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Financial responsibility of the state: a comparative analysis of the European countries' approaches in peacetime and wartime

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Abstract

The aim of the article was to unveil the essence of the financial responsibility of the State within a comparative analysis of the approaches of European countries, in times of peace and war. The complexity of the subject led to the complex application of research methods, in particular: dialectical, systemic, comparative, synergistic, normative and logical analysis, synthesis. The practice of the implementation of State responsibility in some European and Asian countries was studied and it was concluded that it had been established particularly in times of peace. However, it is argued that such experience of public finance could also be useful in the Ukrainian realities of reconstruction and recovery. Ukrainian legal instruments concerning the financial responsibility of the state were also examined and the respective court decisions were researched. Among other things, it is concluded that, the financial liability of the subjects of public administration and their officials or employees is to be understood in terms of compensation of damages for wrongful acts in the form of decisions or actions that led to infringement or disregard of the rights and legitimate interests of the payers.

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Responsabilidad financiera del estado: un análisis comparativo de los enfoques de los países europeos en tiempos de paz y de guerra

Resumen

El objetivo del artículo fue desvelar la esencia de la responsabilidad financiera del Estado dentro de un análisis comparativo de los planteamientos de los países europeos, en tiempos de paz y de guerra. La complejidad del tema condujo a la aplicación compleja de métodos de investigación, en particular: análisis dialéctico, sistémico, comparativo, análisis sinérgico, normativo y lógico, síntesis. Se estudio la práctica de la implementación de la responsabilidad del Estado de algunos países europeos y asiáticos y se concluye que esta se había establecido particularmente en tiempos de paz. De cualquier modo, se afirma que dicha experiencia de finanzas publicas también podría ser útil en las realidades ucranianas de reconstrucción y recuperación. También se examinaron los instrumentos jurídicos ucranianos relativos a la responsabilidad financiera del Estado y se investigaron las decisiones judiciales respectivas. Entre otras cosas se concluye que, la responsabilidad patrimonial de los sujetos de la Administración Pública y de sus funcionarios o empleados, ha de entenderse en términos de indemnización de daños y perjuicios por ilícitos en forma de decisiones o actuaciones que condujeron a la vulneración o desconocimiento de los derechos e intereses legítimos de los pagadores.

Palabras clave: política financiera; integración orden jurídico; globalización socio tecnológica; ley marcial; administración pública.

Introduction

Effective legal system is an important component of a democratic, social and legal State. Law-making activity should be based on the constitutional principles of the rule of law, social orientation of market relations, effective legal regulation in the sphere of public finances, since it is the sphere of public finances that is the basis, on which all components of the economic security of the state are built.

Strengthening the rule of law in Ukraine and ensuring its supremacy in all spheres of public life remains a priority direction of State construction. And this implies both deepening the State's responsibility for the performance of their duties to the person, and the responsibility of each individual to the State and society. However, a significant number of issues in the area of legal responsibility remain debatable. Many of its aspects, covering, in particular, the problems of financial law and financial and legal responsibility, are not sufficiently or not at all researched. The latter issue is one of the most controversial in the legal science of Ukraine.

This is caused both by the very fact of the existence of this type of liability, and by the problems related to the nature of financial and legal sanctions, the order of their application, the definition of the signs and composition of a financial offense. In this regard, the analysis of the problems of the formation and development of financial legal responsibility as an independent type of legal liability is one of the priority areas of science necessary to increase the role of financial law as a branch of law at this stage.

Thus, the purpose of the article is to reveal the essence of a financial responsibility of the State within a comparative analysis of the European countries' approaches in peacetime and wartime conditions.

1. Methodology

The complexity of the topic led to the complex application of research methods, each of which allows to investigate financial and legal responsibility from a certain perspective. The main ones are:

Dialectical method contributed to the examination of financial responsibility from different perspectives, to its studying as a separate phenomenon.

System method was used for comprehensive characterization of financial responsibility as a system of legal responsibility in the broad sense and as a set of separate components in a narrow sense.

The method of comparative analysis took place during the study of domestic and foreign experience of the topic under consideration.

Synergetic method was useful in the research of the materials of court practice, which made it possible to compare individual phenomena of the investigated problem and to identify both general and special features in them.

The method of normative and logical analysis was applied to identify the legal basis governing the problem of financial responsibility of State authorities.;

The method of synthesis helped to consider the State's financial liability in the unity of its elements and their interrelation.

