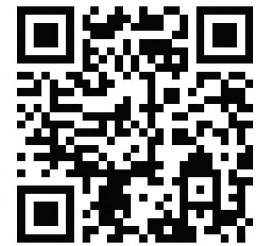
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Liubov M. Kasianenko,
Doctor of Science of Law, Professor,
Department of Financial Law,
University of the SFS of Ukraine
e-mail: kasyanenko_l@ukr.net
ORCID ID 0000-0003-1742-7580

DEVELOPMENT PROCEDURAL THEORY OF FINANCIAL LAW

Procedural financial and legal theory, first of all, is associated with the development of the corresponding categorical apparatus. The theoretical sources regarding the concepts of «the process» and «the procedure» are analyzed in the article, as well as among scientists there is no consensus about these terms. The content of the concept «the legal process» and «the legal procedure» is quite close, almost synonymous, moreover, that this proximity explains common root in the Latin word correspondence. In the static sense, it is established in the legal order or practice, the order of carrying out of certain actions. The activity would even be disorganized and chaotic without this, and it was impossible to organize social relations. In the dynamic sense, a process or procedure can be considered as a practical implementation of the established order by issuing legal acts, making decisions and taking certain actions for their implementation.

The establishment of financial and procedural legal theory, first of all, is connected with the development of appropriate categorical apparatus, which is represented as a network of basic notions of scientific thinking and so it ensures its unity, integrity and constant reproduction. In our opinion, a broad understanding of the process should facilitate a deeper scientific study and comprehension of this category. Many researchers attribute the concept of legal process to such legal categories as action, activity and equate it with categories that characterize the form, the formal side of the legal status, actions, etc. As the financial activity of the state government and local self-government bodies generally has procedural order, it requires legal regulation not less than, for example, judicial activity. Taking into account the scholars' research, it is suggested that the procedural form is inherent in any financial activity, and the widespread opinion that only legal proceedings can be carried out in a special procedural form is insufficiently reasoned. The meaning of any activity is disclosed through a set of consistent actions carried out by its subjects.

In our opinion, in order to determine the objective limits of the financial and legal process, it is necessary to proceed from the main directions and functions of financial activity of the state and local self-government bodies which should be expedient, oriented on the implementation of legitimate state and public interests, carried out in the appropriate procedural form, which must conform to the principle of legality, be rational, free of empty formalities.

Keywords: *financial and legal process, financial responsibility, process, procedure, procedural theory of financial law.*

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The purpose of the article. Legal science is trying to penetrate deeper into the essence of law, to study its structure, correlation, interrelation and interdependence of its components in the light of modern state and law-making processes in Ukraine focused on the practical implementation of the provisions of the Constitution concerning the creation of democratic, social, independent, legal state, reflecting the objective process of development of the law, differentiation and integration of regulatory.

Formulation of the problem. The development and strengthening of the Ukrainian state, its inclusion into the global integration processes, the adoption of its own way of development is inseparably linked with the reformation of the financial system, improvement of its legal regulation and achieving compliance with modern trends of legal development and international standards.

Analysis of recent research and publications. Scholars in the field of financial law have to some extent paid attention to issues of procedural theory. Among them it is necessary to name such as: L. Voronova, O. Dmytryk, I. Krynytsky, V. Kuznechenkova, M. Kucheryavenko, O. Lukashev, O. Orlyuk, N. Prishva, L. Cavchenko and others.

Presentation of the main research material. The field of financial law, which needs a strong procedural basis, has been developing very rapidly for the last years. Procedural development of financial law is of great practical importance as it is a guarantee of realization of material financial and legal norms, ensuring legality in the process of formation, distribution, redistribution, using the financial resources of the state government and local self-government bodies and the effectiveness of financial control. And now widely used notion of process norms cannot be considered to have been finally formed, as it has invested quite different content, calling these norms process, procedural, procedural and processual, organizational and processual, etc. It should be mentioned that scholars underestimate procedural norms despite the social significance of them, although they play an important role in providing optimal conditions of legal regulation, bearing the main burden of the normative way of strengthening the rule of law, ensuring the rights and freedoms of citizens.

