

Public financial-legal regime in the field of civil aviation security

Based on the conceptual positions of the structural construction of the financial and legal regime, the specifics of its elements in the field of civil aviation security are determined.

For realization to achieve the goals and objectives of ICAO, an amount rights and obligations are defined for each Member State as defined in the Convention and its annexes (at the time of submission paper to publication, 19 annexes). The main responsibilities of the participating States are laid down, first of all, in Article 37 of the Convention, which states that each Contracting State undertakes to cooperate in ensuring the highest possible degree of uniformity of rules, standards, procedures and organization relating to aircraft, personnel, airways and auxiliary services on all matters in which such uniformity will contribute to and improve air navigation [1]. Although the Convention does not exactly state and expound how and with whom each state is obliged to cooperate, placing these issues in the internal competence of each State party, we must agree that such discretion cannot be infinitely free. The principle of conscientious performance of duties, enshrined in the UN Charter (Article 2) [2], excludes such an approach, and serves as the legal basis for states to build a national legal policy to implement the requirements of ICAO. In accordance with the practice adopted by ICAO, after adoption, amendments to international standards and recommended practices, which are formed with the active participation of States-members, the latter should apply the relevant standards and practices of ICAO in their national legal system. The mechanism of such interaction reveals the essence of globalization as a process of making, transformation of things or phenomena into global ones. У такому процесі люди світу є єдині в єдине суспільство і функціонують разом [3]. This process is a combination of economic, technological, socio-cultural, and political forces [4]. Important in this process are national means of implementation (transformation, incorporation, legitimization, etc.) international legal norms, creation of internal state mechanisms for the implementation of these norms, their security and protection. One of such mechanisms with a special field of legal regulation is financial and legal mechanism.

Considering the financial law as an independent branch of public law, whose legal interest is made up of national public finances, we must distinguish bounds its legal effect and its role in the system of civil aviation security.

In the theory of law, by establishing the boundaries of legal influence, scientists outline the scope of such influence. In financial-legal branch, the relevant field consist of two groups are financial relationships: 1) financial relations, which are already regulated by financial law (in particular, relations of previous and current fiscal years, as well as relations, the emergence of which is enshrined in financial plan legal acts); 2) financial relations that financial law is not regulated yet, but which can and must be regulated by it [5, p. 105]. As a result of separation the limits of financial-legal

regulation to objective (upper, extensive or external) and subjective (lower, intense or internal) [6, p. 7], we note that the former outline the external border of the sphere of financial and legal regulation of relations, in particular with regard to ensuring security in the field of civil aviation, without claiming, for example, relations that are subject to legal influence from the international, economic and other branches of law. On such "extra-jurisdictional" relations of financial law in the field of research include, for example, international relations in the formation, distribution and use of the budget of ICAO (International Public Fund), the resolution of international financial disputes in compliance with the provisions of the Convention on International Civil Aviation; as well as internal national financial relations within the limits of private economic activity of aviation subjects, etc. Intense (internal) boundaries set the lower bounds of the investigated areas of financial law, which are primarily due to the needs of the ICAO Member State and of the society of such a state as a whole (in particular, aviation carriers, aviation enterprises, consumers of aviation services, etc.) and are determined by the status of the state in this international organization, the minimum necessary list of relations that must necessarily be controlled by the state, without which the state's objectives in its international cooperation cannot be achieved in order to ensure spare security in civil aviation, the performance requirements of the Convention as a whole.

Consequently, in determining the scope of financial-legal influence in context of the issue under research, we must base ourselves on legal facts, that form needs of the state and society in providing security in the field of civil aviation. At the current stage of development of the aviation industry of Ukraine, such external factors are the facts of ratification of international conventions, state membership in ICAO, current decisions of this organization, the requirements of the Convention, and other international aviation related agreements, that give rise to legal rights and subjective obligations relation Ukrainian public finances. For example, based on the content of Articles 61, 62 of the Convention and Article 6.5 of the Financial Regulations of ICAO, the main financial obligation of Ukraine as a Member State is to pay contributions to the regular ICAO budget each year until the first financial year, which includes such contributions (in 2016 - 270,352 Euros and 40,034 Canadian dollars [7], in 2017 - 290,074 Euros and 43,196 Canadian dollars [8]), financial obligations of participating country to finance the expenses of its delegations for participation in the Assembly (held every three years), as well as maintenance costs, daily allowances, expenses from the costs and expenses of persons appointed by the State for work in the Council and its appointed members or representatives in any subsidiary committees and commissions of the organization (Article 63) [1], obligation of a Member State to pay contributions to the ICAO Special Fund within the framework of the implementation of the joint with other member states of the project (Article VIII) [9], as well as other compulsory international monetary contributions. Along with the duties in these relations, a member state also has financially subjective rights, for example, the right to receive funds from the budget of the Regular and other programs for holding meetings, conferences, seminars, workshops and other events on Ukrainian territory.

