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THE FEATURES OF FINANCIAL LEGAL RELATIONS ON THE STATE BORROWINGS

It is indicated that scholars traditionally have identified the following features of financial relations: (1) its occurring in the public financial activities field (2) its property (money) nature, (3) one of the parties of such relations is always the state, represented by the authorized state body (local authority), (4) they arise, change and stop always on the basis of the law (financial and legal act), not on the basis of the parties' will. However, the financial relationship on state loans have a certain specificity. They arise and develop dynamically on the such stage of public finance activity as the mobilization of financial resources to public funds.

Keywords: financial relationship; specificity of financial relations; financial relationship on the public loan; state loans.

Problem setting. Today every state to supplement the public funds, including budgets, uses borrowings. The scholars rightly emphasize that the purpose of state credit defined primarily by the fact that it is a mean of mobilizing additional financial resources by the state. In the case of budget deficit (state or local) additional funds are used to cover the difference between budget expenditures and revenues. In the case of positive budget balance the financial resources (mobilized through public borrowings) are used directly to fund economic and social programs. This means that the state credit, as a mean of increasing the state financial capacity, could be an important factor in accelerating socio-economic development. The state credit is also a source of increasing the profit of securities holders, and such profit achieves through the interest payments and gains on state loans [12, p. 310; 10, pp. 315]. Indeed, the state borrowing as a means to expand the state financial capacity is an important factor of social and economic development. And the raising funds to finance state tasks help to streamline the money turnover. In addition we should pay attention to the important role of the borrowing in the redistribution of the gross national product in the state. The mechanism of such credit allows not apply to the emission activity and allows to improve money turnover, to develop non-cash forms of payments, to consolidate the national currency. The peculiarities of income creating, cost outlay, breaks in time the receiving and using of funds are the financial and economic conditions of credit relationship realization [5, p. 45]. At the same time under the present conditions financial relations on state borrowings become more specific.

Analysis of recent research and publications. Despite the fact that relations for state borrowing have been studied by such scientists as I. B. Zaveruha, N. A. Zaitsev, S. V. Nischymna and others, these issues require the additional attention due to the continuous development of such public relations and improvement of legal regulation.

Target of research. Thus, the aim of the article is to characterize the features of financial legal relations on state borrowing.

Article's main body. We should note that some textbooks considering the mentioned issue contains the statement about public credit, not the state. In general, we can accept such approach, because we are talking about one of the methods of compulsory mobilization of funds used in public finance activity. Clearly that the public nature of such activity causes the same characteristics of the operations related to the involvement of financial resources by the state and local communities. Moreover, the current Budget Code of Ukraine contains a definition of both state and local borrowing. In particular, according to p. 19 Art. 2 of Budget Code of Ukraine the state borrowing is a transaction associated with obtaining state credit (loans) on terms of repayment with the aim to finance the state budget. And according to p. 33 Art. 2 the local borrowing is the operation concerning with the obtaining a credit to the budget of ARC or local budget on the terms of repayment with the aim to finance the budget of the Autonomous Republic of Crimea or local budget. [1] Hence, it is possible to use the term public credit (borrowing) to refer to these categories. The content of the definition of public credit

involves the attraction of appropriate funding for public needs by the state and territorial communities.

At the beginning of the presentation we noted the positive aspects of public borrowing. At the same time, for reasons of objectivity it should be noted its negative effects, that generally come to unproductive charges increasing and to interest rates rising and as a result – the necessary to increase the tax burden. In addition, the negative effects concerning with the need to return the loan principal and pay interest over time. And when the state has entered into a long term state credit relationship with foreign organizations or other state, the interest payments stretched over time and become a heavy burden not only for contemporaries but also to their descendants. As a result, the economy of such state becomes a stagnation character, the process of money and goods outflow begins. The state loses its investment appeal, but the worst thing that can be – it is the loss of the sovereignty in all governance areas. It means that state debt can pursue not only economic, but political interests [7, p. 7]. However, despite the marked negative aspects associated with the use of state borrowing, today no country in the world is not able to give up with using of this mechanism.

