

UDC 347.73

DOI 10.32755/sjlaw.2022.03.064

**Nishchymna S.,**

Doctor of sciences (Law), Associate Professor,

Head of the Department of Administrative,

Civil and Economic Law and Process,

Academy of the State Penitentiary Service, Chernihiv, Ukraine

ORCID: 0000-0001-7424-7688

## THE PRINCIPLES CONTENT OF FINANCIAL LAW

*The article addresses to the characteristics of the principles content of financial law, since legal principles in financial law constitute a single system and act as one of the elements of the legal regime of public relations regulation in the sphere of public finance. Based on the conducted research, the article proposes to divide the general principles of financial law into two groups: general legal principles (taking into account industry specifics) and 2) general financial and legal principles.*

**Key words:** principles, financial law, general principles of financial law, general legal principles, general financial and legal principles.

**Target setting.** Various principles are used in financial law, which are characterized somewhat differently in legal science. These approaches are largely derived from the science of the theory of state and law, which, in its turn, has many interpretations of the concept of the principles of law. Thus, principles in the theory of state and law are doctrinally defined as ideas or requirements, beginnings, rules, provisions, etc. Ideas are also characterized in different ways by different authors, namely, as: basic or initial (original) guiding, key, etc.

At the same time, scientists agree that the principles, no matter what they are called, reflect the most essential features and purposefulness, objective regularities that determine the essence of the entire legal system, branch of law or legal institution.

**Actual scientific researches and issues analyses.** Among the scientific studies of domestic scientists regarding the principles of financial law, we note the works of: L. Kasianenko, M. Kucheryavenka, T. Latkovska, O. Muzyka-Stefanchuk, O. Orliuk, N. Pryshvy, L. Savchenko and others.

**Purpose of the article** is to study the basic principles of financial and legal science and determination of individual principles content of financial law.

**The statement of basic materials.** It is believed that the principles of law are most clearly reflected as the essence of law in general and all its branches. Financial law is no exception. The outstanding scientist-financier Yu. A. Rovinskyi also paid attention to the principles of financial law, who considered them as the principles of the state's financial activity [1, p. 21].

Legal foundations in financial law form a single system and act as one of the elements of the legal regime of public relations regulation in the sphere of public finance. The principles of financial law reflect and specify general legal principles adjusted by the peculiarities of its legal regulation. Along with the general principles of financial law, there are principles of its sub-branches and institutions, which are quite large in financial law and have their own characteristics.

Financial law is one of the branches of Ukrainian law that does not have a single codified legal act. In scientific discussions, the question of adopting the Financial Code of Ukraine, which would establish the foundations of legal regulation of relations in the field of public financial activity and consolidate the principles of financial law of industry significance, was repeatedly raised. The absence of such a code is probably justified, considering the general array of relations regulated by the norms of financial law. The principles of financial law are contained in various codes and other legal acts, which contributes to the separation of financial and legal principles into separate groups.

The principles of financial law, in our opinion, should meet two main criteria: completeness and practical implementation. Completeness means that the set of principles should be built into a certain system, covering the directions of public financial activity as much as possible, and the procedural (practical) implementation should ensure that the guiding ideas are taken into account in specific legal relationships.

We propose to divide the general principles in financial law into two groups: 1) general legal principles (taking into account industry specifics) and 2) general financial and legal principles.

The general principles on which financial legal relations are based relate to the principles of the general part of financial law, which underlie the legal regulation of social relations in the sphere of public finance. General principles alone are not enough to regulate industry relations. There is a need for special - sectoral and interdisciplinary principles.

General legal principles are understood as principles that are common to law in its international, worldwide and universal understanding; common to all legal systems of the same historical type; for legal subsystems (parties) of a certain legal system of a single society; for all branches of the legal system of a certain society and state [2, p. 108–109].

According to O. F. Skakun, the following principles should be attributed to the main general principles of law: the principle of freedom, the principle of justice, the principle of equality, humanism, democracy, legality [3, p. 240–245]. In our opinion, in the given list, there was a mixing of general legal and general social (general human) principles.

The general legal principles include: the principle of legality, the principle of social justice, the principle of social freedom, the principle of the rule of law, the principle of democracy, the principle of humanism, the principle of equality (or the equality of all before the law), the principle of responsibility for guilt, the principle of equality of all forms of ownership.

The principle of legality means that the observance and strengthening of legality in public financial activities depends on the level of financial discipline in the state and the presence of real (active) mechanisms of responsibility of the subjects of such activities in the event that they commit financial and other offenses.

Legality reflects the legal nature of the organization of social and political life, the organic connection between law and power, law and the state, law and society. The requirement of legality applies equally to all subjects of legal relations, starting with the highest bodies of state power, other state bodies that issue by-laws

within their competence (sphere of law-making), direct executors of laws – that is officials, and ending with public organizations, commercial organizations and citizens (sphere of law enforcement).

The principle of legality acts as the main and central principle of the activity of the state apparatus, therefore, of all subjects of public financial activity.