It should be noted that the issue of procedural norms in non-procedural fields of law is one of the most controversial in legal science. In the financial and legal theory procedural phenomena have not been recognized yet as a certain system of interconnected elements – norms, relations, procedural form, process, although they exist and to a certain extent fulfill their functions. Nowadays there is a situation where practice is ahead of the theory. In our opinion, the procedural and legal regulation of financial activity of the state government and local self-government bodies, which should be expedient, focused on the implementation of legitimate state and public interests, becomes important today. The requirement of the procedural form is that such a form must comply with the principle of legality. In financial activity, this requirement is crucial, as aiming to ensure legitimacy, so it must be done within the law, according to law, without the slightest deviation from the procedural regime.

It should be noted that so far there is no consensus regarding the relationship between the concepts of process, procedure in researches of lawyers and this has a negative impact. In our opinion, the notion of a process is more extensive, and a part of a process that has an independent meaning for any legal relationship is consistent with the understanding of the procedure. This uncertainty is also influenced by the fact that in its linguistic content the concept of process and procedure coincide. In terminological literature the procedure is considered as the officially established or customary order for the implementation, carrying out or registration of something;

any number of actions, the carrying out of something; the order of consideration, discussion, carrying out of a series of logical measures, actions in any complex case; procedure – (French – procedure, Latin – procedo – go forward) – established procedure for conducting, consideration of certain cases; officially established or customary order, procedure for the implementation or registration of certain cases; any number of actions, carrying out of something; officially established or customary order for the implementation, carrying out or registration of something.

The content of the concept «the legal process» and «the legal procedure» is quite close, almost synonymous, moreover, that this proximity explains common root in the Latin word correspondence. In our opinion and etymological and legal side of these words can be considered both in a static and dynamic sense. In the static sense, it is established in the legal order or practice, the order of carrying out of certain actions. The activity would even be disorganized and chaotic without this, and it was impossible to organize social relations. In the dynamic sense, a process or procedure can be considered as a practical implementation of the established order by issuing legal acts, making decisions and taking certain actions for their implementation.

In our opinion, there are no grounds for limiting the use of the term "the procedure" for judicial proceedings, except so far legislated terminology that does not always correspond to objective truth, as evidenced by numerous amendments to the legislation. Scholars consider the procedure as a prescription as to what actions to take in a particular situation, specific actions, part of the operation that must be performed or taken to achieve this goal. The process has a higher level of orderliness and guarantee in achieving the goal. Thus the main difference between the procedure and the process is the level of orderliness of the activity.

In our opinion, not every procedure, regulated by the law, can be recognized as a process. Undoubtedly, such legal phenomena have much in common. Firstly, they are strictly regulated by law, secondly, it is legally significant action, and thirdly, such actions are carried out in strict sequence, i.e., a certain condition is the subject to certain stages. Thus legally significant actions, carried out in a certain sequence determined by the legislator, can be called a process. Analyzing all these definitions, we can conclude that the phenomenon of process and procedure are closely interrelated, comparable, but not identical. The process is implemented through specific legal procedures. There is no doubt understanding the procedure as an order. It creates a system of complex procedural rules, through which legislative, civil, administrative processes are exercised. The process of financial activity is formed more difficult, which is characterized by considerable extent, dynamism, transience. Those are tax, budget, control, currency processes. And that's why the procedure is of great importance in these processes.

In the field of legal science, the concept of broad understanding of the legal process as an integrated system of legal activity forms of the authorized state bodies, officials, and also other subjects of law, interested in solving various legal cases, is intensively developed. The reason is that any law enforcement as well as law-making activity that is carried out within a certain procedure makes sense of process. The essence of «the broad concept» of the legal process is that it is not limited only to the regulation of compulsion and the consideration of criminal and civil-law disputes. In the system of substantive fields of law, there are procedural norms and institutions, in addition to criminal and civil proceedings, on the basis of which activities are carried out on the application of substantive law rules of other fields of law.

