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SYSTEM OF PUBLIC ADMINISTRATION OF CURRENCY TRADING

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The article is devoted to the definition of the system of public administration of trade in currency values, the problem of theoretical substantiation of its elements, the main types of manifestations of the administration of this sphere, the study of the subjects of the implementation of administration functions, the study of the current legislation regulating this sphere of public-legal relations.

Particular attention is paid to the definition of the content of the category “trade in currency values”, the disclosure of the legal nature and features of the category “public administration”, the outline of the approaches to the definition of its content and constituent elements available in domestic science. The definition of the system of public administration of trade in currency values and its constituent elements was carried out within the framework of the instrumental theory in law.

It was established that, taking into account the initial provisions of the instrumental theory, the instruments of public administration of currency trading in Ukraine should be considered the norms of the current legislation, which determine the procedure for carrying out, in particular, the licensing of this activity, its control, taxation, the application of other management measures, prohibitions in this sphere, activity and law-enforcement acts of public administration bodies that carry out such management activities are empowered to impose administrative and financial sanctions. A proper definition of the category “administration of trade in currency values in Ukraine” is proposed.

It was determined that the administration of trade in foreign exchange values takes place on the basis of complexity, reasonableness, flexibility of implementation and adaptability to the conditions of application of control and other measures, the expediency of their application, and orientation towards the consistent solution of current and long-term tasks of the state’s currency policy.

The peculiarities of the functioning of subjects of the administration of currency trade in Ukraine, including the National Bank of Ukraine, the Ministry of Economy of Ukraine, the National Commission for Securities and the Stock Market, the State Tax Service of Ukraine and the Cabinet of Ministers of Ukraine in general, have been determined.

It was found that the main subject of the administration of the outlined spheres of public legal relations is the National Bank of Ukraine. It is he who implements administrative, regulatory, control and other instruments in the field of currency relations. At the same time, other areas of implementation of the administration are disclosed, in particular, the activity of public administration bodies within the framework of taxation procedures of the researched activity is outlined.

Keywords: currency, foreign exchange market, currency values, public administration, trade in currency values, system of public administration of trade in currency values.

Formulation of the problem. The financial and economic security of the state depends not only on geopolitical factors and the state of the domestic market of financial services, but also on the quality of the current legislation, which determines the content and direction of public administration measures in the financial and economic sphere of the state, the effectiveness of the activities of state institutions that are empowered to administer the main financial and economic processes taking place in the state. In modern conditions, an important direction of strengthening the guarantee of the financial and economic security of the state is the improvement of the legal support of the public administration of legal relations related to the foreign exchange market, in particular, the trade of currency values in Ukraine.

In view of this, the study of the system of public administration of trade in currency values, the problems of theoretical substantiation of its elements, the main types of manifestations of the administration of this sphere, the subjects of the implementation of administration functions, the current legislation regulating this sphere of public-legal relations deserves special attention. A detailed understanding of these issues is the key to the formation of ways to improve the system of public administration of trade in currency values, to improve the tools that form this system and state policy in this area in general.

Analysis of the study of the problem. The theoretical basis of the study of the system of public administration of trade in currency values became the works of domestic researchers of instrumental theory in law, in particular such as O. Onufrienko [1] and O. Zaychuk [2], researchers of the field of public management and administration, including I. Binko [3] and V. Bakumenko and P. Nadolishnyi [4]. The deepening of these studies in view of the specifics of the sphere of trading in currency values and the unsolved problems that exist in it.

The aim is a theoretical definition of the public administration of trade in currency values, its system and its constituent elements.

Presenting main material. On the foreign exchange market of our country, transactions regarding the purchase and sale of non-cash and cash foreign currency and bank metals are constantly taking place. These legal relations involve banking and non-banking institutions, bank clients, as well as the National Bank.

In modern conditions, the state is entrusted with the important tasks of currency regulation and control. Its implementation is closely related to the organization of the exchange rate system, protection and provision of the necessary degree of convertibility of the national monetary unit, regulation of the payment function of foreign currency, organization of the internal currency market, regulation and regulation of banking activities with currency values and regulation of the processes of formation and movement of currency capital, etc. [5, p. 96].

The structure of the currency market of Ukraine is determined by the regulations of the National Bank of Ukraine.

At the same time, the main directions of currency regulation include the regulation of banking and other activities with currency values, in particular, the organization of the administration of trade in currency values in Ukraine.

Art. 1 of the Law of Ukraine “On Currency and Currency Transactions” dated June 21, 2018 No. 2473-VIII proposes to define trade in currency values by operations of their purchase, sale, and currency exchange in both cash and non-cash form [6].

