

ROUND-TABLE DISCUSSION

«PROBLEMS CONCERNED WITH REFORMATION OF THE ECONOMIC AND LEGAL MECHANISM OF DEVELOPMENT OF THE NATIONAL ECONOMY»

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KHARKIV SCHOOL OF ECONOMIC LAW AND DEVELOPMENT OF A DOCTRINAL POSITION

The Department of Economic Law at Yaroslav Mudryi National Law University was founded by a decision of university management twenty-five years ago in June 1991. Thus, the Department and Ukrainian statehood are the same age. Development of a modern national market economy is one of social goals of the state. As a result, there is a need for well-qualified lawyers in the economic sphere.

Therefore, the twenty-five year history of the Department conditionally comprises the most important three stages of development, which are as follows:

1991–1996 – formation of a process of teaching a number of new educational disciplines and foundation of training PhD students.

1996–2003 – development and acknowledgement of the Department as self-reliant scientific and pedagogical staffs, an effective scientific laboratory in the sphere of entrepreneurial and international private law, and formation of a center of financial law lecturers.

2003 – to the present – formation of the scientific school of economic law with own Master's programs of enhance training experts in economic law, which is acknowledged in Ukraine.

Usually, the place and role of the Department in the structure of a higher educational establishment and a system of higher education is stipulated by quality of

education and a level of scientific and research papers, namely dissertations, monographs performed by its professionals. Such factor enables to note the existence of own scientific school at the Department. In this context, it is worth mentioning that the Department of Economic Law at Yaroslav Mudryi National Law University provides training students of law specialties with economic specialization nowadays. The Department proposes two Master's programs «Corporate Lawyer» and «Legal Consulting», which comprise a number of educational disciplines. A Bachelor's program provides teaching the following disciplines: «Economic Law», «Organizing Legal Work at Enterprises, Institutions, Organizations», «Law of the WTO», «Corporate Law», «Investment Law», etc.

In twenty years, the Department has built up significant scientific results in the sphere of civil and legal as well as economic and legal science, which combinatory enables to create the Kharkiv school of economic law. Its inherent peculiarity is development of the very macroeconomic approach in a system of research of the economic and legal frameworks of economic relations.

Developing certain directions of economic and legal science, the Department has achieved peculiar results. They are as follows:

- economic and legal frameworks of an economic policy of the state and its directions such as industrial, investment, innovation, external economic, etc.;
- economic and legal frameworks of functioning of complexes, sectors, and industries of the national economy such as electricity, the defense industry complex, markets of financial services, steel, shipbuilding, and pharmaceutical industries, etc.;
- economic and legal frameworks of certain integrative peculiarities of functioning of the national economy such as competitiveness, technological safety, economic concentration, a phenomenon of economic power in a system of economic relations, etc.

It is worth noting that a number of other directions of development of economic and legal science have been examined in monographs and dissertations at the Department, particularly in the sphere of corporate, contractual, competitive law, et al.

In general, during twenty-five years of existence of the Department, its staffs have prepared and defended six dissertations of doctors of sciences and sixty-four dissertations of philosophy doctors. Dissertations of doctors of sciences have been defended by D. V. Zadykhailo, V. S. Milash, Yu. Ye. Atamanova, V. M. Pashkov, O. R. Kibenko, and M. P. Kucheriavenko.

There is a scientific school of professor D. V. Zadykhailo at the Department. D. V. Zadykhailo has prepared three doctors of sciences and thirty-three philosophy doctors. Associate professors R. P. Boichuk and I. A. Selivanova have prepared

eight philosophy doctors each. A number of other lecturers of the Department have experience of preparation of PhD candidates.

The author highlights that the scientific potential of the Department become a staff and creative source for foundation of the Scientific and Research Institute of the Legal Provision of Innovative Activity, which belonged to the National Academy of Legal Sciences of Ukraine, and in the process of formation of the related Department at Poltava Law Institute of Yaroslav Mudryi National Law University. A number of former lecturers and PhD students of the Department work as civil servants in the sphere of private legal consulting in Ukraine and in leading countries of Europe now.

