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THE LEGAL PRESUMPTIONS IN THE MECHANISM OF REGULATION OF FINANCIAL RELATIONS

Abstract

The correlation of legal presumptions with such interconnecting categories as legal hypothesis, legal version, legal axiom and legal principles is analyzed. Certain features of practical application of presumption of guiltlessness and presumption of knowledge of financial legislation in financial law are determined. The functions of legal presumption in financial law are grounded.

Key words: *legal presumption, financial legal responsibility, presumption of guiltlessness, presumption of knowledge of financial legislation.*

JELClassification: G3, G38

ПРАВНА ПРЕЗУМПЦИЈА КАО МЕХАНИЗАМ РЕГУЛИСАЊА ФИНАНСИЈСКИХ ОДНОСА

Апстракт

У овом научном раду анализиран је однос правних претпоставки са сродним категоријама, као што су правна хипотеза, правна верзија, правни аксиом, правни принципи. Дефинисане су карактеритстике практичне примене претпоставке невиности и презумпције знања финансијског законодавства у финансијском праву. Објашњена је функција правних претпоставки у финансијском закону.

Кључне речи: *правна презумпција, финансијско-правна одговорност, презумпција невиности, презумпција знања финансијског законодавства.*

Background

The rule of law always exists within the system of other normative instructions and is a part of an integrated system of legal regulation. The system of financial legislation is a hierarchical entity, where some legal rules have higher legal force than the others. Ideally, the entire system of financial legislation should be a set of rules which do not conflict with one another, i.e. which do not regulate the same financial legal relations in a different way. However, this ideal is not attainable in principle. It is due to the concept that the system of financial legislation is a complex social system, which comprises interests of different social groups and formations. The competitive interests in the normative regulation ensure the presence of certain contradictions in the system of financial law. It is normal for any legal system. In

other words, the conflict of legal rules has always been, is and will always be. The task is to create an effective system of control, first of all, of court control, over the compliance of a certain legal rule to the rule of higher legal force. The doctrine of supremacy of law has been used in the Decision of the Constitutional Court in the case concerning the compliance of the Law of Ukraine "On the Accounting Chamber of Verkhovna Rada of Ukraine" (the case concerning the Accounting Chamber) No.7/1997 dd. 23 December 1997 with the Constitution of Ukraine (constitutionality) [1]. The Constitutional Court used in this Decision the principle of the supremacy of the Constitution as part of the doctrine of supremacy of law and pointed out that the supremacy of constitutional rules should be applied to all spheres of governmental activity, including the legislative process. Thus, a general principle of law has been proved that can be used in similar situations and act as a legal presumption. This perspective clearly underlines the political importance of presumptions in financial law, which is driven by the need of implementation of the state public purposes aimed at the carrying-out of financial policy of the state.

Analysis of scientific studies and publications

This article is based on the works of the Soviet scientists and contemporary national and foreign researchers, as well as on the current legislation and case law. The analysis of D. Meyer's work "On legal fictions and assumptions, hidden and pretended actions" written in 1854 has a particular importance for a keen understanding of the importance of legal presumptions in law in general and in financial law in particular. Other important scientific achievements are presented in the works of S.Kravchenko, D. Hetmantsev, V. Babayev, S. Guseva and others.

Problem definition

Public financial legal relations are inherently conflictive. The desire of fiscal authorities to replenish the treasury is objectively in conflict with the desire of entities of financial legal relations to retain their property. Thus, the role of legal presumptions, and at the same time the problems of their use lie in the fact that presumptions act in the minds of entities of financial legal relations as the truth, as a certain regulator of financial behavior. They normatively set forth the most important legal relations for them, implement a common approach to life-critical situations and reduce the number of conflicts.

The main content of the study

Analyzing the role of legal presumptions in the regulation of financial legal relations, it is necessary, first of all, to find out, why the legislator uses this particular technique of legal technology. In other words, it is necessary to find out what is the functional load of legal presumptions in the mechanism of financial regulation.

The conflict between the desire of the state to collect more taxes and the desire of taxpayers to pay less has always existed. According to Wagner's Law on increasing of state spending, tax claims are constantly increasing. This, in turn, increases the resistance to the tax, which is confirmed by A. Laffer's theory: the increasing of taxes by raising

their rates at a certain point does not compensate for the reduction of treasury revenues due to the rapid reduction of incomes being taxed [2; 3, p. 12].

The state inevitably is faced with the problem of introducing a regime of financial control of public legal relations. For example, the taxation relies on the distribution of the tax burden by the actual financial solvency of taxpayers. That is why it is necessary to determine this solvency while defining the tax elements. The desire to determine precisely the solvency inevitably leads to complications in taxation technology, i.e. those legal techniques and mechanisms, which regulate the process of taxation. One of these legal techniques is the use of legal presumptions in defining the tax elements.

