

UDC 340.131.4

DOI 10.32755/sjlaw.2023.02.097

**Nishchymna S.,**

Doctor of Sciences (Law), 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;

**Balyshev M.,**

Post graduate of the Department of Administrative, Civil and  
Economic Law and Process, Academy of the State Penitentiary Service,  
Chernihiv, Ukraine  
ORCID: 0009-0000-6880-0205

## LEGALITY AS THE PRINCIPLE OF LEGAL RESPONSIBILITY

*The article is devoted to the characteristics of the principle of legality in the context of its application as a principle of legal responsibility, which is inherent in all branches of law, including financial law and tax law, as a sub-branch of the latter. An in-depth study of the principles of legal responsibility allows practitioners, using the assets of scientists, to direct efforts to eliminate gaps in the law.*

**Key words:** legal responsibility, principles, legality, financial law, tax law.

**Target setting.** The principles of legal responsibility are basic, fundamental provisions that express the essence and purpose of legal responsibility, as well as determine the laws of its functioning and the order of its implementation.

Legal responsibility as an institution of law is inherent in various branches of law and includes a system of principles that consists of guiding ideas (directions) that reveal its branch essence.

The principles of legal responsibility are an integral part of the structure, reveal its essence and patterns of application. The principles of legal responsibility have always received considerable attention from the side of scientists, because studies of this category allow the most in-depth understanding of the laws of the functioning of legal responsibility as one of the basic institutions of legal theory. In addition, an in-depth study of the principles of legal responsibility allows practitioners, using the assets of academics, to direct efforts to eliminate gaps in the law. This practice accelerates the processes

associated with achieving one of the goals of legal responsibility: ensuring law and order in the state.

**Actual scientific research and issues analyses.** The issues of the legal responsibility principles in general and its particularities and classification, in particular, are constantly being studied by scientists who study general theoretical issues and branch approaches, namely: S. Alekseev, O. Bandurko, M. Koziubra, L. Nalyvaiko, N. Onishchenko, A. Poliakov, O. Petryshyn, P. Pabinovych, Yu. Peshetova, O. Ckakun, O. Tykhomyrov, M. Tsvik, Yu. Shemshuchenko, and many others.

**The purpose of the article is** to reveal the theoretical aspects of understanding the principles of legal responsibility in general and the principle of legality in legal responsibility, in particular.

**The statement of basic materials.** Since the legal institution of legal responsibility is not stable in the dynamic conditions of the development of society, there is a constant scientific interest in it and its principles. In addition, scientists pay a lot of attention not only to the set of principles of legal responsibility, but also to research individual principles as part of the system. The approaches of scientists to revealing the essence of the principles of legal responsibility are not unambiguous. Thus, some scientists emphasize that the principles of legal responsibility have a formal expression and are generally binding. The principles of legal responsibility constitute the overall system, which in turn ensures the functionality of this institution. The principles of legal responsibility should reflect the most fundamental, legal, and moral connections on which legal responsibility is based [1, p. 26].

Others prove that an ambiguous understanding of this category has been formed in the scientific literature, which is due to a number of factors: first, the principle – the category is objective-subjective, its definition in most cases depends on legal awareness, research focus, scientific school; secondly, this definition was formed over a long period of time, its content changed depending on the changes that occurred in society and the scientific worldview; thirdly, different directions in the understanding of the category "legal responsibility" itself cause a different understanding of its principles, their ambiguous classification and system [2, p. 286].

We agree with the point of view of scientists who emphasize that the principles of legal responsibility, which are a future component of the institution of legal responsibility, included in the legal system in general, cannot but "intersect" with the general legal principles of law. Instead, they have their own specificity in each of the branches of legal science.

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 one society; for all branches of the legal system of a certain society and state [3, p. 108–109].

One of such general legal principles is the principle of legality, which is actively applied in all areas of law in order to ensure law and order in the state. The principle of legality provides that the activities of state bodies are carried out exclusively on the basis, within the limits of authority and in the manner determined by the laws of Ukraine. Legal responsibility arises only for actions provided for by law, is applied on the basis of strict compliance with the procedure defined by law, bringing a person to legal responsibility is initiated only by competent authorities provided by law.

In the Decision of the Constitutional Court of Ukraine dated January 25, 2012 No. 3-пн/2012, it is noted that the principle of legality provides for the application by the courts of the laws of Ukraine, as well as normative legal acts of the relevant state authorities, issued on the basis, within the limits of authority and in the manner that are provided by the Constitution and laws of Ukraine [4].

The principle of legality provides that responsibility of a positive or negative nature arises in accordance with the requirements of the law, applied by competent bodies or officials. Exemption from liability must be carried out on legal grounds, the type and limits of liability must be established by law. A law that worsens the position of the subject of legal responsibility has no retroactive effect, and vice versa. The principle of legality is closely related to both punitive, educational and preventive functions

of legal responsibility, influencing the nature, content and purpose of these functions [2, p. 285].

Observance and strengthening of legality in public financial activities in general and tax law, in particular, depends on the level of financial (including tax) discipline in the state and the presence of real (effective) mechanisms of responsibility of the subjects of such activities in the event that they commit financial (including tax) offenses. In this process, the effectiveness and implementation of the principle of legality is of paramount importance.

