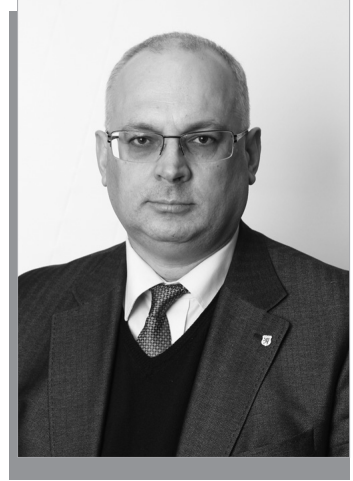


ГОСПОДАРСЬКЕ ПРАВО

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ECONOMIC POWER AS A KEY OBJECT OF REFORMATION OF ECONOMIC RELATIONS (LEGAL IDENTIFICATION MATTERS)

The problem of phenomenology of economic power, the systematization of its subjects and the distribution as the key concept of interaction between government and business entities are disclosed. The necessity of formation of a range of types of subjects of economic power, which are connected by a system of economic and legal relations are justified. It has been proved that the configuration of the distribution of economic power in the national economy will determine imbalances and dysfunction in the national economic mechanism.

Key words: economic power, economic concentration, economic organization, holding company, the distribution of economic power.

Problem setting. Ukraine celebrated the 25th anniversary of its independence under complicated political conditions. Its national economy is one of the sources of optimism regarding the Ukrainian state vitality. The Ukrainian economy is integrated into the global economic system. At the same time, certain parameters of own competitiveness are peculiar to the Ukrainian economy. It is worth acknowl-

edging that effectiveness of the domestic economic mechanism causes very many cautions. They include parameters of the grey economy, oligarchization, corruptive dysfunction of the government apparatus, all the system of organizational and economic relations, raiding, offshorization, brutal manifestations of monopolization and anticompetitive concerted actions, usage of the repressive law enforcement resource of the government to stop the activity of rivals, etc.

All the current social and economic reforms, particularly deregulation, energetic independence, fighting against corruption, and even deoligarchization, do not take into account existence of an economic power phenomenon and a particular formula of balancing between its bearers in the very system of economic relations. Consequently, the question arises of whether it is possible to provide high efficiency of implementation of the mentioned reforms. Legal measures of implementation of the reforms do not tend to radical influence key social and economic factors – relations of emergence, forms of existence and transformations of the economic power, topography of its division within the national and the global economic systems.

Recent research and publication analysis. Problematics of economic power is insufficiently considered in its subject context. Simultaneously, cratology as the science of power, have been researched in scientific papers of V. V. Zheltov (2008), V. F. Khalipov (2002), V. H. Lediaiev (2012), Ye. Veiner (2012), F. I. Shamkhalov (2005).

The mentioned authors consider economic power from the standpoint of power relations mainly superficially. They mainly focus on political power.

Paper objective. The main purpose of this article consists in indication of phenomenology of the very category of economic power, indication of its close relation with economic and legal categories such as economic competition, economic concentration, relation of control and subordination, holding relations, etc.

Paper main body. It is worth acknowledging that all members of economic relations influence each other. Abstracting from its conceptual and power characteristics, the author may assert that, firstly, such influence stipulates final configuration of contractual terms. By the way, factually all the phases of economic system functioning, including production, exchange, distribution, and consumption, are conducted owing to coordination of these terms. At the same time, the influence that arises at the level of microeconomic relations and does not result in the change of parameters of the balance of the whole market remains within a system of coordinates of a limited counteragent number. Contractual legal regulation, which is outlined in the Civil and the Economic Code of Ukraine, comprehensively stipulates this influence. In a particular phase, the increase of concentration of economic influence properties at the expense of various economic and legal factors leads to

transformation of the powerless and dispositive economic influence into the economic influence, which is characterized by features of economic power. These features arise in relations with counteragents and owing to a total influence on economic system functioning and behavior of macroeconomic processes, et al.

Economic relation subjects presenting different segments of the economic system can be economic power bearers. Some of them, as a state, are economic power subjects from its sovereign nature. The others can assume properties of such power in the face of the law as well as in accordance with its requirements. For instance, a powerful and consolidated union movement can really influence conditions of employment at a legal entity within the country, using direct influence instruments as well as an own influence on the government through its law-making authorities in the range of democratic processes. Market power of consumers aimed at motivation of a large number of business entities (producers of goods and services) can be formed analogically. However, concentration of capital by business entities, which occurs in the face of current legislation on protection of economic competition or without direct violation of its requirements, is the most indicative type of acquirement of economic power in order to use it for gaining macroeconomic advantages in relations with counteragents and public bodies.