The legal presumption in financial law is an obligatorily judgmental, which is directly or indirectly fixed in financial legislation and has the nature of probability of the presence or absence of a single legal fact subject to the presence of another legal fact in financial legal relations. The presumable fact in defining the tax elements in that case is the solvency of the taxpayer. The external forms of wealth, i.e. the presence of luxury goods, valuable property etc. (e.g. the projects of implementation of the so-called luxury tax), can act as the basis of the presumption (a presumable judgment concerning the solvency of the person). In this regard, the analysis of legal presumptions of the elements of the legal tax structure should be aimed at defining the fact, how adequately this or that presumption carries out its primary role, i.e. ensures the implementation of the principle of keeping the actual ability to pay a tax.

To determine the important role of the use of legal presumptions in the regulation of financial legal relations it is also necessary to define the correlation of presumptions with such related categories as legal hypothesis, legal story, legal axiom, legal principles and legal prejudice.

Analyzing the relations of legal presumption and legal hypothesis it should be accepted that the similarity of the presumption and the hypothesis lies in their nature and in a common inductive method of their formation. The differences lie in the conditions and causes of their formation, in the nature and consequences of rebuttal. The first ones reflect a simple order of things, proven by practice. They are accepted as the truth without proof. The hypothesis cannot be accepted as the truth without proof [4, p. 48]. For example, in verifying the legitimacy of the income received by individuals, the illegality of the origin of the personal income should be proved not by the state, if the state has suspicions (hypothesis). In this case the citizen has to provide sufficient information to the appropriate authorities regarding the legality of the source of the origin of his income. Thus, there is a definite departure from the absolute application of the principle of presumption of guiltlessness in the confirmation of the legality of the income.

The Russian researcher S. Guseva quite correctly drew attention to the fact that the hypothesis contains incompleteness in itself. The cognitive process cannot be finished at the stage of hypothetical achieving of the truth. The hypothesis inevitably requires the proof. The presumption characterizes such a state of the knower, when the scope of collected information on the properties of the individual generates a conviction of the truth of the knowledge of essential internal properties to a greater or lesser extent [5, p. 32].

When comparing the legal presumption and legal story, it is necessary to consider that the latter is a kind of hypothesis. Their common characteristics lie in an inductive method of formation and probability of these judgments. The differences lie in the fact that legal presumptions retain their influence for a long time. Legal stories are set out in case of violation of regulations of financial and legal rules in each particular case. They are characteristic of the financial and legal responsibility, particularly in the investigation of the facts of financial violations. The role of the legal presumption in this case is that it can be included with the legal story, for example, the presumption of guiltlessness of the

entity of financial legal relations, against which the legal stories of its involvement into a particular financial violation are set out.

The legal presumption significantly differs from the legal axiom. The opinion that the axiom is the truth requires no proof because of its obviousness, it expresses the truth in a comprehensive form (*The Constitution* is the supreme legislative act and the stated rights of a person relate to the entities of financial legal relations to the fullest extent). Although the axiom is not an absolute truth (everyone has the right to contest any regulations of a financial legal rule in the court), it contains a provision the truth of which is required to be recognized, and doubts in its truth are impossible. The generally known facts can be classified as axiomatic (taxation of income, violation of financial legal rules inevitably leads to bringing to financial legal responsibility, etc.). Thus, the legal presumption and the legal axiom differ in content, but the legal axiom can contribute to the formation of the legal presumption. For example, violations of financial legal rules always involve financial legal responsibility, as the legal axiom gives rise to such legal presumptions as presumption of guiltlessness, presumption of knowledge of the legislation and so on.

Analyzing the legal presumptions and legal prejudice, we should agree with Babayev V.K., that they both do not require any proof [6, p. 32].

According to O.Skakun, prejudice is the elimination of voidability of legal probability of once proven fact. If the court or other jurisdictional authority has already established certain facts (after their inspection and evaluation) and stated them in the relevant document, they are recognized as prejudicial, i.e. as such that are considered established and true, that do not require a new proof in a new hearing of the case [6, p. 393].

As a good example of prejudicial fact in financial legal relations can rightly be considered the Decision of the Constitutional Court of Ukraine No.7-rp/2001 dd. 30.05.2001 (the case concerning the responsibility of legal entities), which clearly states the non-administrative nature of such kind of legal responsibility [7].

An important difference between prejudices and presumptions is that prejudicial facts are not included into the fact of proof and presumption facts can be included, if they are negated by the adverse party. Thus, according to the Article 35 of the Commercial Procedure Code [9] "the facts that are established by the decision of the Commercial Court (or by other authority that decides commercial disputes), ...during the hearing of one case are not proved again in deciding other disputes involving the same parties". This legal rule as a legal presumption could hypothetically be implemented in the process of administrative proceedings.

