Incomes includes into budgets incomes from taxes and imposts, is closely connected with Fiscal Law. Sub-Institute of Assignations includes a number of sub-institutes. So, Budget Law System consists of institutes, sub-institutes, smaller (mini institutes) and norms-orders. Because of this the author proposes to single out such kinds of institutes: a) institutes, which divide branches (sub-branches) into parts; b) sub-institutes – smaller; c) mini institutes – the smallest, which belong to municipal property [10, s. 4]. We believe, that proposed vision of Budget Law Institutes system not allow reveal some connection, but cause more questions. Trying to highlight all the system of Budget Law, the author should have not only stated, but explained Budget Law Institutes, sub-institutes and mini institutes

and not only enumerated them. In addition, T.V. Koniukhova points out, that the main principles of singling out the institute are quantitative composition of norms and their public and economic significance. It is obviously, that it is not about principles, but criteria of singling out the institutes.

Scientist S.V. Zapolskyi emphasizes, that Budget Law, as a sub-branch of Financial Law, is internally entire and practically indivisible. He singles out the following norms in its structure, which: 1) determine budgetary arrangement; 2) regulate distribution of incomes and expenses among different branches of budgetary system; 3) establish the order and means of providing budgets balance; 4) fix the order of implementation of expenditure part of the budget; 5) regulate interbudgetary relations [11, s. 87].

Referring to characteristics of the subject of Budget Law, some scholars determine it as a complex of social relations in the sphere of budgetary activity of the state and local communities, which reveal in the result of their state establishing, fixing and regulating. These social relationships are classified into separate groups, which arise, concerning:

- state budgetary arrangement;
- establishment and structure of sources of incomes of budgets of different levels;
- the order of expenditures distribution among budgetary system branches;
- interbudgetary regulation;
- powers of the state and local communities in budget sphere;
- the order of carrying out relationships, which regulate budgetary process;
- the order of regulating relationships, concerning determination of reasons of responsibility for breaking fiscal legislation [8, s. 114].

Traditionally, Budget Law is considered to be a complex of two institutes: budgetary arrangement and budgetary process. Such division is caused by existence of material and procedural norms of Budget Law. The scholar V.V. Bezcherevnykh wrote, that Budget Law consists of two units (institutes): one of them is "budgetary arrangement" (dedicated to material budget and legal norms), and the other is "budgetary process" (dedicated to procedural budget and legal norms) [4, s. 39].

The scientist M.I. Piskotin mentioned on that fact, that division of Budget Law norms into material and procedural looks rather practical and distinct [12, s. 57].

In domestic papers, concerning Financial Law, edited by L.K. Voronova, T.A. Latkovska, M.P. Kucheriavenko, O.A. Muzyka-Stefanchuk, O.P. Orliuk, N.Yu. Pryshva, L.A. Savchenko, etc, Budget Law is in some way connected with Substantive and Procedural Law. Different approaches to Budget Law definition don't deny, in general, that its norms regulate budgetary relations, connected with budgetary activity. V.D. Chernadchuk thinks that the sphere of emergence and development of budgetary relations is budgetary activity of the state and administrative-territorial units, which, in its turn, is a kind of public financial activity [13, s. 57]. In our opinion, such activity is not maintained as much by the state, as by its bodies, but not by administrative-territorial units, but by appropriate bodies of local authority.

Conclusions. Supporting Budget Law division into two parts: material and procedural, we can speak about the existence of budgetary-material and budgetary – procedural activity. In any case, Budget Law is the main sub-branch of Financial Law, which exists and is realized within budgetary activity.

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МУНИЦИПАЛЬНЫЕ ОРГАНЫ КАК СУБЪЕКТЫ ДЕЛИКТНЫХ ГРАЖДАНСКИХ ПРАВООТНОШЕНИЙ

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АННОТАЦИЯ

В статье рассмотрены условия участия муниципальных органов в деликтных гражданских правоотношениях. Определены факторы, которые определяют специфику правового статуса муниципальных органов как субъектов обязательства по возмещению ущерба. Выделены специальные условия возникновения деликтных гражданских правоотношений с участием муниципальных органов. Проанализированы нормы законодательства, регулирующие источники возмещения ущерба по деликтным обязательствам местного самоуправления. Определены недостатки нормативного материала по данным вопросам.

Ключевые слова: муниципальные органы, деликтные правоотношения, возмещение ущерба.

MUNICIPAL BODIES

AS SUBJECTS OF TORT LEGAL RELATIONS

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SUMMARY

The article deals with the conditions for participation of municipal bodies in tort civil legal relations. The factors that determine the specificity of the legal status of municipal bodies as subjects of the obligation to compensate for harm are determined. Special conditions for the appearance of tort civil legal relations with the participation of municipal bodies are singled out. The norms of legislation regulating sources of compensation for harm on tort obligations of local self-government are analyzed. Deficiencies in the normative material on these issues have been identified.

Key words: municipal bodies, tort legal relations, compensation of harm.

Постановка проблемы. Деликтные гражданские правоотношения – это отношения, возникающие вследствие нарушения гражданских имущественных или личных неимущественных прав абсолютного характера и цель которых – обеспечить восстановление прав потерпевшего за счёт возмещения причинённого ущерба. Институту возмещения ущерба присущи общие принципы гражданского права (принцип недопустимости произвольного вмешательства кого-либо в частные дела; принцип юридического равенства участников гражданско-правовых отношений и т.д.) [3, с. 95].

Согласно действующему законодательству участниками гражданских отношений являются: государство Украина, Автономная Республика

Крым, территориальные общины, иностранные государства и другие субъекты публичного права. Посему перед наукой гражданского права возникает проблема определения специфики участия в гражданских правоотношениях (в том числе, в деликтных) муниципальных органов.

Актуальность темы исследования обусловлена сразу несколькими факторами. Во-первых, реформирование системы и полномочий органов местного самоуправления на современном этапе развития государственности в Украине мотивирует представителей цивилистической науки к пересмотру сложившихся ранее доктринальных подходов к участию муниципальных органов в качестве субъектов деликтных правоотношений. Во-вторых,