Owners of economic assets being essential for using in the process of economic activity can also be bearers of economic power. These bearers can be presented by owners of natural resources, financial capital, and intellectual property embodied in innovative products, which are of considerable social and economic importance. Owners of technical infrastructure (railways, seaports, bridges, pipelines, storages of specific goods, etc.) can acquire certain properties of economic power.

It is worth mentioning that any public power assumes political importance and correspondingly requires legal regulation. Implementation of public power (government, political, economic, informational, spiritual, etc.) gathers especially important configurations of social interests. Therefore, legal regulation of relations of the non-power economic influence, which arise between business entities on dispositive principles, occurs according to the same legal scenario (legal regimes). If there are centers of private macroeconomic power in the very same segment of economic and production relations, a paradigm for their legal regulation should principally differ from the previous one.

Economic power is an independent basic type of social power, which arises and exists within an economic system in relations between its subjects. A volition influence on economic behavior of other subjects and the practice of functioning of economic institutes being peculiar in nature, content, and intensity is inherent to the economic system subjects. This influence is made in order to use inherent ad-

vantages for providing own interests. It is worth mentioning that economic power and its properties are closely related to functional nature of its bearers and their role in the economic system. Thus, it is expedient to indicate private and public economic power. At the macroeconomic level, their phenomenology assumes peculiar importance.

In this sense private economic power is a kind of public economic power, which exists in economic systems of a market type between autonomous subjects on «demand – supply» coordinates, where a power bearer uses its dominative position for establishment of a market balance configuration, which enables to fulfill own interests and override economic behavior and interests of counteragents. A macroeconomic level of implementation is an inherent feature of economic power. Interests of business entities in corresponding markets as well as local communities, consumers, employees, the government, and the people of Ukraine are maximally disturbed at this level.

The private macroeconomic power can be defined as a type of public economic power existing at the macroeconomic level of functioning of a market economic system. It arises due to consolidation of economic assets on the basis of a mechanism of control and subordination in a determined organizational and legal form, which enable to significantly influence economic behavior of counteragents, other types of business entities, and a state of macroeconomic conjuncture of a market in order to implement an own strategy of development. The sphere of the private economic power application forms a conditional sub-system in the national economic system. Taking into consideration the difference and «dislocation» of corresponding subjects, power relations can be divided into the following groups of typical spheres of power spreading: a) between business entities; b) between business entities and owners of asset involved in the property basis of a business and a production process; c) between business entities and different groups of employees; d) between business entities and consumers of goods and services.

The public power and, particularly, the government macroeconomic power are two of the most important and multi-functional poles of economic power application. It can be defined as a type of economic power, which arises at the macroeconomic level of functioning of economic system, which is based on government implementation of own sovereign rights regarding: a) establishment of normative and legal support of economic relations; b) government regulation of relations in the economic sphere; c) functioning of a fiscal system and purposes of budget expenses; d) a procedure of usage and disposition of economic assets possessed by the government; e) announcement of privatization and nationalization of integral property complexes; f) establishment of relations of public-private partnership with subjects of the private macroeconomic power.

The government macroeconomic power is spread with the use of methods of the imperative influence on behavior of other economic subjects in order to achieve goals of an own economic policy and providing public interests in the economic sphere.

Since this typology enables to form a specific scheme of economic power topography in the range of the national economic system, the mentioned types of economic power is of considerable instrumental importance. Finally, the very division of conditionally general economic power between the main types of economic system types determines its macroeconomic balance. The government plays the role of corrector in this problem under market economy conditions, even in a case of giving extraordinary regulatory authorities. If there is the unbalance in favor of a particular type of economic power in an economic system, economic development of the country will be distorted. In this sense, a mechanism of government macroeconomic regulation measures is a factor of the second order in a problem of providing harmonic and perspective economic development. Nevertheless, considering typography of such economic power division, there is a need to take into account its determined types as well as other criteria of national economy segmentation.