2. Literature Review

The institutional dynamics of the formation of the integration legal order regarding the financial responsibility of the state is oriented towards establishing mechanisms and strategic models for overcoming the transformational crisis corresponding to the new conditions of the challenges of globalization (Cherleniak and Mashiko, 2017). The defined environment has a basis and framework, as well as institutions that traditionally develop in an evolutionary way (Liakhovets, 2015). Definitions of integration law could be grouped based on the following criteria regarding its dimensions:

- in institutional manifestations: a legal entity formed as a "superstructure" of a supranational nature, when national legal systems continue to function within the borders of each individual state, preserving its own independence and identity (Pisov, 2016);
- functionally: as the interaction of legal systems – the result of the interaction of national legal systems and the legal field formed as a result of legal integration, which arises on the basis of overcoming international barriers and contradictions; as the implementation of relations – a system of legal relations that includes international legal principles and norms, but also institutions that form organizational means and mechanisms, with the use of which these norms and principles are implemented (Pisov, 2016).

The goals of such institutional development are to ensure the perspective of the system in the context of investments, economic growth, and democratization of relations (Moiseienko, 2015), creation of an appropriate institutional environment that accepts innovations, by changing the institutional structure, could strengthen and qualitatively improve the basis through the formation of appropriate conditions of activity, determination of directions for further transformations (Nykyforuk and Berezhnytska, 2021).

The existing definitions of legal policy, particularly considering the financial responsibility of the state, could be grouped according to the following content areas:

- conceptual approach: as a set of ideas of a strategic orientation, developed by subjects of public and private law, introduced into specific programs for the development of the legal life of society and the state (Ternavska, 2018);

- axiological approach: as a state policy of organization and management of social relations to achieve the common good on the basis of law by legitimate means, satisfaction of public interests (taking into account private interests), solving tasks determined by real societal, public (inherent to both the state and the people) needs and interests (Ternavska, 2018);
- functional approach: as a well-founded and consistent activity of state authorities and local self-government, based on fundamental legal principles, for the effective implementation of the mechanism of legal regulation of social relations, in particular, in the conditions of a hybrid war, embodied in ideas, measures, tasks, programs, instructions, which are implemented in the legal area and thanks to the law (Iliashko, 2017);
- integration approach: as a static element of the legal system, as well as a special dynamic interdisciplinary legal category, which defines the principles, strategic directions and ways of creating and implementing legal norms based on general and specific laws of the development of the national legal system, aimed at strengthening the regime of legality and security, formation of a developed legal culture, ability to use legal means to satisfy one's interests, protection of rights and freedoms (Zhelezniak, 2003).

In the doctrine, this term is considered as: the activity of the state, classes, political parties, social groups, which is influenced by their goals and interests; issues and events of state and social life; a way of behavior aimed at achieving a set goal, which establishes the order of interaction between people (Zhelezniak, 2003). It has been clarified that politics is power in dynamics, as well as law and legislation are static power (Mynkovych-Slobodianyk, 2012). Politics is a manifestation of state and law-making.

3. Results and Discussion

An important institution of financial delictology is the State responsibility. We are dealing with discretion, norm interpretation and factual assessments, interest appraisals and technical assessments, judicial and non-judicial paradigms. It is important to form a standard procedure for bringing the state to this type of liability, to unify the grounds for responsibility of the actors of public administration and their officials or employees, taking into account the globalization of such relations.

We can talk about socio-technological globalization in the context of establishing an integration legal order regarding the financial responsibility of the State, appearing as an objective and inevitable phenomenon,

an imperative requirement of contemporary society and scientific and technological progress (Kulishov, 2013). We are dealing with a cross-border public administration (Melnyk and Barikova, 2019), establishing a relevant civil service pattern (Drozd, 2017) in terms of implementation of the law enforcement function of the State under the legal regime of law, including martial one (Drozd *et al.,* 2022), regarding certain types of legal liability (Drozd *et al.,* 2017).

It is about the technical and technological transformation of society into the information and technogenic one within the global socio and techno-natural megasystem, which is beginning to replace the biosphere (info-technosphere), as well as a new type of culture in the world of techno-noosphere civilization, when technologies will have the main properties of a biological organism, and computer networks will resemble the autonomous nervous system of a living organism. Such a complex socio-technological network is characterized by the stability of the organization, based on the desire for the most disordered state (chaos) in closed shemes and for forms of order (under certain conditions) in open systems (Voronkova, 2017).

Asian countries have a peacetime practice considering the implementation of State responsibility. In India, such process is a discretion based and takes place in implementing surveillance tools which could potentially contribute to the theoretical understanding of the importance and fallouts of building in discretion in the writing of rules and laws in relevant financial regulation in terms of the effectiveness of such measures (Aggarwal *et al.,* 2020).

The Indonesian experience is related to public accountability; two types of expenditures often indicated for misappropriation: (1) grant / social assistance discretionary in nature, making it subjective, as well as (2) procurement budgets being non-discretionary, when budget determination is based on the need of the local government to support operations and sustainment of the government (Febrian and Rossieta, 2019).

It is important to pay attention not only to the discretionary characteristics of the activity of the controlling bodies, but to the essence of the activity that might be subject to responsibility, taking into account the peculiarities of the budget process.