Traditionally, scientists distinguish such characteristics of financial relationships [11, p. 69, 70; 12, p.44]: (1) they occur in public financial activity field, (2) they have a property (money) nature, (3) state represented by the state authority (local authority) always act as a party of financial relations, (4) there are arising, changing and discontinuing by the law (financial and legal act), not by the will of the parties. However, relations regarding with the state borrowing have its own characteristics. Under the N. A. Zaitseva's opinion, the presence of such characteristics determines by the peculiar areas of the relations' origin, by the regulation ways, by the subjects, by the purposes and consequences of its implementation. Thus, the underlying relationships arise in the implementation of a voluntary method of mobilizing the financial resources to public funds in the course of public financial activities. At the same time, the feature of such relations is that they are dynamically developing in different areas of public financial activities, despite the fact that they arise within the implementation of relations on financial resources accumulating. In addition, the state credit relations arising exclusively to meet the public interest. That is why the state credit relations are not linked to the business activities, but act as a form of financial activity [5, p. 47]. Totally we agree with this reasoning, but with some detailing.

Thus, we can confirm that the feature of public financial activities obtain the certain specifics. It means that the state borrowing relations occurring at a stage of mobilization of financial resources to public funds. Indeed, the public credit, along with taxes, becomes the

means of engagement, mobilization of financial resources to public funds. At the same time mentioned methods are different. Analysis of the scientific achievements allows to distinguish these differences [11, p. 284–287]: (1) public borrowing has voluntary and contractual nature, taxes are mandatory and imperative; (2) the taxes reduce the payer's financial resources, state credit does not reduce (even provides its increasing – due to the interest payments), (3) the receiving of financial resources from taxes does not generate the counter obligations of the state or local community, while the credit resources determine the appearance of obligation concerning with the money refunding and payment of interest; (4) tax revenues allocated to the budget without the detailing of the aim, whereas the funds received from the state credit allocated to minimize the budget deficit; (5) the implementation of financial relations on public borrowing is possible only if a certain entities – borrowers have temporarily free funds.

N. A. Zaitseva's guidance that the public relations regarding state borrowing «dynamically growing in other areas of public financial activities». We couldn't agree with this opinion. The financial resources of the public borrowing submitted to the appropriate budget and spread by the general rules of the budget process. This is due to the fact that today the Budget Code of Ukraine does not set a target «peg» between the borrowing financial resources and directions for their use. According to Art. 15 of the Budget Code of Ukraine the financial resources of the state (local) domestic and external borrowings using to finance the budget deficit. In our view, the credits involved for investment projects in accordance with Part 2 of Art. 16 Budget Code of Ukraine is the only exception to mentioned provision, because such funds are purposiveness. In addition, scientists traditionally noted that the implementation of financial relations on the involvement of additional financial resources (borrowings) is a basic content of the state debt [4, p. 26]. This suggests that at the stage of using the financial resources the state debt relations arising, not the relations on state borrowing. In accordance with p. 20. Art. 2 of the Budget Code of Ukraine, the state debt is the total debt of the state at the reporting date arising from the borrowings of the state [1]. Therefore, the financial relations on public borrowing arising, changing and discontinuing at the first stage of public financing activity – the stage of mobilizing the financial resources to public funds.

Such feature of financial relations on public borrowing as its arising, changing and termination always based on the law (financial and legal act), not on the will of the parties. It should be emphasized the voluntary and contractual nature of the relationship on public borrowing. In this context, we can single out two specific aspects relating to, firstly, arising, changing and termination of

such relations provided by the law, and secondly, the will of the parties of this relationship. Let us examine this in more detail.

Obviously, the financial relationship on public borrowing arises, change and terminate by law. It is an axiom, because art. 16, 18 and others of Budget Code of Ukraine regulate these relations. However, the indication of the Budget Code of Ukraine is not enough for the dynamics of this type of financial relationships. This is due to the fact that the origin and changes of such relationship requires a complex legal fact. The state borrowings carried out within the limits set by the State Budget of Ukraine (except in cases provided for the p. 4, Art. 15 and the p. 1 par. 7 Art. 16 of the Budget Code of Ukraine) [1]. Thus, the dynamic of financial relations on state borrowing requires the adoption of Law on State Budget for the year that should determine the limits of such borrowing.