Important segments of aggregated economic power division may include the following spheres: a) small, medium-sized, large, and oligarchic businesses; b) national and foreign capital; c) public and non-public sectors of the national economy; d) natural monopolies and competitive markets.

According to a power division criterion, types of power, which participate in balancing the economic system, are divided into: a) resource and raw materials; b) fuel and energetic power; c) power of private finances; d) infrastructure power, etc.

Thus, economic power division can be defined as one of the most important functions of the government in the economic sphere. It consists in providing economic diversity, economic competitiveness, economic democracy, and country sovereignty, which is implemented with the use of economic policy measures in order to establish the appropriate balance between the main bearers of public and private, aggregated and sole economic power in the most important segments of the national economic system. The balance should result in attainment of intersystem topography of economic powers. In this topography, economic powers will interact in a regime of restraints and counterbalances.

The regime of restraints and counterbalances between economic power subjects can be established only as a consequence of formation of a corresponding model and a mechanism. Such formation process encompasses division of such powers into separate segments and stages and establishment of the balance between them, which include destroying domination of any power in the system scope. It is worth

mentioning that the current world system of international relations is still based on principles of country sovereignty. It is a good tendency. However, under conditions of globalization and victorious expansion of principles for market organizing the economic life, providing national economic sovereignty being a guarantee of real country sovereignty is a very complicated affair. Under conditions of national economy openness for investing, private ownership for capital goods leads to erosion of the mentioned social and economic as well as political and juridical properties. Therefore, establishment of economic power concentration scopes for all types of its subjects and the regime of restraints and counterbalances in interaction between them are instruments for protection of national economic sovereignty under conditions of the free flow of foreign investments and formation of own oligarchic holding groups. This is the only way to provide a basic social and political property of a sovereign country – economic democracy. (Unfortunately, the current Constitution of Ukraine does not contain the mentioned category).

Economic democracy is an essential component of democracy, which exists in the form of peculiar, permanent, direct, or indirect participation of the people of Ukraine, its territorial communities and citizens in the national economic system. Such participation consists in practical implementation of a diversified complex of appropriate economic rights. Taking into account conceptual and valuable features of such participation, it is determinant for national economy functioning and sufficient for providing social and individual economic safety and development. A government provides economic democracy at the expense of pursuing a policy of maintenance of the necessary balance and division of economic power and, as a result, establishment an economic democracy regime in a country and a society.

Thus, a system of public power division, which is directly concerned with economic relations, should be the sufficiently developed hierarchic structure, which includes the following levels: a) division between political, economic, and information types of public power; b) division of economic power within an economic system: (I) division between public and private economic powers; (II) division between private macroeconomic powers; (III) division between aggregated macroeconomic powers of groups of economic entities in an intersegment dimension of the national economy.

Providing economic democracy requires the Ukrainian citizens and the people of Ukraine to possess an aggregated «control packet» in all the types of economic power, which encompass market power exercised by organized consumers of goods and services, market power of natural resource owners, market power exercised by consolidated employees, market power of investment potential of citizen savings, power arising from aggregated possession of real assets and corporate rights regarding business entities or from other forms of economic rights implementation.

Economic democracy should obtain an integral legal mechanism of diagnostics and prognostication of its state and properties. In this sense, it is important to develop corresponding legal mechanisms for each block of economic rights of the people of Ukraine, local communities, and personally each citizen of Ukraine. Correspondingly, social and political diagnostics should be conducted according to specially developed legal and economic indicators for each block of economic rights, which jointly characterize the national economic democracy.

Thus, diagnostics of the national economic democracy should include measurements of aggregated and segmented economic power, which is belonged to the people of Ukraine in the context of the following blocks of implementation of their economic rights:

- labor rights, through determination of optimal employment terms, including a guaranteed salary amount and opportunities of professional level improvement, through government conducting to formation of an independent all-Ukrainian union movement and providing necessary guarantees of protection for its leaders and activists. The government should also stimulate formation of new vacancies, taking into account problems of Ukrainian labor migrants repatriation;

- consumer rights, through transformation of organizationally differentiated consumers into a consolidated influential force endowed by resources and supported by science and methodical instruments. A government purpose is to support formation of corresponding organizations, systems of their interaction, particularly information, and legal forms of interaction of consumer organizations and controlling and law enforcement bodies;