The term "legality" is derived from the term "law" and, being a complex concept, covers all aspects of the life of law – from its role in the creation of the law to the implementation of its norms in legal practice. 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 equally applies to higher state authorities, other state bodies that issue by-laws within their competence (the sphere of law-making), direct executors of laws – officials, as well as public organizations, commercial organizations, citizens (the sphere of law enforcement) [5, p. 58].

In our opinion, the principle of legality consists in: 1) exact and consistent fulfillment of the requirements of the law when implementing measures of legal responsibility (including financial); 2) the validity of the application of responsibility to the offender. It is implemented in all branches of law, including financial (and tax) law, since subjects of financial (tax) law must comply with the requirements of the law when exercising their rights and fulfilling their duties.

Legitimacy acts as one of the most important methods of state management of society, principles of state apparatus activity and people's behavior, principles of legal regulation. In addition, it is customary to attribute legality to the general legal principles of law, since the normative functioning of the legal system is possible only under the condition of its steady and consistent transformation into life. Reflecting one or another approach to this complex social and state-legal phenomenon, various authors consider legality as a principle, requirement, method, political-legal regime, an element of

democracy and culture, a component of social relations regulation. The majority of scientists define legality as a concept that encompasses the observance and implementation of legal norms (laws, by-laws) by all subjects of social relations [5, p. 59–60]. This principle is implemented in all branches of law. Subjects of law, including financial (tax), when exercising their rights and fulfilling their duties, must comply with the requirements of legality.

The principle of legality reveals legal validity from the point of view of practical implementation of law. In scientific literature in general, and financial and legal literature in particular, a unified approach to the definition of this concept, its initial elements and main aspects of implementation has not been formed.

The concept of legality has always been inextricably linked with the system of law enforcement and ensuring justice. That is why these principles are closely interconnected in their implementation. In the concepts of many scientists, philosophers, and politicians, these concepts were inextricably linked [6, p. 76].

At the same time, the idea of legality is understood as the opinion formed in legal consciousness about the expediency and necessity of real legal behavior of all participants in legal relations, in the presence of which there is no room for arbitrariness, the generality of law is actually achieved, the real realization of subjective rights [7].

Speaking about legality, we are talking about compliance with legal norms in general. This distinguishes legality from principles-norms, as they are formally expressed in legislation and can be directly applied in solving specific cases. At the same time, the principle acts as an ideal form of legality – everyone must follow the rules of the law. In reality, by no means, not all legal norms and not all subjects are observed and implemented, there are many violations of legality [8, p. 59]. That is, an offense committed in any sectoral legal relationship is unequivocally related to a violation of a legal norm, therefore, it is automatically a violation of the principle of legality.

From the above mentioned, it can be concluded that the study of legality as a phenomenon of social reality, the connection of its theoretical provisions with the conditions of practical

implementation is not only an important scientific, but also a practical problem. The historical experience of the functioning of state legal systems of many countries of the world shows that compliance with the requirements of legality in them contributes to the disclosure of law not only as a means of realizing the interests of members of society, but also as a tool for realizing the personal interests of individuals, their freedom. That is, it is the basis of the functioning of the legal system as a whole, and a manifestation of a mandatory element of the branches of law, in particular, financial law. In its essence, this is a qualitative characteristic of law, which ensures its content. Therefore, its study is necessary not only for the recognition of other sectoral principles of law, but also for the creation of relevant legal norms based on it.

Nevzorov I. writes that the basis of the implementation of the principle of legality in the practical plane should be a threefold system connection: "the law – its adequacy to the needs of life – the implementation of the law (first of all, its enforcement)" [8, p. 55]. Therefore, in law (including financial law), the implementation of the principle of legality requires the presence of appropriate legislation. At the same time, the legislation should be such that it meets the modern needs of society. In order for the laws and their norms to be implemented most effectively, the legislation must be understandable for law enforcement officers and stable. Unfortunately, such signs are characteristic of domestic legislation (primarily, financial) only partially. All public activity (including financial) must comply with the principle of legality.

The action and implementation of the principle of legality is manifested in relations and in relation to financial and control public activities of all spheres of economic activity. Professor L. Savchenko emphasizes that financial control contributes to compliance with the principle of legality in the field of financial activity, because, firstly, this principle is characteristic of him; secondly, with its help, various violations of financial discipline are exposed. That is, financial control is an important means of ensuring the legality of financial activities. Its main task is to check compliance with the legislation on financial matters, the timeliness and completeness of the receipt of funds to the relevant funds, the

prevention of financial offenses, etc. Since the competence of financial control bodies includes the detection of violations of financial discipline, the use of measures to prevent and stop violations of legality in the financial sphere, the principle of legality should be the main principle of their activity [9, p. 55].

Legitimacy can exist only in the presence of stable legislation, the norms of which do not contradict each other, as it establishes the tasks and powers of the relevant subjects of financial control, which contributes to the proper activity of the latter. Insufficient development of certain issues that are subject to legal regulation, obsolescence of some norms, their constant change have a negative impact on the implementation of the principle of legality and, accordingly, on the activities of the subjects of financial control, as additional difficulties are created for the correct application of the norms of law, and therefore for their fulfillment tasks and functions [10, p. 71].