It should be noted that the search for the ways of establishing legality of law and order suggests that the whole financial activity is interrelated in order to meet the different needs of society. It must be performed by the rules, established in advance, in order to strictly following

of the procedures. The use of procedural forms in financial activity of the state should ensure the correct application of legal norms. The content of the procedural form of financial activity of the state and bodies of local self-government is a set of unified procedural requirements to the participants in the financial and legal process. These requirements are objectively reflected in the components of financial and legal process, where the procedural proceedings are the defining characteristic element in its structure and reflect its subject, the procedural stages are dynamic characteristic of the process, and the procedural regime permeates the whole matter of the financial and legal process in general.

In the complex ensuring of the legality and financial discipline in the field of public finance is achieved through the form of implementation of the protective function of financial law – legal liability. There are a number of qualities that are common for all kinds of legal liability and mostly relate to the need for its application. Firstly, legal liability reflects the specifics of all legal phenomena; secondly, it is always connected with state-power activities, with its state-powerful will; thirdly, legal liability has two aspects: positive and negative; fourthly, the offense is the ground for retrospective liability; fifthly, all types of legal liability are carried out on the basis of normative constructions, which represent the unity of the rules of substantive and procedural law; legal liability can be characterized as a special responsible state of parties to legal relations.

Scholars have not formulated a common position on the place of financial responsibility in the system of legal liability yet. In our opinion, one reason for discussions is the lack of clarity in the defining notions and categories of the general theory of legal liability and the theory of liability of branch legal sciences, insufficient drawing-up of methodological problems of liability in financial and legal regulation. We believe that the talk about independence of a certain type of liability needs to define criteria of this type as an individual as well as the features that will be the basis for differentiation. We agree that these criteria should include the independence of the field of law, the specific regulation of social relations, the independence and specificity of the law offense, the distinctive features of liability measures and the special order of their application, subjects authorized with the right to enforce measures of liability [1, c. 366].

In our opinion, financial responsibility as a kind of legal liability is a consequence and form of the state reaction on the violation of the prescriptions of financial and legal norms, and is manifested in the enforcement in accordance with the legislation and the established procedure of the prescribed measures of influence. It is also associated with the enforcement of fines towards the offender of penalties in multiple size in accordance with the amount of damage.

The establishment of financial and procedural legal theory, first of all, is connected with the development of appropriate categorical apparatus, which is represented as a network of basic notions of scientific thinking and so it ensures its unity, integrity and constant reproduction. In our opinion, a broad understanding of the process should facilitate a deeper scientific study and comprehension of this category. Many researchers attribute the concept of legal process to such legal categories as action, activity and equate it with categories that characterize the form, the formal side of the legal status, actions, etc. As the financial activity of the state government and local self-government bodies generally has procedural order, it requires legal regulation not less than, for example, judicial activity. Taking into account the scholars' research, it is suggested that the procedural form is inherent in any financial activity, and the widespread opinion that only legal proceedings can be carried out in a special procedural form is insufficiently reasoned. The meaning of any activity is disclosed through a set of consistent actions carried out by its subjects.

In our opinion, in order to determine the objective limits of the financial and legal process, it is necessary to proceed from the main directions and functions of financial activity of the state and local self-government bodies which should be expedient, oriented on the implementation of legitimate state and public interests, carried out in the appropriate procedural form, which must conform to the principle of legality, be rational, free of empty formalities.

The peculiarities of the financial and legal process are: the financial activity of the state and local self-government bodies which is focused on the process of formation, distribution, redistribution, use of financial resources and its actual content; the financial and legal process are associated with the material rules of financial law; enforcement of the rules of financial substantive law is carried out in a certain procedural order, regulated by procedural financial and legal norms; financial procedural norms are contained in different normative and legal acts depending on the legal force; the parties to the financial and legal process are the bodies of different branches of government and local self-government bodies; the financial and legal process is directed not only to the solution of individual cases, but also to the normative regulation of the activities of parties that are involved, within the limits of its competence; the procedural legal norms in this area are characterized by a large variety of types of parties, maintained in their enforcement, because such parties include, as individual (heads of state government bodies, their deputies), and collective (The Verkhovna Rada, local councils); the financial and legal process is characterized by special stages, proceedings, procedural regime; the financial and legal process is a systematic process.

