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ANALYSIS OF FOREIGN EXPERIENCE SPECIFICS OF LEGAL REGULATION OF ORGANIZATION, MANAGEMENT AND MAINTENANCE OF GOVERNMENT DEBT: PRIORITIES OF ITS IMPLEMENTATION IN UKRAINE

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In this article has been carried out research of foreign experience specifics of legal regulation of organization, management and maintenance of the government debt obligations. In the era of increasing the impact of globalization on the loan relationships, the analysis of experience of the high developed countries in the area of market relations, especially in the sphere of legal and institutional maintenance of government debt, will give the opportunity to optimize Ukrainian debt policy and influence on creation of the solutions for the internal and external government debt problem in Ukraine. The Author examined the specifics of legal regulation in the financial and legal institution of government debt in the USA, Germany, Great Britain, Poland, Russia, Kazakhstan and Belorussia; established patterns of maintenance of government debt obligations, described authorities and legislative acts in the sphere of legal regulation of organization, management and maintenance of the government debt.

Key words: public finances, government debt, government debt policy, government debt obligations, government debt strategy.

Пирожкова Ю.В. АНАЛИЗ ЗАРУБЕЖНОГО ОПЫТА ОСОБЕННОСТЕЙ ПРАВОВОГО РЕГУЛИРОВАНИЯ ФОРМИРОВАНИЯ, УПРАВЛЕНИЯ И ОБСЛУЖИВАНИЯ ГОСУДАРСТВЕННОГО ДОЛГА: ПРИОРИТЕТЫ ЕГО ВНЕДРЕНИЯ В УКРАИНЕ / Запорожский национальный университет, Украина

В статье анализируется зарубежный опыт правового регулирования формирования, управления и обслуживания государственных долговых обязательств. В современных условиях глобализации, усиления ее влияния на денежно-кредитные отношения, исследование опыта стран с высоким уровнем развития рыночных отношений в сфере правового и институционального обеспечения регулирования государственного долга, даст возможность оптимизировать украинскую долговую политику, повлияет на формирование механизма решения проблем внешней и внутренней государственной задолженности в Украине. Автором исследованы особенности правового регулирования финансово-правового института государственного долга в США, Германии, Великобритании, Польше, Российской Федерации, Казахстане и Белоруси; определены модели обслуживания государственных долговых обязательств, охарактеризованы органы, исследованы законодательные акты в сфере формирования, управления и обслуживания государственного долга

Ключевые слова: государственные финансы, государственный долг, государственная долговая политика, государственные долговые обязательства, государственная долговая стратегия.

Пирожкова Ю.В. АНАЛІЗ ЗАРУБІЖНОГО ДОСВІДУ ОСОБЛИВОСТЕЙ ПРАВОВОГО РЕГУЛЮВАННЯ ФОРМУВАННЯ, УПРАВЛІННЯ І ОБСЛУГОВУВАННЯ ДЕРЖАВНОГО БОРГУ: ПРІОРИТЕТИ ЙОГО ВПРОВАДЖЕННЯ В УКРАЇНІ / Запорізький національний університет, Україна

В умовах формування та функціонування ринкової економіки державний борг постає однією із суттєвих складових державних фінансів. За офіційними даними Міністерства фінансів України станом на 31 січня 2014 року державний та гарантований державою борг України становить 585.298.486,95 тис. грн. або 73.226.383,96 тис.дол. США.

Стабілізація економічної ситуації в державі, забезпечення ефективного наповнення державного бюджету та зменшення зовнішнього державного боргу, обумовлює

необхідність дослідження державного боргу, його структури, пошук шляхів вдосконалення механізму управління та обслуговування державних боргових зобов'язань з урахуванням досвіду країн з розвинутою ринковою економікою (США, Німеччини, Великобританії, Франції), а також країн пострадянського простору – Російської Федерації, Білорусі, Казахстану.

Моніторинг формування основних стратегічних напрямів боргової політики в зарубіжних країнах дозволяє зробити висновки, що контроль за борговими зобов'язаннями держави, координація процесу управління ними здійснюється через три основні моделі: урядову (управління державним боргом здійснюється міністерством фінансів та відомствами), банківську (управління державним боргом здійснюється центральним банком країни) та агентську (функції управління державним боргом відносяться до незалежної установи).

