

Candidate of Law, associate professor

**INTRASECTORAL CATEGORY «MONEY» IN THE FIELD OF A
CIVIL AND FINANCIAL AND LEGAL POLICY**

Paper reveals the essence of the connection of civil and financial legal policy on the example of the regulation of related monetary relations in civil and financial law.

Keywords: *politics, civil legal policy, financial legal policy, money.*

Analysis of the sectoral problems of domestic legislation in the context of civil-legal and financial and legal policy is one of the ways to study the relationship of these types of legal policy. Now, exploring public types of legal policy, including financial and legal, you need to take into account changes in relations between the State and the individual. In Ukrainian society is slowly going on rethinking the merits and social destination of many legal phenomena. According to the Constitution of Ukraine, radically changed the vector of relations "state–man". Rights and freedoms and their guarantees determine the content and orientation of the activities of the State, the main directions of its policy and to the civilized ways of resolving conflicts.

The process continues in our country not for one year, however, it is characterized by the systemic instability and fluctuations in the direction of strengthening the powers of the State in private relations, then toward the formal expansion of human rights. Legal policy, and, above all, civil-legal policy, allotted the role of fundamental study of the balance of the participation of the State and other public power entities in private relations and search mechanisms of their responsibility for the infringement of the principle of horizontal equal nature of these relations.

In the domestic and foreign literature for varied aspects of legal policy in general and the study of its individual types is given a considerable attention,

particularly, in the writings of such scholars as: V. Borisov, V. Vavilin, V. Lasyuk, O. Lopasenko, O. Minklovich-Slobodyanik, O. Malko, A. Muzika, O. Ribakov, V. Semchik, V. Sydor, R. Stefanchuk, P. Fris, M. Shulga. Financial and legal policy are investigated, for example, by such scholars as: L. Voronova, L. Dmitrenko, M. Karasev, D. Koshel, Y. Krohina, S. Myrochnik, O. Muzika-Stefanchuk, and V. Rukavishnikova, L. Trofimova, N. Sharandina. Unfortunately, there are no reasons to claim about a similar level of the development of civil-legal policy. However, the category of "money" is extensively investigated both in the civil and financial legal doctrine, as well as by the representatives of economic sciences. Among them: E. Alisov, I. Bezklubij, T. Bodnar, A. Galchinsky, A. Lukashov, L. Lunts, L. Novoselova, G. Shershenevich.

Any kind of legal policy is the result of theoretical generalizations and conclusions of the relevant industry. Civil, financial and legal policy is no an exception. In modern civil and financial law there are numerous inconsistencies of the understanding of many legal categories [1]. Solving of these problems of terminology is possible only with a comprehensive approach to the definition of these categories, namely taking into account the specificity and scientific achievements of relevant legal doctrines.

The purpose of this paper is to analyse the money as cross-categories that should illustrate the link mentioned in the title of the paper types of legal policy. We do not claim to own the definition of the concept of money. It is important for us to answer the question, whether there is a need for its legal definition, defining the essence of money as sectoral concepts in the context of a civil, financial and legal policy. The connection between civil and financial law as the branches of the law is explained, in particular, with a similar subject of their legal regulation – property and monetary relations. Of course, by using entirely different methods of legal regulation. The difference between these relationships, as I. Shevchenko notes, is a substantial one [2, p. 129]. However, objects (such as money

or property) still remain the objects of legal relations, irrespective of whether they are private or public relations.

To determine the capabilities and limits of the use of private law structures in the field of public law, in particular the financial regulation, to consider that these relationships are inherently proprietary. In addition, to the single, civil and economic nature of the financial property relationship unites and availability of material object. In civil legal relations, as commodity-money, as the last serving product, i.e., the product is meant for sharing, and financial legal relations as a tangible object is financial resources, that is, material possessions, intended not for sharing, and for no-equivalent movement [3, p. 205]. The concept of property relations apply to the commodity-money civil relations and financial relationships as inter-related forms of economic relations. Therefore, as logically suggests M. Karasev, of the development of the property financial relations in many aspects is similar to the paradigm of civil legal relations. In other words, as the scholar argues, property laws, regardless of their origin, and through them the unified object is a tangible benefit, are based on the same logic [3, p. 205].