Public administration is a constituent element of public management. There are attempts to explain its content through the process of achieving national goals and interests thanks to the active activity of legislative, executive and judicial authorities and local self-government bodies. Some scientists understand public administration as the activity regulated by current legislation related to the adoption of administrative decisions, the provision of administrative services, and the implementation of internal management activities in the system of the subject of public administration [3, p. 44]. Some differentiate public administration in a narrow and broad sense. A narrow approach actualizes the managerial activity of executive authorities, while a broad approach actualizes the entire system of government institutions at the national, regional, and municipal levels [4, p. 8].

In general, it seems appropriate to define public administration as a system of state tools (means) aimed at achieving the strategic objectives of the development of collateral legal relations in a certain area.

Scientists single out among the elements of public administration that form its structure, the regulatory and legal system, public administration and tools of public administration. The first element, in their opinion, is a system of official written documents approved according to the prescribed form by the public authorities, the second represents a wide list of public institutions endowed with the necessary competence, in particular with regard to the implementation of state coercion, in order to implement public interests, the third – reflects administrative activity and ways and means of influence for public administration in the sphere of public relations [7, p. 4–5].

However, such an approach seems somewhat dubious and does not correlate with the main approaches developed by representatives of domestic legal science within the framework of instrumental theory in law. Proponents of this theory consider legal instruments or means as a system of substantive and operational legal phenomena, with the help of which specific subjects of legal relations are able to achieve private and public goals [1, p. 14–15]. These phenomena are united by normative means (legal norms, legal acts of a normative and law-enforcement nature), incentives and punishments, benefits and prohibitions, various actions of law enforcement subjects [2, p. 14–15].

An important place in the system of these means is also occupied by the instruments of administrative coercion, which ensure the imperative influence of the subjects of public administration on members of society in order to normalize the social relations in which they enter, bring them to the requirements defined by the state in the current legislation, prevent torts and punish guilty persons [7, p. 4–5].

Achieving the efficiency of public administration is determined by indicators of the effectiveness of satisfying the public interest and the private interests of members of society that are related to it, the clarity of the system of public administration bodies that are empowered to realize such interests, the effectiveness of regulatory and legal acts that regulate a certain sphere of public relations, and reducing the number of violations of current legislation in the defined area, etc.

In view of the original provisions of the instrumental theory, the instruments of public administration of currency trading in Ukraine should be considered the norms of the current legislation, which determine the procedure for carrying out, in particular, the licensing of this activity, its control, taxation, the application of other management measures, prohibitions in this area, activity and legal enforcement acts of public administration bodies implementing such management activities, empowered to impose administrative and financial penalties.

Subjects of currency regulation in the sphere of trade in currency values are public administration bodies and institutions, bodies that implement regulatory measures aimed at streamlining such operations with currency and currency values.

The basis of the public administration of trade in currency values in Ukraine is the norms of the Law of Ukraine “On Financial Services and Financial Companies” dated December 14, 2021 No. 1953-IX [8], which was put into effect on January 1, 2024, and the main subjects public administration of trade in currency

values in Ukraine, which implements its activities on the basis of this law, is recognized by the National Bank of Ukraine, the Ministry of Economy of Ukraine, the National Commission for Securities and the Stock Market, the State Tax Service of Ukraine and the Cabinet of Ministers of Ukraine in general.

At the same time, the main subject of currency regulation in the defined area is the National Bank of Ukraine. It is he who implements administrative, regulatory, control and other instruments in the field of currency relations. Its administration measures apply to enterprises, commercial banks, currency exchanges, investment funds, and brokerage enterprises.

The administration of the trade in currency values of this activity is based on the principles of complexity, reasonableness, flexibility of implementation and adaptability to the conditions of application of control and other measures, the expediency of their application, and orientation towards the consistent solution of current and long-term tasks of the state's currency policy.

Trade in currency values, given the content of the mentioned law, is a type of financial services, which is implemented by financial companies as financial institutions, which, based on the appropriate license, can carry out activities related to the implementation of one or more types of such services.

Trade in currency values is carried out exclusively through authorized institutions that have received a license for such activity.

In particular, financial companies that implement such financial services for trading foreign exchange values, carry out such activities exclusively on the basis of a license of the National Bank of Ukraine to carry out foreign exchange transactions, guided by the provisions of the Law of Ukraine "On Currency and Currency Transactions" dated June 21, 2018 No. 2473-VIII.