The practice of European countries regarding the implementation of State responsibility has been established in peacetime conditions. In Recommendation No. R (84) 15 (Council of Europe, 1984) regarding public legal responsibility for the damage caused, the right of a person to compensation for damage in case of its wrongful infliction by the State, authority or employee has been enshrined.

The emphasis has been placed on the rational elements of a decision-making process as an aspect of legality and on the verification of the conditions when a norm attaches to the exercise of discretion, as well as the check issues of legal nature in terms of the evidence.

As a result, electronic dimension of law enforcement considering the financial responsibility of the state arises within a new 'Lex Ex Machina' concept (Pečarič, 2021) during technological disruption (Brownsword, 2022), leading to discretion in applying provisions of law with linguistic prospects for AI and machine learning with the aim to minimize negative practices with the following model standards (Barikova and Bernaziuk, 2022):

- classification of points is possible when an event that is only a cause (only ribs emanate from it, not fit) becomes a 'pure cause' of true chance. True coincidence has consequences, but no causes. Depending on the interpretation, pure consequences might be possible;
- model stands for pure reasons at the 'beginning' of the graph, i.e. initial conditions. Rules for continuing the graph from the available points, including the rules for the appearance of pure causes, except for the initial conditions, are physical laws. Physical laws and initial conditions are enough to model the universe. Or any of its independent parts;
- convolution means graph points that could be interpreted as nodes. Each node is a 'collapsed' section of the graph, all the consequences of the section go from the node, all the reasons from the section lead to the node. An infinitely unfolding graph is possible. You could collapse the universe into one node, not only the discretion in applying provisions of law:
- freedom of will is by definition not a pure cause (true coincidence). Free will is by definition not a consequence (something predetermined). A graph could represent the evolution of a structure of any possible complexity with arbitrarily complex laws. Consequently, free will in the world of cause and effect is impossible by definition;
- structure represents the graph which could branch into causally incoherent parts. The graph could self-copy and/or have cycles, might be completely closed to itself and not include pure reasons (true coincidence) at all. Each node of the graph could have an innumerable number of edges. Sets of edges, graph nodes and their relation could be considered from the point of view of set theory. It could be considered algorithmically, from the point of view of the theory of computability. The set of properties mapped to any event could also be viewed differently. The same applies to the set of rules for continuing the graph and the rules for generating initial conditions, if any. Each approach provides an opportunity to construct a graph in some other way.

For example, in Germany, liability is possible for official wrongdoing (in the narrow sense), as well as for activities or their results, regardless of their legality ("the right to State compensation" in a broad sense). In case of causing damage, it is allowed to ensure this liability by creating a fund (association) of non-profit insurance organizations, based on the system of joint and several liabilities (Demkova *et al.*, 2007).

For Ukraine, the implementation of the outlined insurance practice could be useful for the prompt implementation of compensation to payers and the restoration of justice, with the further implementation of a special procedure for compensation of damages by guilty entities to the fund of non-profit insurance organizations.

The Republic of Poland refers to the right to compensation for damage caused by the illegal action of a public authority, when the application of norms that have the character of legis specialis forms a system that covers the principles and method of execution (amount of damage, nature of illegality, the procedure for protecting the right to compensation, etc.) (Demkova *et al.,* 2007).

In France, Albania and Latvia, compensation for both material and non-pecuniary damage is allowed (Chapus, 2001), and in Estonia – damages and lost profit, with a separate section of the relevant Law with amendments to the legislation on public service regarding the grounds and procedure for filing a claim in the order of recourse against the official for whose fault the state paid compensation (Demkova *et al.*, 2007). Such practice could also be useful in Ukrainian realities of the reconstruction and recovery, provided that the procedure for proving damage is carried out effectively, because similar provisions are presented in the national legislation.

Similar provisions are presented in the national legislation of Ukraine. The Article 56 of the Constitution (Law of Ukraine, No. 254K/96-VR, 1996) indicates the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority. Article 3 of the Basic Law also contains provisions on the State's responsibility to a person for its activities. Article 128 of the Tax Code of Ukraine (Law of Ukraine, No. 435-IV, 2010) enshrines the concept of tax offences of control authorities, which is illegal decisions, acts or omission by controlling bodies, their officials, the commission of which is the basis for compensation for damage to a person whose rights have been violated, in accordance with the law. The prerequisites for establishing such liability also existed in the Clause 21.3 of the Article 21 of this Code.