Проведені дослідження дозволяють сформулювати такі висновки: сучасний стан державних боргових зобов'язань в Україні вимагає перегляду та оновлення правового забезпечення створення, управління та обслуговування державного боргу, адже чинне законодавство недостатньо повно регулює зазначені питання. Зважаючи на дослідження позитивного зарубіжного досвіду доцільним, на нашу думку, є прийняття в Україні базового Закону "Про державний борг України", а також створення єдиного органу управління державним боргом, підпорядкованого Міністерству фінансів, але з достатньо високим ступенем автономності у прийнятті рішень. Поява подібного нового органу в Україні повинна значно зменшити кількість протиріч у функціях існуючих органів, що задіяні в управлінні державним боргом.

Доцільно підтримати позицію вчених Г. Кучер, В. Дудченко, О. Новосолової, П. Козелецького щодо необхідності створення правових умов для акумуляції внутрішніх заощаджень країни, активізації іноземного інвестування. При формуванні боргової стратегії країни на 3-5 років, необхідним вбачається брати до уваги напрями використання зовнішніх запозичень, забезпечуючи ними пріоритетні галузі економіки. Вжити заходів для вдосконалення Методики визначення ліміту зовнішнього боргу, в щорічному Законі про державний бюджет виписувати «ліміт боргу уряду», «ліміт зовнішнього боргу Національного банку України», «ліміт боргу місцевого виконавчого органу».

Ключові слова: державні фінанси, державний борг, державна боргова політика, державні боргові зобов'язання, державна боргова стратегія.

In conditions of formation and functioning of market economy, government debt becomes one of the essential components of public finances. According to official data by the Ministry of Finance of Ukraine as for 31 of January, 2014 public debt and government-backed debt of Ukraine was UAH 585.298.486, 95 or USD 73.226.383, 96 [1]. The amount of our country's debt obligations were caused by the state budget deficit, and involving loans for its coverage. The size of the public debt of Ukraine and its systematic increase become not only financial, but also social and political problem, because government debt directly related to the issue of economic security. The issue of good governance, formation a strategy of maintenance government debt obligations is updated at the present stage of development the Ukrainian society in the context of overcoming economic difficulties and aggravation of the political crisis, which recently is going in Ukraine. The solution of this problem is a factor of economic stability in the country, because fiscal capacity, the stability of the national currency, financial support by international organizations is highly depends on this factor.

The analysis of the external debt of Ukraine allows to state that in the international context the external position of Ukraine is quite critical. The ratio of external debt to GDP (Gross Domestic Product) is close to the average indicator for low – and middle-income countries, which is 66%. Moreover, the ratio of external debt to GDP for countries of this group is optimal at the indicator 35%. In Ukraine, the indicator is 56%, almost twice higher than acceptable limit [2, p. 57].

The stabilization of the economic situation in the country, providing effective incomes to the state budget and reducing external debt, necessitates the research of the public debt, its structure, finding ways to improve the mechanism of management and maintenance of public debt using the experience of countries with developed market economies (the U.S., Germany, UK, France), and post-Soviet countries – Russia, Belorussia, Kazakhstan, that will allow to

make conclusions and suggestions for improving legal establishment, management and maintenance of the public debt of Ukraine, to form a conceptual position to improve the quality of public management in some areas of social relations, which will affect the further optimization of the maintenance of Ukrainians public debt obligations.

Foundations of the theory of public debt and its management contained in the works of such foreign economists as A. Smit, D. Rikardo, A. Tyurgo, J.S. Mill, K.F. Nebenius, J.M. Keynes, K. Marks, U. Xeller, A. Lerner, M. Braunrig, R. Musgrave, C.R. R.McConnell, S.L. Brue, J. Buchanan, S. Weintraub, M.M. Agarkov, M.I. Bogolepov, N. Brzheskyi, Y. Vavilov, A.G. Sarkisyancz, L.O. Drobozina, L.M. Krasavina, and national economists like – V.L. Andrushhenka, O.I. Baranovskogo, O.D. Vasylyka, T.P. Vakhnenko, V.M. Geietcya, A.M. Moroza, G.V. Kucher, K.V. Pavlyuk, M.I. Savluka, V.N. Sutorminoi, V.M. Fedosova and others.