The norms of this law determine the mandatory procedures for the administration of the defined sphere of legal relations, in particular, the entry of providers of these services into the Register of foreign currency exchange points, which is maintained by the National Bank of Ukraine. It was introduced on January 1, 2023 in compliance with the requirements of the Law of Ukraine "On Amendments to the Tax Code of Ukraine and other laws of Ukraine regarding the specifics of taxation of activities involving trade in currency values in cash form" dated November 3, 2022 No. 2720-IX, and its procedure outlined in the Regulations on the Register of Foreign Currency Exchange Points, approved by the Resolution of the Board of the National Bank of Ukraine dated December 30, 2022 No. 254 [9].

The public administration of such activity requires the NBU to enter information into this register using a special form defined by legislation within five working days from the day of its receipt.

Non-banking financial institutions submit such information according to the form established in the aforementioned law, whereas banks submit such information through the information system of the State Register of Banks.

At the same time, it should be noted that an important component of the process of administration of currency trading is the licensing of activities of providers of specified services. In particular, Art. 9 of the Law of Ukraine "On Currency and Currency Operations" dated June 21, 2018 No. 2473-VIII stipulates that the administration of such activities is carried out by the National Bank of Ukraine. If the provision of such services by banks is implemented on the basis of a banking license, then non-banking financial institutions receive licenses from the National Bank of Ukraine to carry out such currency operations.

Quite often, violations of the current legislation lead to the cancellation of the relevant licenses. As an example, we can cite the fact that the NBU revoked the license to carry out foreign exchange transactions in the part of cash currency trading, issued by Artem Financial Company LLC in 2024. This decision was approved by the Committee on Supervision and Regulation of Non-Banking Financial Services Markets due to the NBU's determination of data inaccuracy, declared in the documentation that was submitted to obtain a license to trade currency values [10].

The implementation of control measures for activities related to the trading of currency values is an integral part of the public administration of this sphere, which is regulated by the resolution of the NBU Board of July 29, 2022 No. 165 "On the peculiarities of regulation and supervision of the implementation of

the activity of trading currency values in cash form during the period of validity martial law and amendments to the Resolution of the Board of the National Bank of Ukraine dated March 6, 2022 No. 39”.

In particular, the National Bank carries out on-site supervision, unscheduled on-site inspections, the purpose of which is to identify violations of currency legislation and bring the guilty to justice, including the revocation (cancellation) of the license to trade in currency values, which is carried out on the basis of the Regulation on currency supervision, approved by a resolution of the NBU Board dated January 3, 2019 No. 13 [11].

At the same time, it should be noted that the implementation of control measures for trading in currency values underwent significant changes during the war in Ukraine. In particular, the NBU slightly revised the procedure for carrying out unscheduled on-site inspections of institutions that trade in currency values during martial law. The legal basis for the changes was the regulations of the resolution of the Board of the NBU dated June 18, 2024 No. 68 “On Amendments to the Resolution of the Board of the National Bank of Ukraine dated July 29, 2022 No. 165” [11].

In view of the content of the Resolution of the CMU On Approving the Regulation on the Ministry of Economy of Ukraine of August 20, 2014 No. 459, it is this institution that analyzes the impact of foreign exchange and monetary policy instruments on the development of the economy, develops recommendations to improve their use, and predicts the impact foreign exchange market, other markets of financial services on the country’s economy.

Speaking about the public administration of trade in currency values in Ukraine, one should mention the activities of public administration bodies that implement management measures within the framework of the procedures for taxation of the activity under study. It is the State Tax Service of Ukraine that is endowed with the broadest set of administrative measures to influence this sphere of legal relations.

The Law of Ukraine dated November 3, 2022 No. 2720-XX “On Amendments to the Tax Code of Ukraine and other laws of Ukraine regarding the specifics of taxation of the activity of trading currency values in cash form”, in particular, from January 1, 2023 provides for the payment of advance tax payments on profit of enterprises for structural subdivisions that carry out trade in currency values in cash form.

Taxpayers who trade in currency values in cash are required to pay corporate income tax advance payments for each foreign currency exchange point entered in the Register of Foreign Currency Exchange Points.

Foreign currency exchange points are subject to entry in the Register of foreign currency exchange points, which is maintained by the National Bank of Ukraine in accordance with the procedure determined by it.

By the 10th (inclusive) of the current month, the National Bank of Ukraine submits to the central executive body that implements the state tax policy information on foreign currency exchange points entered in the Register as of the first day of the current month, indicating their location and business entity , on behalf of which the relevant foreign currency exchange point has the right to trade foreign currency in cash form.