The content of the financial and legal process is disclosed at certain stages: formation of financial resources of the state government and local self-government bodies, distribution of financial resources, use of financial resources. The control process with inherent stages (planning, preparation, programming, monitoring organization in place, documentary and actual check, systematization of check materials, drafting of a legal document, etc.) accompanies all previous stages. Each stage of financial and legal process, reflecting the typical nature of financial and legal relations is characterized by its specificity.

The financial and legal process is characterized by the fact that its types: budget, tax, control and currency are focused on the implementation of independent groups of financial and material norms, which also represent the appropriate legal institutions of financial law. They are complex depending on the legal nature and include a large number of different proceedings.

Conclusions. Financial responsibility, which includes legal measures of procedural compulsion, provided by financial legislation is also applied to violators of financial discipline, in addition to other types of liability. Special attention should be paid to the proceedings of cases on financial violations, and the enforcement of measures of state compulsion during these proceedings requires clear procedural regulation. This kind of proceedings is distinguished among others by a number of specific features: arises only in connection with the committing of a financial offense; is carried out by the control bodies and bodies of justice. There is the practical implementation of financial sanctions only in this proceeding.

The need for practice in financial and legal regulation, on the one hand, and the level of the financial law science, on the other hand, predetermines the necessity and the possibility of developing the procedural part of financial law.

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Л. М. Касьяненко. Розвиток процесуальної теорії фінансового права

Процесуальна фінансово-правова теорія насамперед пов'язана з розробкою відповідного категоріального апарату. У статті проаналізовано теоретичні джерела щодо понять «процес» та «процедура», а також серед науковців немає єдиної думки щодо цих термінів. Зміст понять «юридичний процес» і «юридична процедура» досить близький, майже синонімічний, до того ж саме ця близькість пояснює спільнокореневі в латинському слові «кореспонденція». У статичному розумінні це встановлює в правовому порядку чи практиці порядок здійснення певних дій. Без цього діяльність була б навіть неорганізованою і хаотичною, а суспільні відносини організувати неможливо. У динамічному розумінні процес або процедуру можна розглядати як практичну реалізацію встановленого порядку шляхом видання правових актів, ухвалення рішень та здійснення певних дій для їх реалізації.

Становлення фінансово-процесуальної правової теорії насамперед пов'язане з розробкою відповідного категоріального апарату, який представлений у вигляді мережі основних понять наукового мислення і так забезпечує його єдність, цілісність і постійне відтворення. На нашу думку, широке розуміння процесу має сприяти більш глибокому науковому вивченню та осмисленню цієї категорії. Багато дослідників відносять поняття юридичного процесу до таких правових категорій, як дія, діяльність, і ототожнюють його з категоріями, що характеризують форму, формальний бік правового статусу, дії тощо. Оскільки фінансова діяльність органів державної влади та місцевого самоврядування загалом має процесуальний порядок, вона потребує правового регулювання не менше ніж, наприклад, судова діяльність. Враховуючи дослідження вчених, висловлюється припущення, що будь-якій фінансовій діяльності притаманна процесуальна форма, недостатньо обґрунтованою є поширена думка про те, що тільки судочинство може здійснюватися в спеціальній процесуальній формі. Сенс будь-якої діяльності розкривається через сукупність послідовних дій, що здійснюються її суб'єктами.

На нашу думку, для визначення об'єктивних меж фінансово-правового процесу необхідно виходити з основних напрямів і функцій фінансової діяльності держави та органів місцевого самоврядування, які мають бути доцільними, орієнтованими на реалізацію законних державних і громадських інтересів, здійснених у відповідній процесуальній формі, яка повинна відповідати принципу законності, бути раціональною, вільною від порожніх формальностей.

Ключові слова: *фінансово-правовий процес, фінансова відповідальність, процес, процедура, процесуальна теорія фінансового права.*

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