The doctrine of financial law defines the grounds for holding the State and its agencies accountable: in case of damage caused by illegal decisions

or acts; failure to fulfill their contractual obligations, in which they act as one of the parties; underfunding of managers and/or recipients of budget funds, if the allocation of funds was established by law or a decision on the relevant budget (Muzyka-Stefanchuk, 2012). Clause 114.3, Article 114 of the Tax Code of Ukraine (Law of Ukraine No. 435-IV, 2010) details a non-exhaustive list of types of such damage subject to compensation, in particular:

- the value of the lost, damaged or destroyed property of the taxpayer, determined in accordance with the requirements of the law;
- additional expenses incurred by the payer as a result of illegal decisions or actions of the control authorities, their officials or employees (fines paid to the payer's counterparties, the cost of additional work, services, additionally spent materials, etc.);
- documented expenses (the sum of which should not exceed 50 amounts of minimal salary set upon January 1 of the accounting (taxable) period, in which the corresponding court decision or decision by another body is taken, in cases established by law), related to administrative and/or judicial appeals (except for amounts subject to reimbursement in the order of distribution of court costs in accordance with procedural legislation) of the specified decisions or actions of the controlling bodies, their officials or employees (legal support not related to the protection provided by a lawyer; employees or representatives of the taxpayer obtaining the necessary evidence, engaging experts, making copies of documents, etc.).

The Tax Code of Ukraine (Law of Ukraine, No. 435-IV, 2010) does not establish a detailed procedure for bringing control bodies, their officials or employees to financial responsibility. At the same time, Clause 114.2, Article 114 and Clause 128.1, Article 128 of this Code allow the use of "legislation on compensation for damage" as the category "in accordance with the law". According to the second part of the Article 1 of the Civil Code of Ukraine (Law of Ukraine, No. 435-IV, 2003), civil legislation does not apply to property relations based on administrative or other authority subordination of one party to another party, as well as to tax and budget relations, unless otherwise established by law.

Regarding financial responsibility of the State, the law expressly allows the blanket application of special regulations, which in this context are the provisions of the Articles 1173, 1174 of the Civil Code of Ukraine. The aforementioned approach is due to the gap in the relevant tax legislation of Ukraine, as well as the contextual similarity of the described regulatory approaches regarding the responsibility of the state, in particular, and without fault for the implementation of this procedure.

A similar approach to the interpretation of the regulatory body regarding the procedure for bringing the state to financial responsibility has been presented in the decision of the Supreme Court in the case No. 260/576/19 (2023), which also states that during the consideration of cases for damages claims, caused by the actions / inaction of the revenue and collection authorities, the co-defendants are the relevant bodies of the State Treasury Service of Ukraine, which are responsible for the treasury service of budget funds.

It is not required that the specified bodies have violated the rights and interests of the payer protected by law. The Decision of the Constitutional Court of Ukraine (Case No. 1-36/2001, 2001) specified that compensation for damage caused by illegal decisions or actions of state bodies is not allowed with the funds allocated for the maintenance of these bodies.

The decision of the Supreme Court (Case No. 280/4506/18, 2021) indicated that the fact of voluntary elimination by the controlling body of an admitted violation of the rights of the payer does not indicate the unconditional absence of grounds for meeting the legal requirements for the recognition of such behavior as illegal, if specific negative consequences arose for the latter.

The outlined policy in Ukraine is affected by war or the threat of force, other external challenges and international factors; socio-political and economic circumstances, public expectations, positions of the ruling party, balancing between literacy and populism of politicians, which should be reflected in the national Concept of Legal Policy (Kravchuk and Matola, 2018). Such circumstances determine the implementation of the principles of the legal policy of Ukraine (Zhelezniak, 2003) with the following focus, in particular, on the basics of the financial responsibility of the public administration subjects and their officials or employees:

- fundamental: humanity and moral principles; democratic character; justice; stability and predictability; publicity;
- normative: legitimacy; compliance with the main provisions of international law, legislation of the European Union;
- social: the combination of the interests of society and the state; the priority of human rights as the highest social value; social conditioning;
- doctrinal: scientific validity.

Conclusions

Thus, the financial responsibility of the public administration subjects and their officials or employees is to be understood in terms of compensation for damages for illegal torts in the form of decisions or actions that led to the violation or failure to recognize the rights and legitimate interests of the payers.

The institutional environment of the financial responsibility of the State is one of the conditions for reforming the economy (Liakhovets, 2015) as a process of evolutionary development with relatively normalized restrictions (Kornieiev, 2002), quantitative and qualitative essential transformations and the formation of relevant social and economic institutions (Katyhrobova, 2013), constant transformational process (Rudenko, 2018), in particular, regarding the resolution of conflict situations.

Thus, the issue of holding responsible regulatory bodies and their officials arises is quite problematic in financial law. Properly justified State financial policy on this matter will contribute to the creation of an economic basis for filling the state and local budgets.

The procedure for bringing the state to financial responsibility is to have the following stages: 1) documenting the damage; 2) legal qualification with assessment of the amount of compensation; 3) adoption of an administrative act on bringing the controlling body, its officials or employees to financial responsibility; 4) the optional stage of contesting the specified act; 5) compensation for damage from the established budget.

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