In the aspect of the investigated question, it should be mentioned the broad powers of the National Bank to detect violations of currency legislation and punish the guilty on the basis of the Regulations on Currency Supervision, approved by the NBU Board Resolution No. 13 of January 3, 2019. In particular, it has the ability to make a decision on restrictions, suspension or termination implementation by the institution of certain types of currency operations, license suspension, etc. [12].

Conclusions. Summing up the above, we believe that the public administration of currency trading in Ukraine is a system of state tools (means), which is coordinated by a wide list of public legal institutions, which are empowered by the state, including the use of state coercion, in order to satisfy public interests , related to the purchase, sale, exchange of currency values both in cash and non-cash form and ensuring the achievement of national goals and interests in the financial and economic sphere and financial and economic security of the state in general.

REFERENCES

1. Onufrienko, O. V. (2004). *Pravovi zasoby u konteksti instrumentalnoi teorii prava* [Legal means in the context of the instrumental theory of law]: avtoref. dys. ... kand. yuryd. nauk: 12.00.07. Kharkiv. 18 p. [In Ukrainian].
2. Zaiets, A. P., Zhuravskiy, V. S., Kopylenko, O. L., Onishchenko, N. M. (2006). *Teoriia derzhavy i prava. Akademichnyi kurs: pidruchnyk* [Theory of the state and law. Academic course]. Kyiv: Yurinkom Inter, 2006. 685 p. [In Ukrainian].
3. Binko, Ihor (2020). *Publichne upravlinnia i publichne administruvannia: spivvidnoshennia poniat* [Public management and public administration: the relationship of concepts]. Visnyk APSVT. No. 3–4. P. 41–47. [In Ukrainian].
4. Bakumenko, V. D., Nadolishnii, P. I. (2003). *Teoretychni ta orhanizatsiini zasady derzhavnoho upravlinnia* [Theoretical and organizational principles of public administration]: navch. posib. Kyiv: Milenium. 256 p. [In Ukrainian].
5. Kushchik, A. P. (2013). *Mizhnarodni rozrakhunkovi i valiutni operatsii* [International settlement and currency operations]: navchalno-metodychnyi posibnyk. Zaporizhzhia: ZNU, 2013. 116 p. [In Ukrainian].
6. *Pro valiutu i valiutni operatsii* [About currency and currency operations]: zakon Ukrainy vid 21 chervnia 2018 r. No. 2473-VIII. *Vidomosti Verkhovnoi Rady Ukrainy*. 2018. No. 30. P. 5 [In Ukrainian].
7. Taldonova, K. H. (2022). *Publichne administruvannia sferoiu akvakultury* [Public administration in the field of aquaculture]: dys. ... d-ra filosof.: 081 – Pravo. Kyiv. 219 p. [In Ukrainian].
8. *Pro finansovi posluhy ta finansovi kompanii* [About financial services and financial companies]: zakon Ukrainy vid 14 hrudnia 2021 r. No. 1953-IX. *Vidomosti Verkhovnoi Rady Ukrainy*. 2023. No. 3–4. P. 2.
9. *Polozhennia pro Reiestr punktiv obminu inozemnoi valiuty* [Regulations on the Register of Foreign Currency Exchange Points]: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 30 hrudnia 2022 r. No. 254. *Ofitsiinyi visnyk Ukrainy*. 2023. No. 4. P. 377.
10. *Prysiazhna Liudmyla Natsbank anuliuвав litsenziiu velykii merezhi valiutnykh obminnykiv* [Bank canceled the license of a large network of currency exchangers]. *LIGA ZAKON Biznes*. https://biz.ligazakon.net/news/229799_natsbank-anulyuvav-litsenziiu-veliky-merezh-valyutnykh-obminnykiv [In Ukrainian].
11. *Polozhennia pro valiutnyi nahliad* [Provisions on currency supervision]: postanova Pravlinnia NBU vid 03 sichnia 2019 roku No. 13. URL: <https://zakon.rada.gov.ua/laws/show/v0013500-19#Text> [In Ukrainian].
12. *Polozhennia pro valiutnyi nahliad* [Provisions on currency supervision]: postanova Pravlinnia NBU vid 03 sichnia 2019 roku No. 13. URL: <https://zakon.rada.gov.ua/laws/show/v0013500-19#Text> [In Ukrainian].