Important in a scientific way are theoretical conclusions of Ukrainian and Russian lawyers-financiers scientists: O.M. Gorbunovoi, M.V. Karasevoi, Y.A. Krokhinioi, G.V. Kucher, S.V. Zapolskogo, D.V. Vinnyczkogo, S.G. Pepelyaieva, G.V. Petrovooi, G.P. Tolstopyatenka, M.F. Ivliievooi, N.K. Isayevooi, S.T. Kad'kalenka, V.Y. Kosanyaka and others. In Ukraine, some problems of government debt were investigated by V.V. Kozyuk, V.V. Lisovenko, S.V. L'ovochkin, V.Y. Novytskyi, O.V. Plotnikov, O. Baranovskyi, V.Y. Maistryshyn, T.G. Bondaruk, I.B. Zaverukha and others.

Scientists are unanimous in their views on the problem of growth of the external debt of Ukraine and the need to develop mechanisms for its maintenance and regulation. But, unfortunately, even nowadays a complete state program of actions to solve the problem of state external debt hasn't been formed in scientific legal literature. However, as H.V. Kucher correctly noted, lack especially of legal studies and some disagreement of opinions among economists provokes uncertainty in understanding a number of fundamental legal points regarding to the realization of relations in the sphere of state debt [3].

Objective: to investigate the status of regulatory legal providing of formation, management and maintenance of the state debt in Ukraine, to outline ways to improve and optimize debt strategy and institutional control of state borrowing, taking into account positive adapted foreign experience.

Legal definition of the state debt had been enshrined in paragraph 20 of Article 2 of Budget code of Ukraine that came in force on July 8, 2010 №2456-VI. The state debt is the total amount of state obligations from returning derived and outstanding credits (loans) that arise from state borrowing by the balance sheet date [4]. It is clear from this definition of the state debt that we are talking about internal and external state debt. Internal state debt is a debt of the state to citizens and legal entities that have bought securities. Internal state debt is arising from involving internal lenders' funds in the national currency. External state debt is a set of state debts on loans in the foreign market. It consists of: loans to finance the state budget and to repay external state debt; loans to support national currency; loans to finance investment and institutional projects; guarantees to foreign counterparties to complete contractual obligations due to non-commercial risks.

Currently, there are many regulatory acts that partly regulate the procedure of state debt formation, maintenance and repayment of it, but they do not create an integrated system to determine the procedure, forms and methods of its effective management. According to Article 92 of the Constitution of Ukraine the procedure for establishing and repayment of state internal and external debt, emission and circulation of state securities, their types and forms are established by the laws of Ukraine: Budget code of Ukraine; Law of Ukraine "On securities and stock market" that came in force on February 23, 2006 № 3480-IV; Law of Ukraine "On state guarantees for restoration of citizens' savings" that came in force on November 23, 1996 № 537/96-VR; Law of Ukraine "On the restructuring the debt of the

Cabinet of Ministers of Ukraine owed to the National Bank of Ukraine” that came in force on April 20, 2000 № 1697-III; Law of Ukraine “On the system of individual deposit guarantee” that came in force on February 23, 2012 № 4452-VI and by the number of subordinate regulatory legal acts: Decree of the Cabinet of Ministers of Ukraine “On measures about the involvement of foreign loans by state or under state guarantees and the provision of state guarantees” that came in force on July 11, 2001 № 787; Decree of the Cabinet of Ministers of Ukraine “On emissions of internal state debt loans” that came in force on January 31, 2001 № 80. State debt management is regulated in the legislative level in Ukraine by: Order of the Ministry of Finance of Ukraine “On approval of the Program of state debt regulation for year 2014” that came in force on February 14, 2014 № 62; Decree of the Cabinet of Ministers of Ukraine “On approval of Medium-term strategy of the state debt regulation for years 2013-2015” that came in force on April 29, 2013 № 320 [4-13].