**Conclusions.** Therefore, the principle of legality as a general legal principle in law has a comprehensive application, it applies to all public activities, to the actions of all legal entities. The financial and legal significance of this principle lies in the creation and maintenance of the regime of legitimacy of public financial activity.

The principle of legality, as a principle of legal responsibility, is of particular importance in determining one of the main functions of the state which is security, the observance of which is a guarantee of the development of a democratic legal state, which ensures the protection of the rights and legitimate interests of the citizens of Ukraine.

### References

1. Podkovenko, T., Pavelko, L. (2014), Principles of legal responsibility: content and main classification criteria, *Comparative and analytical law*, № 7, pp. 26–29.
2. Tarakhonych, T. I. (2012), Principles of legal responsibility in the system of principles of law, *Almanac of law*, Issue 3, pp. 284–287.
3. Kolodyi, A. M. (1998), Principles of Ukrainian law : monograph, Yuryнком Inter, Kyiv.
4. Decisions of the Constitutional Court of Ukraine dated 25 January 2012 № 3-пп/2012 in the case of the constitutional submission of the board of the Pension Fund of Ukraine regarding the official interpretation of the provisions of the article 1, parts one, two, three of Article 95, part two of Article 96, clauses 2, 3, 6 of Article 116, the second part of Article 124, the

first part of Article 129 of the Constitution of Ukraine, clause 5 of part one of Article 4 of the Budget Code of Ukraine, clauses 2 of part one of Article 9 of the Code of Administrative Procedure of Ukraine in systematic connection with certain provisions of the Constitution of Ukraine, available at: <https://zakon.rada.gov.ua/laws/show/v003p710-12#Text> (accessed 05 April 2023).

5. Nishchymna, S. O. (2013), Principles of public financial activity in Ukraine: monograph, Chernihiv State Institute of Economy and Management.

6. Izmailova, L. B. (2005), The ratio of justice, legality and equality in criminal justice, *Bulletin of the Academy of Advocacy of Ukraine*, Issue 3, pp. 74–81.

7. Koval, O. A. (2005), The issue of legislative consolidation of the system of principles of Ukrainian law, *Bulletin of the Academy of Advocacy of Ukraine*, Issue 3, pp. 10–17.

8. Nevzorov, I. L. (2003), The principle of legality in law enforcement activities: PhD in Law Thesis, Kharkiv.

9. Savchenko, L. A. (2002), Legal problems of financial control in Ukraine: PhD in Law Thesis, Kharkiv.

10. Savchenko, L. A. (2008), Legal basis of financial control: manual, Yuryнком Inter, Kyiv.

**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;

**Балишев М. В.,**

аспірант кафедри адміністративного, цивільного та господарського права і процесу, Академія Державної пенітенціарної служби, м. Чернігів, Україна  
ORCID: 0009-0000-6880-0205

## **ЗАКОННІСТЬ ЯК ПРИНЦИП ЮРИДИЧНОЇ ВІДПОВІДАЛЬНОСТІ**

*Стаття присвячена характеристиці принципу законності в контексті його застосування як принципу юридичної відповідальності, притаманному всім галузям права, у тому числі фінансовому праву та податковому праву як підгалузі останнього. Поглиблене вивчення принципів юридичної відповідальності дозволяє практичним працівникам, використовуючи надбання науковців, спрямовувати зусилля на усунення прогалин у праві. Така практика при-*



скорює процеси, пов'язані з досягненням однієї із цілей юридичної відповідальності – забезпечення законності і правопорядку в державі.

Юридична відповідальність як інститут права притаманний різним галузям права й охоплює систему принципів, яка містить керівні ідеї (напрямки), що розкривають її галузеву сутність.

Принципи юридичної відповідальності, будучи складовою інституту юридичної відповідальності, що входять до системи права загалом, не можуть не «перетинатися» із загальноправовими принципами. Натомість вони мають свою специфіку в кожній з галузей правової науки. Одним з таких загальноправових принципів є принцип законності, який активно застосовується в усіх галузях права з метою забезпечення правопорядку в державі.

Дотримання та зміцнення законності в публічній фінансовій діяльності загалом та в податковому праві зокрема залежить від рівня фінансової (у тому числі податкової) дисципліни в державі та наявності реальних (дієвих) механізмів відповідальності суб'єктів такої діяльності у разі вчинення ними фінансових (у тому числі податкових) правопорушень. У цьому процесі переважне значення мають дієвість та реалізація саме принципу законності.

Дія та реалізація принципу законності проявляється у відносинах, пов'язаних з фінансово-контрольною публічною діяльністю всіх сфер господарської діяльності.

Принцип законності як принцип юридичної відповідальності має особливе значення при визначенні однієї з основних функцій держави – охоронної, дотримання якої є запорукою розбудови демократичної правової держави, що забезпечує захист прав та законних інтересів громадян України.

**Ключові слова:** юридична відповідальність, принципи, законність, фінансове право, податкове право.