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Онуфрієнко О. В. Правові засоби у контексті інструментальної теорії права: автореф. дис. ... канд. юрид. наук: 12.00.01. Харків, 2004. 18 с.
2. Теорія держави і права. Академічний курс: підручник / О. В. Зайчук (відп. ред.), А. П. Заєць, В. С. Журавський, О. Л. Копиленко, Н. М. Оніщенко. Київ : Юрінком Інтер, 2006. 685 с.
3. Бінько Ігор. Публічне управління і публічне адміністрування: співвідношення понять. *Вісник АПСВТ*. 2020. № 3–4. С. 41–47.
4. Бакуменко В. Д. Надолішний П. І. Теоретичні та організаційні засади державного управління: навч. посіб. Київ: Міленіум, 2003. 256 с.
5. Кущик А. П. Міжнародні розрахункові і валютні операції: навчально-методичний посіб. Запоріжжя: ЗНУ, 2013. 116 с.
6. Про валюту і валютні операції: закон України від 21 червня 2018 р. № 2473-VIII. *Відомості Верховної Ради України*. 2018. № 30. Ст. 5.
7. Талдонова К. Г. Публічне адміністрування сферою аквакультури: дис. ... д-ра філософ.: 081 – Право. Київ, 2022. 219 с.
8. Про фінансові послуги та фінансові компанії: закон України від 14 грудня 2021 р. № 1953-IX. *Відомості Верховної Ради України*. 2023. № 3–4. С. 2.
9. Положення про Реєстр пунктів обміну іноземної валюти: Постанова Правління Національного банку України від 30 грудня 2022 р. № 254. *Офіційний вісник України*. 2023. № 4. С. 377.
10. Присяжна Людмила. Нацбанк анулював ліцензію великій мережі валютних обмінників. *LIGA ZAKON Бізнес*. https://biz.ligazakon.net/news/229799_natsbank-anulyuvav-litsenziiu-veliky-merezh-valyutnykh-obminnykiv

11. Положення про валютний нагляд: постанова Правління НБУ від 03 січня 2019 року № 13. URL: <https://zakon.rada.gov.ua/laws/show/v0013500-19#Text>

12. Положення про валютний нагляд: постанова Правління НБУ від 03 січня 2019 року № 13. URL: <https://zakon.rada.gov.ua/laws/show/v0013500-19#Text>

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СИСТЕМА ПУБЛІЧНОГО АДМІНІСТРУВАННЯ ТОРГІВЛІ ВАЛЮТНИМИ ЦІННОСТЯМИ

Стаття присвячена визначенню системи публічного адміністрування торгівлі валютними цінностями, проблемі теоретичного обґрунтування її елементів, основних видових проявів адміністрування цієї сфери, дослідженню суб'єктів реалізації функцій адміністрування, дослідженню чинного законодавства, що регламентує цю сферу публічно-правових відносин.

Особливу увагу присвячено визначенню змісту категорії “торгівля валютними цінностями”, розкриттю правової природи та особливостей категорії “публічне адміністрування”, окресленню наявних у вітчизняній науці підходів до визначення його змісту та складових елементів. Визначення системи публічного адміністрування торгівлі валютними цінностями та її складових елементів здійснено у рамках інструментальної теорії в праві.

Констатовано, що з огляду на вихідні положення інструментальної теорії, інструментами публічного адміністрування торгівлі валютними цінностями в Україні треба вважати норми чинного законодавства, які визначають порядок здійснення, зокрема й ліцензування цієї діяльності, контролю за нею, оподаткування, застосування інших управлінських заходів, заборон у цій сфері, діяльність та правореалізаційні акти органів публічного управління, що здійснюють таку управлінську діяльність, мають повноваження щодо накладення адміністративних та фінансових стягнень. Запропоновано власне визначення категорії “адміністрування торгівлі валютними цінностями в Україні”.

Визначено, що адміністрування торгівлі валютними цінностями відбувається на засадах комплексності, обґрунтованості, гнучкості реалізації та адаптивності до умов застосування контрольних й інших заходів, доцільності їхнього застосування, скерованості на послідовне вирішення поточних та довгострокових завдань валютної політики держави.

Визначено особливості функціонування суб'єктів адміністрування торгівлі валютними цінностями в Україні, серед яких Національний банк України, Міністерство економіки України, Національна комісія з цінних паперів та фондового ринку, Державна податкова служба України та Кабінет Міністрів України загалом.

З'ясовано, що головним суб'єктом адміністрування окресленої сфери публічних правовідносин є Національний банк України. Саме він реалізовує адміністративні, регуляторні, контрольні й інші інструменти у сфері валютних відносин. Водночас розкрито й інші напрями реалізації адміністрування, зокрема окреслено діяльність органів публічного управління в межах процедур оподаткування досліджуваної діяльності.

Ключові слова: валюта, валютний ринок, валютні цінності, публічне адміністрування, торгівля валютними цінностями, система публічного адміністрування торгівлі валютними цінностями.