Ukraine, as a member state of ICAO, has been developing and implementing state policy not only in the field of civil aviation, but also in other related industries,

in order to comply with international legal requirements for the implementation of the standards, recommended practice in the field of civil aviation security. In this state mechanism, an important part is allocated to the financial component, which represents a set of various economic relations and monetary funds that materially ensure the achievement of the goal and the fulfillment of the tasks of the process. Obviously, this component requires a necessary settlement and protection from the law. Based on the delimitation of the spheres of influence of financial law and international law, we consider it necessary to specify the tasks and functions of financial law in particular in achieving the above-mentioned goals.

Formally, from the position commonly accepted in the theory of financial law, the main task of this branch is to establish a legal regime for public finances, as a special type of social relations (their procedural side) and public funds (their material side). In the context of the researched issue it follows that in the field of security of civil aviation an adaptive financial-legal regime, that aimed at regulating, security and protecting public finances (as a complex material and procedural phenomenon), which involved in various social processes (administrative, social, international, etc.) of this sphere in the interests of the state, Ukrainian society. These areas (regulation, protection and protection) reflect the main functions of financial law, that is, indicate the functional orientation of the national financial-legal influence in order to form a targeted effective financial-legal regime.

Based on the conceptual positions of the structural construction of the financial-legal regime (for example, the assistant professor D. Kosse [10]), it is important to identify the features of its elements in the field of civil aviation security.

First, we propose to consider the composition of subjects this legal regime by the criterion of distribution of powers. The first group consists of state bodies, which are entrusted with the functions of financial rule-making, signing of international agreements in the field of civil aviation security and their financial support; state bodies of general and special financial competence (Ministry of Finance of Ukraine, State Treasury Service, State Audit Service of Ukraine, Accounting Chamber, State Fiscal Service of Ukraine); government agencies with separate special financial powers in the field of civil aviation (in particular, State Aviation Service of Ukraine, Ministry of Infrastructure of Ukraine); subjects of legal safety of public finances (state bodies authorized to carry out inspections and apply measures to terminate financial offenses, as well as measures of financial responsibility for committing the relevant violations, namely: the Ministry of Finance of Ukraine, the State Audit Service of Ukraine, the Accounting Chamber, the State Fiscal Service of Ukraine, State Aviation Service of Ukraine, internal audit units of the State Aviation Service of Ukraine and subjects of aviation activity); subjects of legal protection of public finances (in particular, administrative courts, which are authorized to resolve public financial legal disputes, including the payment by air carriers of state fees to the state budget of Ukraine for the purpose of security of civil aviation [11]).

To the second group we propose to include the subjects of aviation activity, that is, individuals and entities, regardless of the form of ownership and subordination, which carry out activities in the field of civil aviation, and which

includes, in particular, the obligation to pay targeted state fees to the state budget of Ukraine; subjects of compulsory aviation insurance of civil aviation [12], namely: 1) insurers - entities - residents of Ukraine who have received a license in accordance with the established procedure for the implementation of mandatory aviation insurance civil aviation; 2) policyholders: aircraft operators; owners of aircraft; aviation carriers; airport operators (aerodromes, heliports, permanent landing sites); certified terrestrial service subjects; organizations that provide air navigation services (which are not structural departments of the airport (aerodrome) or which do not include specialized agencies in the airport (aerodrome), developers, manufacturers of civil aviation technics, maintenance organizations entitled to conduct test flights, including other flights of production necessity (take-off, certification flights or production flights, etc.); educational establishments, that have the right to carry out training flight; individuals or entities, who are customers of aviation works and signed relevant agreements with executive airy work). Of course, in order to acquire the status of a subject of this financial-legal regime, the relevant entity should acquire the general-sector financial legal personality, as well as special legal personality - sufficient and necessary to participate in specific financial legal relationships (for example, in tax relations, within aviation industry; in budgetary legal relations in the formation, distribution and use of funds of the State Specialized Fund for financing of the state expenditures on aviation activity and participation of Ukraine us in the international aviation organizations, in relations on obligatory aviation insurance of civil aviation and others.). It should be noted that the content of the financial-legal status of various subjects of the civil aviation security system is formed from the provisions of national general, air and financial legislation, as well as international legal legislation, in particular the Convention on International Civil Aviation, Financial Regulations and other acts ICAO.