Conducted analysis of the current legislation on the establishment, maintenance and regulation of state debt in Ukraine allows us to admit that legislative regulation affects not only internal debt problems, but relationship in the sphere of external debt is unsettled legislatively that determines the objective need for the development and adoption of the Law "On state debt of Ukraine " which will set the basis of the legal regulation of internal and external state debt. Such regulation act should concentrate in itself main principles of state policy in this sphere and identify the procedure of the formation of state debt; procedure of its maintenance and repayment; procedure of involving foreign loans and mechanism of their use and repayment; terms of guarantees on debt obligations; procedure of formation and maintaining the register of debt obligations; monitoring and reporting on state debt; procedure for publication of information about state debt status and so on. In particular, it is quite reasonable to follow the example of the publication of state debt in the United States of America where its daily rate is displayed on a board in public places [14].

Researches in foreign countries experience on issues of legislative regulation of state debt is essential as for the impact on the existing debt policy in general and same for the formation of effective mechanism for solving problems of external and internal state debt in Ukraine in conditions of globalization and increase of its impact on monetary relations.

At the present stage of world development there is almost no country which state budget does not use the institution of state debt because all countries, which are developed or are developing, are characterized by a steady trend towards continuous growth of state debt sum due to limitations of their own resources, inefficient use of credits, violation of deadlines of debt obligations.

The monitoring of forming the basic strategic directions of debts policy in foreign countries allows to draw conclusions, that control over public debt securities, coordination of process of its managing is provided through three models: governmental (public debt managing is performed by the ministry of finance and departments), bank (public debt managing is hold by central bank of state); agency model (functions of public debt managing are performed by an impartial institution). There is a clear mutual relation with public fiscal and monetary policy. The governmental model is applied in Czech Republic, Estonia, Spain, Lithuania, Luxembourg, Poland, Slovenia and Italy. Bank model is being criticized and used in Cyprus, Malta and in Denmark only.

The most widespread model of public debt managing among high developed countries is agency model. It's been applied in Austria, Belgium, Finland, France, Greece, the Netherlands, Ireland, Latvia, Germany, Portugal, Slovakia, Sweden, Hungary, Great Britain, meaning in the majority of countries of European Union [15, p. 56]. In Brazil public debt management is executed by National Monetary Council under the direction by Minister of finance, which includes representatives from Ministries of planning, budget and management, social security, industries and commerce [16, p. 17]. Regardless of the institutional public

debt management model, basic tasks are debt security, strategies development, public debt management and liquidity provision.

Function of public debt management in U.S.A. holds Bureau of the Public Debt, the structural unit of the United States Department of the Treasury. Basic tasks: debt security strategies development, debt servicing, summary debt accounting, technical, informational and analytical support of public debt.

The main government body in public debt management in Great Britain is UK Debt Management Office, the executive body of Her Majesty's Treasury. The role of Debt Management Office is securing financing government expenditures. Besides the functioning of National Savings and Investments has great importance.

A similar institution for public debt management is functioning in Portugal. Agency for public debt management deals with providing stable government functioning and effective management of public debt. This Agency reports to the Ministry of finance. Regulation of national debt is formalized in the Law "About the national debt", annual state budget law and decree, that regulates the functioning of the Agency [17].

The experience of Poland seems to be useful for Ukraine, where public debt management is carried out by individual department in structure of the Ministry of Finance and according to the Law "About public finances" Minister of finance is accountable for the public debt management. Public debt management functions are executed by the Public debt department. The main legislative act, which defines priorities in debt of Poland, is the Public Debt Management Strategy for 2011-2014 years.

Practice of legislative debt limits establishing as a method of public debt regulation (U.S.A., Belarus) is quite interesting.

In the USA in 1917 the practice of debt growth restriction was accepted. The establishing of the maximum amount of the federal budget deficit for each fiscal year creates opportunities for the targeted debt management. In France, Germany, there are no restrictions on the absolute size of public debt, but the rate of its growth for the year is under control. The debt policy of the United Kingdom is based on two main principles: "golden rule" – the government borrows only for investing in certain sectors of the economy, rather than spending and the rule "stable investing" – a stable level of internal public debt to GDP ratio – 30% [18].