The norms of the Basic Law of the state should determine the basic principles, rules, directions of public financial activity and act as the basis for all financial legislation. In our opinion, the principle of legality consists in the exact and consistent fulfillment of the requirements of the law by all subjects of financial law and the reasonableness of the application of liability for the commission of an offense. With different approaches to understanding legality as a legal category, it is obvious that the principle of legality is a key (basic) concept for law in general and financial law in particular. The principle of legality reveals the legal reality from the point of view of the practical implementation of the law.

The principle of legality applies equally to all subjects of financial law. It finds its expression in the fact that all public financial activity is regulated by the norms of financial law, compliance with which is ensured, if necessary, by the coercive power of the state. One of the forms of such coercion in financial legal relations is called financial and legal responsibility. The principle of legality provides for the implementation of financial activities at all stages of the movement of fund funds, subject to their regulation by the norms of financial law and the possibility of applying state coercion [4, p. 46].

In financial law, the implementation of the principle of legality requires appropriate, stable and comprehensible legislation. Unfortunately, such features are characteristic of modern financial legislation only partially.

In financial law, the principle of legality consists in compliance with the legislation by all subjects, primarily financial bodies and their officials, who participate in the implementation of public financial activities. Therefore, in financial law and the financial process, all public financial activity must comply with the principle of legality.

The principle of social freedom in financial law finds its expression, for example, in the right to receive compensation at the expense of public funds (in particular, state social insurance funds) in the event of relevant insurance cases; the right of individuals and legal entities to independently dispose of their income after paying all necessary taxes and fees.

The principle of the rule of law in financial law requires the state to implement it in law-making and law-enforcement activities, in particular to laws, which in their content should correspond to the ideas of social justice, freedom, equality, etc.

The rule of law is manifested primarily in the rule of law and consists in the regulation of the most important social relations with the help of laws.

Therefore, in financial law, the principle of the rule of law means that all public financial activity is regulated by legal norms that establish both the financial powers of state-authority subjects and the limitations of their exercise of public power.

The principle of humanism also finds its manifestation rather indirectly in financial law. Thus, any person who is a subject of financial legal relations, who does not have authority, has the right to protect his violated financial rights, to have his case fairly considered by an impartial court.

The principle of equality or equality of all before the law means that there is a single legislation for all subjects of financial legal relations. The famous ancient Roman politician, outstanding orator, philosopher and writer Marcus Tullius Cicero argued that everyone should be subject to the law. Later, this thesis was transformed into the principle of equality of all before the law.

The essence of the principle of responsibility for guilt is that the measures of financial (financial and legal) responsibility rely only on the one who is guilty of violating the relevant legal norms, that is, on the guilty person. In financial law, both a legal entity and an individual who acted on behalf of a legal entity can be held liable for one offense. This principle is an important constitutional principle of the legitimacy of state power. It ensures the growth of subjects' trust in public authorities, and therefore in the state as a whole.

To conclude the abovementioned, we note that not all general legal principles are of particular importance in financial law. But all these principles are basic for legal relations, in particular, financial and legal relations.

We suggest that the general financial and legal principles include: the principle of unity of the financial, budgetary, tax, banking and monetary system of the state; the principle of unity and interaction of financial policy and the financial system; the principle of financial security of the state; the principle of unity and integrity of the system of financial bodies.

The list of principles of financial law presented in modern financial and legal science looks more like a set of arguments justifying certain ideas in the field of public finance, which, unfortunately, are not always agreed upon.

At the same time, some of them regulate the sphere of financial and legal regulation, but also the sphere of all public law and economic turnover. Many scientific works mention the principles of financial law, but at the same time, not all of them reveal their essence. In addition, the authors' visions of definitions and systems of principles may differ significantly.

Despite the fact that for the first time the principles of financial law were given attention back in Soviet times, today the basic financial and legal principles are formed by law-making bodies based on certain legal experience and legal culture of the state and are based on the main provisions of the legal system taking into account the achieved level of development of financial legislation.

The principle of the unity of the financial, budgetary, tax, banking and monetary system of the state has an inter-institutional meaning and purpose. Any financial relationship should not be carried out in isolation from other financial relationships, but in close connection and interaction. For instance, the connection between budget law and tax law is unconditional, because the main source of income for budgets included in the state budget system are taxes included in the tax system. The stability of the banking system depends on the stability of the monetary system of the state.

The continuation of the previous principle is the principle of unity and interaction of financial policy and the financial system,

which means that the independence of public authorities – subjects of financial legal relations should not go beyond the fundamentals of financial policy, on which the stability of the financial system and its individual components depends.

At the current stage, financial policy is a component of the state's economic policy aimed at the formation, distribution and use of centralized and decentralized funds of the state and local self-government bodies. The implementation of financial policy is directly related to the forms and methods of public financial activity, and aims at the most effective distribution of national income both among economic sectors and individual subjects.

Policy is a prerequisite for the formation of any legal norms. In this context, one should agree with the statement that financial policy is a component of financial and legal regulation and a factor affecting its maintenance, manifested in numerous and diverse functions of creation, distribution, redistribution and use of funds. That is, all relations surrounding public finances are interconnected and interdependent on the financial policy of the state.