Celebrating an anniversary of the Department, the author may express confidence about importance of a matter of the essential role of legal work in the economic sphere (from law-making to law enforcement) and the place of educational disciplines of the economic and legal sphere in a system of higher juridical education under contemporary social, economic, and political challenges, which are hardly overcome. Educational disciplines of the economic and legal sphere must gain absolute priority under conditions of fierce competition between law HEEs.

There are several legal positions with regard to doctrinal achievements, implementation of which is urgent and considerably important.

The constitutional economic order in Ukraine is based on enshrinement of a set of statements in the Constitution of Ukraine such as the main institutions of functioning of the national economic system and mechanisms of their distinction and interaction with political, social, and information systems of the society. This order imperatively determines principle statements and factors of an economic and legal policy of the government, the legal economic order, directing them towards providing the main constitutional values.

There is a need to structurally indicate a separate chapter «Economic system» in the text of the Constitution of Ukraine. Complex constitutional and legal enshrinement of frameworks of functioning of the national economic system within a separate and integral constitutional and legal institution, namely the constitutional economic order should be subject to this chapter. Goals of such institutionalization are as follows:

- modernization of corresponding normative statements in the Constitution of Ukraine;
- systematization of corresponding norms for providing system development of economic legislation;
- carrying out necessary specification of constitutional and legal regulation in order to strengthen the influence of norms of the Constitution of Ukraine on formation of economic legislation of Ukraine;

- enhancement of system and structure relations between norms of the Constitution of Ukraine, especially regarding competency of public authorities in the economic sphere;

- empowerment for application of means of constitutional jurisdiction on the content of legislative regulation of economic relations.

It is worth mentioning that there is an urgent need for achievement of the social and political harmonization of the main statements of «General National Conception of Economic Development in Ukraine» between consolidated interests of the main groups of economic entities with regard to the following elements:

- structure of division of property into the main economic assets;
- the role and place of a public sector in the national economy;
- the role and place of small and medium-sized entrepreneurship;
- the role and place of economic organizations of the transnational level;
- the role and place of foreign investments in the national economy;
- the role and place of innovative and ecological components in economic development;
- nature and functions of governmental regulation of economic relations;
- guarantees and spheres of exercising a right to freedom of entrepreneurial activity;
- exercising consumer rights of citizens;
- providing labor rights of citizens.

The General Concept of Economic Development as a social and political document of the civilizational choice, which is based on statements of the constitutional economic order, should become a source for formation of an economic and legal policy of the state.

A macroeconomic policy, which is aimed at providing the influence of the state on an economic system on the level of agricultural indices of its functioning, assumes peculiar social and legal importance within a government economic policy.

A government macroeconomic policy as the core of its economic policy combines a considerable part of directions and mechanisms of the latter, particularly monetary, foreign exchange, investment, budgetary, tax, external economic, anti-inflation, employment policies, etc., in order to achieve the state of the macroeconomic balance in the national economic system.

Under the current legislation of Ukraine, means and mechanisms of macroeconomic regulation are divided into groups (depending on their sector affiliation) between economic, budgetary, tax, natural resources, agrarian legislation, which impedes their system application. Secondary normative and legal acts contain a significant part of legal regulation of application of these means and mechanisms contrary to requirements of the Article 19 of the Constitution of Ukraine.

Hence, the author proposes to create a single system sub-sectoral normative and legal complex, which would provide system functioning of a mechanism of governmental macroeconomic regulation in the regime of legitimacy. Complex codification of legislation in the sphere of macroeconomic government regulation of the national economy may become a legislative form of practical application of the complex.

Modernization and enhancement of the content of the current Economic Code of Ukraine as well as formation of a multi-level hierarchic system of sub-sectoral and institutional codifications being subjects to statements of the Code should be the main tendency of development of a codification process in the sphere of economic legislation.

The necessity of a process of further codification of economic legislation is substantiated by an extreme amount and dynamics of this process, a significant number of collisions, peculiar demand for system economic and legal regulation, taking into account complex nature of its objects.

There are several arguments in favor of expediency of sub-sectoral codifications of economic legislation:

- existence of basic codification in the form of the Economic Code of Ukraine;
- the necessity of system regulation of complicated objects, particularly markets of particular goods and services;
- certain directions of a government economic policy formed regarding such objects;
- a large amount and fragmentation of sources of normative and legal frameworks of a particular object;
- a high degree of defectiveness of legislation in the determined sphere, which cannot be overcome by fragmentary improvement of the context of particular sources.