The second element of the financial-legal regime in the field of civil aviation security is the object. Its peculiarity is manifested in the types of finance, which correspond to the general, generic and concrete objects. Thus, the general object of the researched legal regime is all public funds that are involved or should be involved, as well as created (if necessary) for funding civil aviation security, relevant state internal and foreign policy, being in the sphere of Ukrainian jurisdiction (for example, state budget and extrabudgetary funds). The generic object of the legal regime is the category of funds, that is, that part of the state budget funds that are designated and used for the main purpose of meeting the state needs in the field of civil aviation. The purpose of the fund can be regarded as the main purpose of the fund, which does not exclude the implementation of the related purposes of its use. Such a fund is, in particular, the State Special Fund for the financing of national aviation expenditures and Ukraine's participation in international aviation organizations, which is created to ensure the implementation of the main areas of state policy in the field of aviation activities and use of Ukraine's airspace, maintenance and support of the State Aviation Service to fulfill the tasks and functions entrusted to it, the participation and representation of Ukraine in international aviation organizations and other activities (paragraph 2) [13]. The specific object of the financial-legal regime is part of the fund in the form of a budget program approved for implementation of the State Aviation Safety Program

of civil aviation [14]. Such a program is part of the State Specialized Fund for the financing of national expenditures on aviation activities and Ukraine's participation in international aviation organizations, and envisages, on the one hand, the accumulation of financial resources at the expense of airport charges for ensuring aviation security at a particular airport and state aviation security charges, on the other hand - the directing of expenses solely on the provision of aviation safety of the airport in question, as well as on the implementation of nationwide expenditures, and other costs of the State Aviation Service of Ukraine, related to ensuring the fulfillment of its aviation safety functions.

Methods of interaction of subjects with objects as a separate element of the financial-legal regime in the field of civil aviation security are used depending on the competence and authority of subjects in relatively to objects. For example, the State Aviation Service of Ukraine, as the administrator of the State Specialized Fund for the financing of national aviation expenditures and Ukraine's participation in international aviation organizations, applies methods for the formation, distribution and use of funds based on the methods of management of this fund, and on the funds of aviation carriers - such as the supervisory authority by dint of various methods of persuasion, control and compulsion ensures the collection of state fees, the payment of penalties, etc.

The final element of researched legal regime is the system of legal guarantees. As a whole, they are positive and negative responsibilities, procedures for resolving financial-legal disputes in extrajudicial and judicial procedures, caution measures, prevention measures and discontinuation measures of financial violations in the field of financing to civil aviation security. It should be noted, that the improper implementation of the state's financial obligations to ICAO may be as a consequence of "failure to" comply with the relevant legal safeguards, as well as a condition for their correction and activation at the national level.

Additionally, for financial-legal regime in the field of civil aviation security, the following three determinants are mandatory and important: time; space; and number of persons, who are subject to this mode. Based on these conditions, financial law should respond properly to social transformations, changes in international relations of Ukraine in the field of civil aviation security, status of them in the state (content of duties and rights).

Conclusion. Thus, in the civil aviation security system, the role of financial law of Ukraine is in formation to the necessary and sufficient financial-legal regime of public finances as the financial basis of this system. While, the legal instrument of this branch of law corresponds to three main functions: regulatory, security, protective. Moreover, international legal nature of the tasks assigned by Ukraine as a result of its active participation in international aviation activities with its potential financial risks and threats to the state, points out the need to distinguish additional functions of financial law - implementation and security. In context of globalization legal systems and finance in the field of international civil aviation, following the basic idea of protecting the national interests of Ukraine, the study of these functions will allow to develop a system of national financial-legal measures and means of containment, counterbalance, adaptation, security and protection.

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