In addition, a prerequisite for their implementation is the will of the party of financial relations opposing to the creditor who may act as national private person and as legal entities, international organizations, or even states. Speaking of foreign borrowings, such willingness reflects in memorandums and international treaties. For example, the Memorandum of Understanding between the Borrower as Ukraine and the European Union as a creditor of Ukraine ratified by the Law dated June, 18, 2015 [8]. The Memorandum states: On 15 April 2015, the European Parliament and the Council of the European Union adopted a decision to provide macro-financial assistance to Ukraine of up to EUR 1.8 billion in the form of a loan (Decision (EU) 2015/601). The objective of this assistance is to ease Ukraine's urgent external financing constraints, alleviate its balance of payments and budgetary needs and strengthen its foreign exchange reserve position. This assistance from the European Union is complementary to the resources provided to Ukraine by International Financial Institutions and bilateral donors in support of the authorities' economic stabilization and reform programme. The assistance will be disbursed in three instalments of EUR 600 million each. The disbursements will be conditional upon a satisfactory track record in the implementation of the Extended Fund Facility (EFF) agreed between Ukraine and the International Monetary Fund (hereafter referred to as «the IMF»). The first instalment will be disbursed upon entry into force of this Memorandum and the corresponding Loan Agreement, provided that Ukraine receives disbursements under the EFF agreed with the IMF. The disbursement of the second and third instalments shall not take place earlier than three months after the release of the previous instalment and will also be conditional upon a positive assessment by the European Commission (hereafter referred to as «the Commission») on behalf of the European Union, of progress made with respect to

a set of macroeconomic and structural adjustment policy conditions specified hereinafter. These conditions are based on the economic stabilization and reform programme developed by the Ukrainian authorities, and are consistent with the agreement reached by Ukraine with the IMF [8]. Thus, the creditor's will have to be for the arising and dynamics of financial relations. Generally, such will reflect in the relevant contract (agreement). In addition, this agreement defined the certain terms of the credit.

In this regard we should note that the application of the agreement to regulate the relationship between certain parties is not typical for some public fields of law (such as financial law). It is determined by the peculiarities of the subject and method of legal regulation. At the same time, we can speak about the existence of contractual structures in the financial law. With regard to abovementioned O. O. Dmytryk points that the financial relationships mobility and volatility of the financial sector counts in favor of increasing the regulatory capabilities of such contract, because the legislation can't predict all the developmental variation for financial relationships. For additional argument of this position the scientist notes that increasing role of contractual regulation of all spheres of the country justified by fundamental reform of relations in society, by globalization of the economy and the desire of the state to carry out an effective state financial activity [3, p. 278, 279].

In our opinion, these arguments underline the advisability of the existence of contractual relations in the field of financial regulation to ensure a more «flexible» relationship between the various subjects. Moreover, traditionally considering the public financial activities we are talking about the movement of public funds within the relevant stages (mobilization, distribution, using). Each of them can apply their own ways to ensure the move of financial resources to public funds (for example, budgets of different levels). Thus, at the stage of mobilization we can talk about the method of: a) compulsory mobilization; b) voluntary mobilization [12, p. 13]. The method of mandatory mobilizations establishes the form of payment, its exact amount, payment due date and liability on financial offenses. In this situation considers the accumulation of money from taxes, fees, fines and other payments. State and local governments, as powerful subjects, require everyone to pay taxes and fees in the amount and manner prescribed by law. It follows that taxpayers don't have the right to choose an alternative behavior. They have the obligation and in the case of failure or improper fulfill of this obligation such person will be responsible for it.

A completely different situation arises in the case of voluntary method of funds mobilization. In this case, it refers to the lack of obligation and the existence of the own will of the subject, for example, sales of government

securities, charitable contributions, etc. It seems appropriate to speak about the certain expressions of dispositivity of financial law. At the same time, we should remember that the imperative method is only method of legal regulation of financial relationships and such certain expressions of dispositivity are possible within the framework of the main imperative method. For example, a person wishing to purchase the relevant state securities (the will of the person is the expressing of dispositivity), and the state establishes the procedure for their treatment. In other words, dispositive in these relations «expire» during the expressing the willingness of relevant subject (private or legal person, international organization, another state) to purchase the securities (give money), then the imperative get involved in this process – the state issues the relevant mandatory regulations compulsory for further dynamics of these relations.