Analyzing the correlation between the legal presumptions and legal principles, it should be noted that the legal principles are, in fact, the most common, universal social and philosophical foundations of the functioning of public financial legal relations.

The presumption differs from the principle by its origin and the scale of coverage of legal system. The principles have a general system-forming nature, and the presumption – a private one. However, in some cases, according to S.V. Guseva, presumptions take on the general principles of the system organisation: for example, the principle of presumption of guiltlessness [5, p. 68].

The presumptions-principles of law also comprise common legal presumptions that act in various spheres of law. The following ones are to be distinguished: the presumption of truth and purposiveness of public legal act, according to which all regulatory acts are assumed as such that properly reflect social relations; the presumption of legal personality of the participants of legal relations; the presumption of honesty of the citizens; the presumption of knowledge of laws by the legal entities; the presumption of guiltlessness; the presumption of lawfulness and fairness of judicial decisions. The importance of the role of presumptions in legal regulation should be emphasized. As a rule, there are no objections in legal literature concerning the fact that the presumptions

act as principles of law and are legal techniques. That means that this absolutely applies to the sphere of public financial legal relations as well.

The special role of legal presumptions in the regulation of financial legal relations also lies in an ambiguous legal interpretation of their certain types. Thus, the most commonly used and ambiguous presumptions in the regulation of public financial legal relations are the presumption of guiltlessness and the presumption of knowledge of financial legislation.

The presumption of guiltlessness was formulated for the first time in Art. 9 of Declarations of Rights of Man and of the Citizen published in 1789. The proclamation of the presumption of guiltlessness meant the abandonment of the principles of the medieval inquisitorial process.

A significant imbalance of the legal status of the state and the entities of financial legal relations, as well as the principle of the priority of public interest over private interest that exist in the domestic financial law during all pre-Soviet, Soviet and contemporary history are the barriers that haven't been solved at the legislative level so far.

The apparent domination of the public interest over the private interest, the leveling of the first towards the latter was perceived seamlessly in the administrative-command system of the USSR. After all, the idea that the individual must fully sacrifice his own interests in favour of the public ones was the basis of the official state ideology. Naturally, it could not remain non-reflected in the most imperative field of Soviet law, i.e. in financial law. Thus, financial law of the Soviet and post-Soviet period was vested with a number of rules and principles that imperatively settled the domination of the state in a public financial sphere. It is proved by many facts, for example, by the fact that the concept of financial violation is not determined at the legislative level, and the analysis of tax legislation makes to state that the basis for the financial legal responsibility is, as a rule, an act (a violation), in which the guilt of the violator is not an obligatory feature.

Even in the absence of specific indications concerning the guilt as the basis for financial legal responsibility, the special role of the presumption of guiltlessness should lie in the fact that it should remain an essential element of a financial violation because of the general legal principle "***there is no responsibility without guilt".***

However, according to a national researcher D. Hetmantsev, the practice of regulatory and law enforcement authorities was for quite a long time the use of financial legal responsibility only on the basis of the mere fact of a wrongful act, without any consideration of the subjective grounds of legal responsibility [10, p. 7]. Moreover, the burden of the proof of guiltlessness and lack of evidence in an administrative procedure of collateral attack of the decisions of the tax service lies upon the taxpayers and not upon the tax authority.

Another controversial issue in financial law is the guilt of the legal entity. There are different points of view, including those which deny the possibility of applying the notion of guilt to such category as a legal entity. In domestic financial legislation there is also no unambiguity concerning this issue. For example, tax legislation specifies that the tax authority has to prove the guilt of any taxpayer, and no exceptions with respect to taxpayers-legal entities are not provided. Taking into consideration the presumption of guiltlessness, the guilt of a legal entity is the guilt of the appropriate officials of the organization. The fact that officials are not separate subjects of taxation and are legal entities in tax relations generates the conclusion about the identity of the guilt of the officials and the organizations. It is also proved by the content of Art. 2 of the Law of Ukraine "On the responsibility of legal entities for corruption violations", which states that "... the legal entity is responsible for the commission of violation of any kind on its behalf and in its interests by the head of the legal entity, its founder, member or other authorized person alone or in complicity... " [11].

Thus, the idea of a special character of the guilt of legal entities leads to consideration of the presumption of guiltlessness of the taxpayer in relation to taxpayers-

organizations, to recognition of either an a priori guilt of such entities or the absence of the practical significance of the principle of guilty responsibility of organizations.