Among the post-socialist countries, in the Republic of Kazakhstan, except limits of public debt, limits of local debt are legislatively established, in Law "About public borrowings and debt" such concepts are defined: "the limit of government debt", "National Bank of Kazakhstan external debt limit", "local executive body debt limit", that allows to optimize public external debt management. Belarus also imposes legal limits on the growth of internal public debt in annual budget laws.

To sum up, conducted researches allowed to formulate the following conclusions: the current public debt situation in Ukraine requires review and renewal of the regulation of creation, secure and management of public debt, whereas active legislation regulates above-indicated issues insufficiently. Considering the studying of the positive foreign experience, in our opinion, it is advisable to adopt the fundamental Law "About the public debt of Ukraine" and to establish an individual public debt regulation body in structure of the Ministry of Finance with high measure of autonomy in decision-making. In order to determine the legal status of the new public debt management body, its organizational and legal form, should refer to the European and international experience. In European countries, despite some differences in the form of public debt management bodies, between it and the Minister of Finance (and/or Treasury) are subordination relations.

It is advisable to maintain the position of scientists G. Kucher, V. Dudchenko, A. Novoselov, P. Kozeletskyi relating to the necessity of creation of legal conditions for accumulation of the internal savings of state, stirring up foreign investment. Forming the national debt strategy for 3-5 years, it is it is advisable to take into account uses of savings by providing with it the priority sectors of the economy. Improve methods of determining the debt limit in the annual state budget law; prescribe such definitions as “government debt limit”, “external debt limit of the National Bank of Ukraine”, “local executive body debt limit”.

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PRINCIPLES OF ADMINISTRATIVE LAW: GENERAL CHARACTERISTICS OF FEATURES

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Principles of administrative law are specific, original category of a particular field of law. Not enough attention is paid at this in educational and scientific works. Their importance and fundamentality are often underestimated. Nevertheless it's relevant to emphasize the significant influence of principles of administrative law on forming and developing the science of modern administrative law, effective regulation and law application. In order to clarify a real perspective of principles of administrative law, the general features which characterize a particular category need to be mentioned. Such features represent external expression and content of all the principles of administrative law.

Key words: principles, administrative law, features of principles, origin, system, inviolability, universality.

Шарая А.А. ПРИНЦИПЫ АДМИНИСТРАТИВНОГО ПРАВА: ОБЩАЯ ХАРАКТЕРИСТИКА ПРИЗНАКОВ / Запорожский национальный университет, Украина
Принципы административного права являют собой своеобразную категорию соответствующей отрасли права. Не всегда им уделяется достаточное внимание в учебных и научных работах. Чаше их значение и фундаментальность недооценивают. Однако нельзя не отметить весомое влияние принципов административного права на формирование и развитие современной административно-правовой науки, эффективного нормотворчества и правоприменения. Для выяснения реального потенциала принципов административного права, необходимым является определение их общих признаков, которые характеризуют данную категорию. Такие признаки отражают внешнее выражение и содержательное наполнение всех без исключения принципов административного права.

Ключевые слова: принципы, административное право, признаки принципов, основоположность, системность, незыблемость, универсальность.

Шарая А.А. ПРИНЦИПИ АДМІНІСТРАТИВНОГО ПРАВА: ЗАГАЛЬНА ХАРАКТЕРИСТИКА ОЗНАК / Запорізький національний університет, Україна
Принципи адміністративного права є особливою, своєрідною категорією відповідної галузі права. Не завжди їм приділяється достатня увага у навчальних та наукових роботах. Частіш за все їх значення і фундаментальність недооцінюють. Відсутність підвищеної уваги серед науковців до принципів адміністративного права створює уявлення, що така категорія не має істотного впливу на адміністративне право, є вторинною та неважливою для нього. Проте не можна не відзначити вагомий вплив принципів адміністративного права на формування та розвиток сучасної адміністративно-правової науки, ефективної нормотворчості та дієвого правозастосування. Варто помітити, що адміністративне право в