There is a need to propose a definition of economic power as a phenomenon of functioning of economic relations, which is a basic type of social power that arises and exists within an economic system in relations between its subjects. These subjects exercise strong-willed influence, which is peculiar by nature, the content, and intensity, over economic behavior of counteragents, the order of functioning of economic institutions for the purpose of usage of inherent advantages in order to provide own interests.

In this context, a goal of the economic and legal state consists in formation of the legal economic order based on control, division, balancing, and harmonization of private economic power relations in the economic sphere in order to provide economic democracy.

A phenomenon of economic power may be divided into the following types:

- a) by a set of subjects – into sole and aggregate (consolidated and spontaneous);

- b) by a type of economic assets – into financial, resource, production, infrastructure, technological, etc.;
- c) by nature of interests – into private and public;
- d) by the scale of the influence – into micro- and macroeconomic.

The author determines that private macroeconomic power is defined as a type of social economic power on the macroeconomic level of functioning of a market economic system. The private macroeconomic power manifest itself in the process of concentration of economic assets in organizational and legal forms determined by the law, where an economic organization at the expense of formation of market advantages gain opportunities of the significant influence on economic behavior of counteragents, other subjects of the economic system, the state of macroeconomic balance in order to implement own strategy of development, including through a conflict with other bearers of economic power.

The author also indicates that a sphere of exercising private macroeconomic power may be divided into the following groups: between business entities; between economic entities and asset owners, who are involved in property basis of economic activity; between economic entities and employees; between economic entities and consumers of goods and services.

The author indicates that governmental macroeconomic power consists in the imperative order of application of own sovereign rights in the economic sphere, particularly through:

- establishment of the normative and legal basis of economic relations;
- exercising public regulation of relations in the economic sphere;
- establishment of the order of implementation of budgetary and tax relations in the economic sphere;
- establishment of the order of usage of economic assets possessed by the government;
- providing activity of economic entities of the public sector of the economy;
- establishment of relations between public and private partnership and non-governmental economic entities.

Division of economic power between economic entities is a purpose of a government economic policy and one of its economic functions, which must provide the constitutional economic order, economic diversity and competitiveness, economic democracy and state sovereignty. Control, division and balancing economic power between its main bearers in all the important segments of the national economic system should be carried out by the government through formation of a mechanism of their interrelation in the regime of deterrence and counterbalances.

A system of division of economic power should be based on mechanisms of division between political, economic, and information powers and mechanisms of

division of economic power within the very economic system, namely between public and private macroeconomic powers, between private macroeconomic powers, between private macroeconomic powers of the very economic entities.

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ISSUES OF LEGAL SUPPORT OF E-BUSINESS

Concepts of *electronic commerce, a virtual office, electronic governance, electronic forms* of an agreement and securities, *a web-site* of a company or an authorized agency, which contain information on their activity, etc., are common for contemporary entrepreneurship, which cannot be imagined without electronic means of doing business (with the use of information and communication technologies). In turn, such process contemplates corresponding legislative enshrinement of conditions and a procedure of application of electronic resources in the economic sphere. Nevertheless, there is no act, which consolidates similar statements. The Law «On Electronic Commerce», which was adopted in 2015, proposes narrow meaning of a concept of electronic commerce. Electronic commerce is defined as relations aimed at gaining profit, which arises during carrying out legal transactions related to acquiring, change, and termination of civil rights and obligations, which are remotely conducted with the use of information and telecommunication systems; as a result, parties of such relations acquire property rights and obligations. In other words, this concept encompasses only one component of doing business, namely relations regarding selling goods, work, and services for a fee. At the same time, it does not take notice of organizational aspects and activity of authorized agencies regarding organizing business.

Simultaneously, a concept of «commerce» is traditionally defined as entrepreneurial activity, i.e. activity related to production of particular goods in order to sell them for profitable payment, which should provide self-funding of a business entity. Therefore, in countries with a dualistic system of private law, codes that regulate relations in the entrepreneurial sphere are called commercial (France) or trade (Germany, Japan). Thus, electronic commerce may be considered as functioning of business entities based on application of electronic means of communication in