A. Kotenko rightly says on this subject. The scientist notes that the contractual structures in the financial regulation field are the expression of the dispositivity principles in the legal regulation of financial relations. Such structures involve financial and legal loan contracts, credit contracts, agreement on credit lines and placement of government securities. A. Kotenko focuses on the existence of a trend in the scientific researching to study the possibility of implement the contractual regulation of certain financial relationships [6, p. 55, 56]. Indeed, such scientific researches contribute to more effective functioning of the financial system and will help to improve regulation on financial relations.

Another feature related to the definition of the subjects of public relations on the state credit. State (not it authorized bodies) is the subject of credit relations. So, the money that accumulates as the state (local) borrowings come to the state (community) and aimed at reducing the deficit of the relevant budget creating the state (local) debt, not the state authorities' debt. The security for state borrowings, ultimately, is the total financial resources of the state or the local community. Thus, the activity of authorized state bodies (Cabinet of Ministers, Ministry of Finance, etc.) does not exclude the participation of the state as an independent subject in the relationship of state credit [2, p. 260]. In support of this position here are the provisions of current legislation. Thus, according to p. 2 Art. 16 of the Budget Code of Ukraine the right on state internal and external borrowings is vested in state, represented by the Minister of Finance of Ukraine, by the order of the Cabinet of Ministers of Ukraine. The Cabinet of Ministers of Ukraine determines the conditions of state borrowing, including the type, currency, term and interest rate of state borrowings. For the investment projects the state attracts the credits (loans) from the foreign states, banks and international financial organizations under the international treaties of Ukraine and such credits belong to state external credits [1].

Another feature of relations on state borrowing is that fundraising from population, enterprises and organizations to finance the social needs carried out through the issuance and sale of debt securities. In accordance with Art. 3 of the Law of Ukraine «On securities and stock market» such securities certify the credit relations and provide for the obligation of the issuer or the person issuing non-equity security to pay money, transfer goods or provide services in accordance with the obligations. It may be Ukraine state bonds, treasury bills of Ukraine, state derivative [9].

State bonds of Ukraine divided into domestic state bonds of Ukraine and external state bonds of Ukraine and target state bonds Ukraine. Domestic state bonds of Ukraine are the state securities placed exclusively at the domestic stock market and confirmed Ukraine's obligations on reimbursement to the holders of these bonds of nominal value with the income payment under the terms of bonds. The nominal value of domestic state bonds of Ukraine may be denominated in a foreign currency. The issue of target domestic state bonds of Ukraine is a source of financing the budget deficit in the amount established for this purpose by the State Budget of Ukraine for the year, and within the maximum amount of state debt. External state bonds of Ukraine are the state debt securities placed at domestic stock markets and confirmed Ukraine's obligations on reimbursement to the holders of these bonds of nominal value with the income payment under the terms of bonds.

Treasury bonds of Ukraine are the state securities placed at a voluntary basis among individual persons and certifying the fact of the debt of the State budget of Ukraine to the owner of treasury bonds. These bonds give to the holder the right to receive money income and such bonds repaid under the terms of placement of treasury bonds of Ukraine. The nominal value of treasury bonds of Ukraine may be determined in national or foreign currency.

State derivative is the security placed at the international stock markets and confirms Ukraine's obligations to make payments to the owner of the securities in the case of reaching the certain index of gross of domestic product of Ukraine and make other payments. We emphasize that the issue of the state derivatives is part of the state budget process and doesn't regulate by the National Commission on Securities and Stock Market.

Conclusions. As we demonstrated, the financial relations on state borrowing have their own specifics. They arise and develop at such stage of public financial activity as mobilization of financial resources to public funds. The characteristic of arising, changing and termination of these relations has the specificity concerning with the fact that they always based on the law, not on the will of the parties. As for ways of regulation of mentioned relations, the dispositive

method uses within the mandatory method of legal regulation. Because the creditors (individual persons and entities, foreign organizations, the states), on their own decide whether to join in such relationship, whether they provide their money to the state (community). Hence the following subjects voluntarily buying state securities and carry out the state loans.