Property, jobs, services, which practically advocate a commodity which is purchased by budget funds, is the object of budgetary relations (within the relationship of the budget process at the stage of the execution of the budgets of expense). At the same time it is the object of civil legal relationship, because managing budget funds contract, supplier, provider of services, etc., which, through the action of the budget legislation is the recipient of budget funds and the civil law is a counterparty. Therefore, in the context of our research requires coverage of the issues of money and property relations in their private and public legal regulation. Current legislation does not define the concept of "money". You can hardly recognize the legal definition of the concept of money referred to the p. 1 of art. 192 of CC. It is in general terms only stipulates that legal means required to accept at face value throughout the territory of

Ukraine is the hryvnia currency. As you can see, this article has not named any of the signs, that inherent were remodeled as an object.

The Constitution of Ukraine, finance and banking don't give the legal definition of the concept, where the supposed name of the monetary unit of Ukraine is determined by the forms, in which the money is functioning in the country, listed species are used in the circulation of the banknotes. Category of money is widely investigated by economic [4] and legal sciences [5]. For many years, experts in various areas of Economics and Law don't leave the attempts to bring out the universal definition of money. Here are just a few examples of the scientific reasoning for solving this problem.

Lunts, exploring the question of money in civil law, noted that "for legal theory arises the task to give the definition of the legal concept of money, which would remove the gaps of current legislation". However, subsequently the scholar concluded that the science of civil law can be based only on the notion of money, which is revealed in the economy [6, p. 23].

From the perspective of civil law, as Novoselova believes, the question of the concept of money, their nature and role in the economy does not belong to the sphere of legal science, but the scientist states that the incorporation of the concepts, developed economic science, is necessary. After all, just based on this analysis, you can identify features of money as an object of civil legal relationship [7, p. 5]. A similar position on this issue is O. Olejnik, according to which "legal understanding of money can and should rely primarily on their economic understanding, because money is the foremost economic concepts. However, in legal analysis there are some limitations that determine the legal meaning of money"[8].

A. Lukashov explores the analyzed category from the position of financial law. And, in particular, believes that in the theory of finance law one of the most important principles of the financial activity of the State is the principle of unity of the financial policy and monetary system. The complexity of the money as an object of theoretical

research involves, according to the scientist, the tiered structure of approaches to the defining of the essence of this phenomenon. The main reason is that they combine two basic aspects: socio-economic and legal [9, p. 3, 13].

A. Samsonova, exploring the calculations in the tax and budgetary fields [10], concluded that "the functions of money in fiscal law is different from the functions of money in civil law. In the financial law clearly reveals itself an informational function of cashless money. In private law information does the price. Information function of money in the financial law at the macro level gives an idea of the effectiveness of the mechanism of the State regulation in the sphere of taxation, but on the microlevel allows you to detect a number of facts: non-payment of taxes, improper calculation of taxes, late payment of taxes, etc. Information function of cashless money – nationwide, out-state function of money in the financial law"[11].

It should be noted that there is also a point of view about what is generally impractical to give a definition of the concept of money. K. Polanji argues that the money is not a unified system, search targets which starts in hopelessness. This explains the numerous vain attempts to define "the nature and essence of money. We should be listing the goals, which include quantitative items, which are usually referred to as money. K. Polanji, presenting the issues of institutional direction in the theory of money, that money can be explained only by institutionally and not withdrawn conceptually [12].

We support the opinion expressed in the legal literature (for example, Alisov, Lunc, Rovinsky, Cipkin) [13], that the category of "money" includes two concepts: 1) money, as they should be understood in economic terms; 2) notion of money overall for law and economic science. Indeed, the law in that notion of money may not be formulated, without regard to their economic content. Because in such a case will place fiction and its implementation in practice of the legal regulation, undoubtedly had a negative impact on the economic system of a society.

Summing up the positions regarding the appropriateness or immateriality of the legislature fixing of the definition of money, it is noted that this problem has emerged beyond a purely theoretical. Boldly we can state that the implementation of the legal implemented practice of many legal structures foreseen by the regulations directly depends on a proper understanding of the term "money". We are talking about the definition of such concepts as "cash payments", "money", "monetary obligation", etc. In particular, highly complex seems to be the problem of the definition of the category of "payments in cash". It is common knowledge that the application in practice of different understanding of some of those same legal categories can have significant negative consequences. The problem is not only the Ukrainian one. Let's illustrate this by the example that took place in the application of legislation of the European Economic Community (EEC). Ambiguous was the answer to the question: can it be applied to the rules relating to the free movement of goods into circulation, or he is subject of a special regulation? It was about the conflicting situation within the EEC as a result of the breach by the UK of the export-import restrictions on the operations of the landing to 1947 coins and bullions of precious metals (gold and silver) and their alloys. European Court decision on the merits of the dispute determined that money is not a commodity, and therefore it may not apply quantitative restrictions and measures provided by the articles 30–34 of the Maastricht Treaty. In this court decision for the special attention deserves a differentiated approach regarding the delimitation of money and goods. It is based on the criterion of inclusion of the examined items before the legal tender (lawful payment means). The Court specified wa three groups of coins depending on above mentioned symptoms:

- 1) coins, which are still inherently legal means of payment;
- 2) if it is doubtful the accessory of coins to "legal tender" one should keep in mind that on the money markets of the EEC member countries, they are considered to be the equivalent of the currency and so their transfer is a cash movement;
- 3) coins that were issued before

1947 and were not legal tender, can be attributed to the goods [14, pp. 5, 6]. The example is yet another evidence that the economists and lawyers put a different meaning into the concept of "money" and it creates certain difficulties in practice. Undoubtedly, this situation requires a compromise solution by the joint development of scientists in the field of Economics and law of the unified definition, acceptable for both doctrines. Money can be an independent subject in some civil legal agreements, namely: loans (art. 1121 C.C.), loans (article 827 of the CC), loan (art. 1054 of the CC), donation (art. 717 CC), storage (936 CC) and others.

Regarding the legal definition of the concept of "monetary obligation", it should be noted that the rule stated in art. 1 of the Act of Ukraine "On the Restoring of Debtor's Solvency or Declaring it Bankrupt» dated by May 14, 1992, as it is amended by the Act from June, 30, 1999 [15]. It is the obligation of the debtor to pay the lender a certain monetary amount in accordance with the civil law contract and on other grounds stipulated by civil legislation. In this part of the monetary obligations of the debtor do not count penalties and fines, defined for the date of an application to the commercial court, as well as the obligations that have arisen as a result of the harm to the life and health of citizens, the obligation of payment of author's remuneration, obligation to the founders (participants) of the debtor-legal entity that emerged as a result of such participation, the obligations of the debtor is a natural person-entrepreneur arising directly from individuals on the grounds not related to the implementation of such a debtor business. Unfortunately, the Central Committee of Ukraine contains no the definition of the notion of monetary liabilities, as it is stated by Bodnar, and it may lead to different understanding of this type of obligations in commercial and judicial practice [16, p. 110].

Indeed, the contents of the above mentioned legal definition is used only for the purposes of this Act and, therefore, in the connection with a certain limitation of monetary obligations, set by Law, you may experience difficulties with applying this

norm by analogy with the law regarding the types of civil legal monetary obligations outside the relationship of insolvency of the debtor. The examples of the relationships of a civil, financial and legal policy are not limited exclusively with the monetized sphere. You should remember the following, in particular, relationships as: payments in foreign currency, foreign trade payments, financial services, credit and lending, borrowing, which are governed by the dispositions of various branches of the law, including the civil and financial law.

Thus, by analyzing the legislative regulation of a number of adjacent relations in civil and fiscal law we have investigated their relationship. The civil law in the regulation of the monetary sphere uses the achievements of financial law. This, in turn, promotes the unification of related legal categories that optimizes the realization of the analyzed relationships.

LIST OF USED SOURCES

1. *Музика Л.* Взаємозв'язок цивільно- та фінансово-правової політики / Л. Музика // *Право України.* – 2013. – № 1–2. – С. 387–394; *Музика Л. А.* Поєднання приватно- та публічно-правового регулювання (на прикладі відносин у сфері запозичень) / Л. А. Музика // *Наука і правоохорона.* – 2012. – № 3(17). – С. 204–209.

2. *Шевченко Я.* Місце цивільного права в системі права України / Я. Шевченко // *Право України.* – 2012. – № 1–2. – С. 125–138.

3. *Карасева М. (Сенцова).* Частноправовые конструкции в налоговом праве: возможности и пределы использования / М. Карасева // *Публичные финансы и налоговое право: ежегодник. Вып. 1: Современные проблемы финансового и налогового права стран Центральной и Восточной Европы* / Под ред. М. В. Карасёвой (Сенцовой). – Воронеж: Издательство Воронежского государственного университета, 2010. – С. 204–215.