Scientist P. M. Godme wrote that regarding financial policy and because of the fact that public spending is seen as an evil, financial policy is guided by one principle: to achieve maximum economy and the greatest possible reduction of expenditure. Such a simplified financial policy continues to form the basis of the liberal doctrine [5, p. 70].

Thus, the principle of the unity of financial policy and the financial system of the state in the context of financial law determines the interrelationship of all links of the financial system and the constant influence of state measures on public finances.

The unity of the financial system is a necessary condition for the unity of the state and its sovereignty. It is determined by the unity of the monetary, budgetary and tax systems, as well as the inadmissibility of establishing customs borders within the state and ensuring the freedom of movement of goods, works, services and financial resources.

In the conditions of political and economic instability, the principle of financial security of the state occupies a special place. World experience shows that when building a model of the financial system from the standpoint of national security, it is important not

to go to extremes. Thus, it is necessary to avoid both the decentralization of the financial system and the excessive centralization of financial resources in the state budget, which excludes the independent development of the private sector of the economy.

In each country, the level of financial security of the state is determined by a certain set of factors. The most characteristic are: the degree of economic openness of the state and access to the domestic market; the degree of development of the financial market; the attractiveness of the country's financial climate; degree of regulatory and legal support of the financial market; the degree of public trust in the financial policy of the state, which is manifested in its participation in operations on the financial market; the effectiveness of the fight against financial crimes.

The next general financial and legal principle is the unity and integrity of the system of financial bodies. In a general sense, financial bodies are subjects of financial law that make up the financial apparatus of the state. In turn, the financial apparatus of the state is a component of the state apparatus, which is entrusted with the function of leading and managing finances.

In our opinion, the principle of unity and integrity of the system of financial bodies should be observed in all spheres of public financial activity (budgetary, tax, banking, etc.) and relate to the creation and functioning of those bodies that carry out this activity. In addition, it is necessary to pay attention to the coordination of activities of various bodies.

Thus, the list of general financial and legal principles is not wide enough, although the spectrum of social relations they cover is quite important for the functioning of the state. A significant factor is the observance of financial and legal norms in their application and implementation in practical activities.

**Conclusions.** The principles of financial law are the basic principles established in various formal sources. In the functional aspect, the principles act, on the one hand, as ascending principles of legal regulation, which ensure the consistency and effectiveness of the system of legal norms, on the other hand, as direct regulators of the behavior of participants in financial legal relations.



## References

1. Rovynskyiv, E. A. (1960), *Basic issues of the theory of Soviet financial law*, State Publishing House of Law Literature, Moscow.
2. Kolodii, A. M. (1998), *Principles of Ukrainian law*, Yurinkom Inter, Kyiv.
3. Skakun, O. F. (2000), *Theory of the state and law*, Konsum, Kharkiv.
4. Voronova, L. K., Kucheriavenko, M. P., Prishva, N. Yu. and others (2009), *Financial law of Ukraine*, Legal unity, Kyiv.
5. Godme, P. M. (1978), *Financial law*, Progress, Moscow.

**Ніщимна С. О.,**

доктор юридичних наук, професор,  
завідувач кафедри адміністративного,  
цивільного та господарського права і процесу,  
Академія Державної пенітенціарної служби, м. Чернігів, Україна  
ORCID: 0000-0001-7424-7688

## ЗМІСТ ПРИНЦИПІВ ФІНАНСОВОГО ПРАВА

*Стаття присвячена характеристиці змісту принципів фінансового права, оскільки правові принципи у фінансовому праві становлять єдину систему та виступають одним із елементів юридичного режиму регулювання суспільних відносин у сфері публічних фінансів.*

*У фінансовому праві застосовуються різні принципи, які в теорії держави і права доктринально визначаються як ідеї або вимоги, початки, правила, положення тощо. Разом із цим науковці погоджуються, що принципи, як би їх не називали, відображають найбільш суттєві особливості та цілеспрямованість, об'єктивні закономірності, які визначають сутність усієї системи права, галузі права чи правового інституту.*

*Правові засади у фінансовому праві утворюють єдину систему і виступають одним із елементів юридичного режиму регулювання суспільних відносин у сфері публічних фінансів. У принципах фінансового права відображаються та конкретизуються загальноправові засади, скориговані особливостями його правового регулювання. Поряд із загальними принципами фінансового права діють принципи його підгалузей та інститутів, яких у фінансовому праві достатньо велика кількість, що мають свої особливості.*

*На підставі проведеного дослідження у статті запропоновано розділити загальні принципи фінансового права на дві групи: 1) загальноправові засади (з урахуванням галузеві спеціфіки) та 2) загальні фінансово-правові засади.*

*До загальних фінансово-правових засад запропоновано відносити: принцип єдності фінансової, бюджетної, податкової, банківської та грошової системи держави; принцип єдності та взаємодії фінансової політики та фінансової системи; принцип фінансової безпеки держави; принцип єдності та цілісності системи фінансових органів.*

**Ключові слова:** принципи, фінансове право, загальні засади фінансового права, загальноправові засади, загальні фінансово-правові засади.