The State or local community act as a borrower and legal entities and individuals, foreign states, international financial organizations act as creditors. Financial resources involved during such borrowings used to finance the budget deficit (state or local) to ensure the implementation of the state or local public investment programs.

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ОСОБЛИВОСТІ ФІНАНСОВИХ ПРАВОВІДНОСИН ПО ДЕРЖАВНИХ ПОЗИКАХ

Зазначено, що традиційно науковці виділяють такі ознаки фінансових правовідносин: 1) виникають у сфері публічної фінансової діяльності; 2) мають майновий (грошовий) характер; 3) однією зі сторін завжди виступає держава в особі уповноваженого державного органу (органу місцевого самоврядування); 4) виникають, змінюються і припиняються завжди на підставі закону (фінансово-правового акта), а не за волевиявленням сторін. Однак фінансові правовідносини по державних позиках мають певну специфіку. Вони виникають і динамічно розвиваються саме на такій стадії публічної фінансової діяльності, як мобілізація коштів до публічних фондів. Крім того, певну особливість має і така ознака, як виникнення, зміна і припинення завжди на підставі закону, а не за волевиявленням сторін. У цьому контексті виділено два аспекти: певна добровільність і договірний характер відносин з публічного позикою. Що стосується способів регулювання цих відносин, зазначено, що застосовується в межах імперативного методу правового регулювання диспозитивний спосіб, адже кредитори, якими є юридичні та фізичні особи, іноземні організації, держави, на свій розсуд вирішують, чи вступати їм у ці відносини, чи вони будуть надавати свої грошові кошти державі (територіальній громаді). Тому такі суб'єкти на добровільній основі купують державні цінні папери, здійснюють внутрішні позики. Самостійними суб'єктами таких правовідносин є держава або територіальна громада, які виступають позичальником, а кредиторами – юридичні та фізичні особи, іноземні держави, міжнародні фінансові організації. Кошти, залучені при здійсненні такого запозичення, направляються на фінансування дефіциту бюджету (державного або місцевого), забезпечення реалізації публічних державних або місцевих інвестиційних програм.

Ключові слова: фінансові правовідносини, особливості фінансових правовідносин, фінансові правовідносини з приводу публічної позики, державні позики.

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ОСОБЕННОСТИ ФИНАНСОВЫХ ПРАВООТНОШЕНИЙ ПО ГОСУДАРСТВЕННЫМ ЗАЙМАМ

Указано, что традиционно ученые выделяют следующие признаки финансовых правоотношений: 1) возникают в сфере публичной финансовой деятельности; 2) имеют имущественный (денежный) характер; 3) одной из

сторон всегда выступает государство в лице уполномоченного государственного органа (органа местного самоуправления); 4) возникают, изменяются и прекращаются всегда на основании закона (финансово-правового акта), а не по волеизъявлению сторон. Однако финансовые правоотношения по государственному займу имеют определенную специфику. Они возникают и динамично развиваются именно на такой стадии публичной финансовой деятельности, как мобилизация средств в публичные фонды. Кроме того, определенную особенность имеет и такой признак, как возникновение, изменение и прекращение всегда на основании закона, а не по волеизъявлению сторон. В этом контексте выделены два аспекта: определенная добровольность и договорный характер отношений по публичному займу. Что касается способов регулирования рассматриваемых отношений, указано, что применяется в пределах императивного метода правового регулирования диспозитивный способ, ведь кредиторы, которыми являются юридические и физические лица, иностранные организации, государства, по своему усмотрению решают, вступать ли им в такие отношения, будут ли они предоставлять свои денежные средства государству (территориальной громаде). Поэтому такие субъекты на добровольной основе покупают государственные ценные бумаги, осуществляют внутренние займы. Самостоятельными субъектами таких правоотношений является государство или территориальная громада, которые выступают в качестве заемщика, а кредиторами – юридические и физические лица, иностранные государства, международные финансовые организации. Средства, привлеченные при осуществлении такого заимствования, направляются на финансирование дефицита бюджета (государственного или местного), обеспечение реализации публичных государственных или местных инвестиционных программ.

Ключевые слова: финансовые правоотношения, особенности финансовых правоотношений, финансовые правоотношения по поводу публичного займа, государственные займы.