4. Див, наприклад: *Менгер К.* Основания политической экономии / К. Менгер // Австрийская школа политической экономии / Предисл., коммент., сост. В. С. Автономова. – М.: Экономика, 1992. – С. 24–242; *Економічна енциклопедія: в 3-х т. / відп. ред. С. В. Мочерний.* – Т. 1. – К.: Академія, 2000. – 864 с.; *Глух Н. А.* Деньги, торговля и рынки в американской экономической антропологии // Вестник МГУ. Серия эконом. – 1997. – № 6. – С. 44–57; *Кассель Г.* Основные идеи теоретической экономии / Г. Кассель; пер. с нем. Б. М. Жолковой; предисл. Е. Р. Качуринер. – Л.: Прибой, 1929. – 109 с.

5. Див., наприклад: *Боголепов М. И.* Бумажные деньги / М. И. Боголепов. – Пб.-М.: Центр. товарищество „Коопер. изд-во”, 1922. – 111 с.; *Усоскин В. М.* Теории денег / В. М. Усоскин. – М.: Мысль, 1976. – 228 с.; *Пашкус Ю. В.* Деньги: прошлое и современность / Ю. В. Пашкус. – Л.: Изд-во ЛГУ, 1990. – 181 с.; *Гальчинський А.* Теорія грошей: навч. посібник / А. Гальчинський. – К.: Основи, 1998. – 415 с.; *Тарасенко Л. В.* Цивільно-правова відповідальність за порушення грошових зобов'язань: автореф. дис. ... канд. юрид. наук: 12.00.03 / Л. В. Тарасенко ; НАН України. Ін-т держави і права ім. В. М. Корецького. – К., 2006. – 20 с.; *Шершеневич Г. Ф.* Курс торгового права / Г. Ф. Шершеневич. – Т. 2. – Спб.: Тип. печ. и изд. дела «Труд», 1908. – 624 с.

6. *Лунц Л. А.* Деньги и денежные обязательства. Юридическое исследование / Л. А. Лунц / Деньги и денежные обязательства в гражданском праве / Л. А. Лунц. – М.: Статут, 1999. – 352 с.

7. *Новоселова Л. А.* Денежные расчеты в предпринимательской деятельности. – М.: ЮрИнфоР, 1996. – 160 с.

8. *Олейник О. М.* Основы банковского права: курс лекций / О. М. Олейник. – М.: Юристъ, 1997. – 427 с.

9. *Лукашев О. А.* Правове регулювання грошової системи України: дис. ... канд. юрид. наук: 12.00.07 / О. А. Лукашев; Національна юридична академія України імені Ярослава Мудрого. – Х., 2002. – 200 с.

10. *Самсонова А. Е.* Расчеты в налоговой и бюджетной сферах: теория и практика / А. Е. Самсонова. – М.: Юристь, 2006.

11. *Самсонова А.* Информационная функция денег и налоговое право // Публичные финансы и налоговое право : ежегодник / А. Е. Самсонова; под ред. М. В. Карасёвой (Сенцовой). – Вып. 2: Бюджетные и налоговые реформы в странах Центральной и Восточной Европы. – Воронеж: Издательство Воронежского государственного университета, 2011. – 396 с.

12. *Глух Н.А.* Деньги, торговля и рынки в американской экономической антропологии / Н. А. Глух // Вестник МГУ. Серия эконом. – 1997. – № 6. – С. 45.

13. *Алісов Є.О.* Проблеми правового регулювання грошового обігу в Україні : дис. ... докт. юрид. наук: 12.00.07 / Є. О. Алісов; Національна юридична академія України імені Ярослава Мудрого. – Харків, 2006. – 445 с.; *Ровинский Е. А.* Основные вопросы теории советского финансового права / Е. А. Ровинский. – М.: Госюриздат, 1960. – 193 с.; *Цыпкин С. Д.* Финансово-правовые институты, их роль в совершенствовании финансовой деятельности советского государства / С. Д. Цыпкин. – М.: Изд-во МГУ, 1983. – 80 с.; *Лунц Л. А.* Деньги и денежные обязательства. Юридическое исследование / Деньги и денежные обязательства в гражданском праве / Л. А. Лунц. – М.: Статут, 1999. – 352 с.

14. Usher J.A. The Law of Money and Financial Services in the European Community. – Oxford: Clarendon press, 1994. – 198 pp.

15. Про відновлення платоспроможності боржника або визнання його банкрутом : Закон України від 14.05.1992 у редакції Закону від 30 червня 1999 // Відомості Верховної Ради України. – 1999. – № 42–43. – Ст. 378.

16. *Боднар Т.В.* Особливості виконання грошових зобов'язань у цивільному праві України / Т. В. Боднар // Вісник Київського національного університету імені Тараса Шевченка. – Юридичні науки. – Випуски 60–62. – 2004. – С. 110–113.