Another problematic aspect of the application of legal presumptions, which reflects their role in the regulation of financial legal relations, is connected with ***the presumption of knowledge of financial legislation***, which in general terms can be defined as follows: *everybody is assumed as the one who knows the laws, until otherwise is proven*. Under the law all applicable laws are understood. The legal basis for the presumption of knowledge of financial legislation is the responsibility of all and everyone to obey the laws. The most difficult question is whether any deviation from this algorithm is allowed in certain cases or not. In other words, whether the presumption of knowledge of the laws is a rebuttable presumption or not. According to most authors, the presumption of knowledge of the legislation is rebuttable and in some cases there are permissible exceptions from the rule "ignorance of the law is not an excuse". There is also an opinion about the irrefutable nature of the presumption of knowledge of the law. For example, in English law the presumption of knowledge of the legislation is considered as irrefutable. Even D. Meyer explained the irrefutability of the presumption of knowledge of the legislation, first of all, by the fact that the laws are the reflection of the legal opinion of the people, so everyone involved in the legal life is conscious of prevailing legal opinions. On the other hand, D. Meyer pointed out that the irrefutable nature of this presumption is caused by the necessity, as without this provision a great amount of the laws would remain without coordinated approvals [12, p. 54-55]. Financial law with its large number of complex rules would hardly be considered as originally laid down into the legal consciousness of the citizens. Besides, the presence of the companies that provide services concerning "taxation optimization", simplification of customs control, bypassing of foreign exchange regulation in the domestic market only confirms the refutability of this presumption.

The role of legal presumptions in the regulation of financial legal relations is also reflected in the functions they perform. The concept of "function" has been thoroughly analyzed subjected to the study of the role and purpose of law in general, however, the problem of defining the functions of presumptions in law as a special means of legal regulation is still neglected by researchers.

Due to the fact that presumptions are a part of the system of law, and they possess the main functions of law, namely: regulatory and protective ones.

The regulatory function of presumptions is connected with the reform of legal regulation in almost all spheres of financial legal relations and the introduction of fundamentally new spheres of legal regulation. According to O.A. Kuznetsova, the presumptions are aimed at overcoming of gaps in the law, they "save" the legal regulation, simplify and reduce regulatory legal direction and serve as a means to overcome the uncertainty in the legal sphere [13, p. 64].

The protective function of presumptions implies that they are a means of normative organizational impact on the financial legal relations with a view to their protection and regulation. For example, in criminal law the presumption of guiltlessness is valid in holding a person criminally responsible - the guilt of the accused person is proved by the public authority, he himself is exempt from the necessity to prove his innocence. In civil law another presumption is valid - the guilt of the person that caused damage, according to which: the person is considered guilty, in case the objective side of the violation is present, until otherwise is proved. Both presumptions are a means of protection of interests of an individual, his personal and property rights [14, p. 31]. Similarly, presumption of guiltlessness should be fixed in financial law at the legislative level, especially in tax legal relations.

Thus, every presumption that is formulated by the legislator is aimed at the

protection of various interests, rights and freedoms of entities of financial legal relations - this is the realization of the protective function by means of presumptions.

Most of works of foreign scientists consider the problem of presumptions as a procedural matter. Thus, S. Venegas states that the category of presumption belongs to procedural sphere [15, p. 62]. S. Movellan defines presumption as a procedural rule which has a probative value and makes the evaluation of the evidence possible [16, p. 49]. Nevertheless, the scope of the functional purpose of presumptions cannot be limited by the process only. But is undeniable, that presumptions may show themselves in the most active way in procedural activity.

Y.O.Serikov was the first researcher who raised the issue of research of the procedural functions of presumptions. The presumptions alone or in combination with other means are able to achieve the main goals of jurisdiction, namely the protection of the rights and legitimate interests of the persons, the strengthening of legality and prevention of violations, the formation of respect towards the law and court, etc. [17, p. 103]. In his opinion, the presumptions possess such procedural functions as: the establishment of the facts concerning the subject matter of proof; the release of the party from confirmation of the fact being presumed; the function of procedural saving; the imperative function.

Conclusions

The features of the subject of legal regulation of financial law determine the necessity of more stringent imperative regulation of the relations of the parties than, for example, in commercial or administrative law. Taking into consideration the mentioned above, the decisive role of legal presumptions in the regulation of financial legal relations should be limited, first of all, to securing of legal guarantees for entities of financial legal relations; secondly, the legal presumption must remain an essential element of a financial violation structure; thirdly, the role of legal presumptions in regulation of financial legal relations is also reflected in the protective and regulatory functions they perform.

It should be noted that some aspects of financial legal relations should be clearly regulated by financial and legal rules, and not by presumptions. These are:

- procedure and mechanism for the protection of the entities of financial legal relations in the process of application of financial and legal sanctions;
- circumstances which exclude the responsibility of a person for committing a financial violation (with the obligatory prediction of such a ground as lack of guilt of the subject);
- a clear list of grounds, to which a person can avoid the financial and legal responsibility;
- circumstances mitigating and aggravating the responsibility for committing the violation;
- mechanism of compromise between a control authority and the entity of financial legal relations.

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