- rights to entrepreneurship, which is provided by the government through pursuing an appropriate policy on development and government support of small and medium-sized businesses and pursuing a consistent regulatory policy. It is important to create a system of optimal criteria for determination of the aggregated economic weight of small and medium-sized businesses and legal measures of the government influence on its development. A matter of pursuing a government policy on the internal market increase assumes especial importance. Guarantees of impossibility of confiscation taxation play the important role in the system of legal relations of the government and sectors of small and medium-sized businesses;

- property rights to objects being the capital basis of the business activity. This matter concerns formation of effective legal forms of usage of corresponding objects, including in own or in other's business activity. Property rights can be used by any means on condition that they mediate inclusion of corresponding objects in the economic activity. Directions of property rights usage can include foundation of a private company and providing it with necessary assets, renting out assets,

other contractual liabilities, accumulation of banking monetary deposits, purchasing securities issued by the government, etc. A common feature of the mentioned forms of using property rights to capital objects of citizens are an opportunity to exercise these right individually and a need of government guarantees regarding minimization of their riskiness. Such guarantees should encompass guarantees of protection from confiscation inflation of the national monetary unit, guarantees of returning banking deposits, and guarantees of obligations of the government as an issuer of bonds and other securities;

– rights of ownership for capital objects, objects used for purchasing of corporate rights regarding business entities (a corporate type of companies), purchasing of other capital rights related to investing in business entities. Maximal participation of Ukrainian citizens in economic processes of the mentioned type directly depends on the state of a legal economic mechanism, transparency of investment processes and the active law enforcement role of the government. It is worth mentioning that, according to expert estimation, the citizens of Ukraine jointly keep from 40 to 100 billion of the USA dollars outside banks. Involvement of these funds in the national economy and removing them from «home offshores» depend on transparency, assurance, and consistency of the government policy. Due to formation of a perfect legal mechanism for usage of resources in the applied activity, property rights of the people of Ukraine for natural resources may make the people of Ukraine a direct beneficiary of natural rent. It is important to know that aggregated amounts of resource payment rates should also take into account value of measures regarding reproduction of the environment state and value of innovative developments, which will form alternatives to exhaustible resources in the future. Logics of constitutional and legal fixation of the property right of the people of Ukraine, in contrast to the existing procedure of economic usage of natural resources in favor of certain private persons, requires a mine share possessed by all the Ukrainian citizens to be entered into accounts with a special regime of usage;

– industrial property rights in the process of formation and usage of corresponding objects should become the basis for wide participation of the Ukrainian citizens in creation of innovative products and gaining incomes from investing in the economic activity. The government support of scientific and technical as well as innovative activities of the Ukrainian citizens should become a powerful factor of new economy formation – innovative niche machine building, biotechnologies, and production of new materials, food products, etc.

Thus, permanent monitoring of parameters of the Ukrainian citizen participation through enforcement of each of the mentioned groups of economic rights and aggregated participation, particularly in comparison with a weight of the place in the national economy of large business or foreign capital, including in the sectoral

context, should deliver the government and the society answers regarding reality of economic democracy and tendencies in division of macroeconomic power between public, oligarchic, foreign, and criminal capitals.

A matter of legal organizational institutionalization of a power component of society participation in all the forms of economic power in the society assumes principal importance. It is worth noting that such participation in the structure of public economic power is based on statements of Article 5 of the Constitution of Ukraine, according to which the people are the only bearer of sovereignty and fountain of power in Ukraine. The people exercise power directly and through public and local self-government bodies.

The author thinks that the economic democracy mechanism also should be approved on the constitutional and legal as well as economic and legal levels.

Conclusion of the research. 1. The necessity of determination of a qualification criteria system for economic organizations (economic power subjects) should be acknowledged as a problem of the economic and legal science and the legislation.

2. Development of organizational and legal forms for consolidation of other types of economic power subjects (small business, consumers, owners of rights to industrial property objects, etc.) should be of considerable importance for the economic and legal science.

3. Concepts of the balance of economic power in an economic system, division of economic power in an economic system, and economic democracy require legal institutionalization on the economic and legal level as well as the level of constitutional and legal regulation.

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**ЭКОНОМИЧЕСКАЯ ВЛАСТЬ КАК КЛЮЧЕВОЙ ОБЪЕКТ
РЕФОРМИРОВАНИЯ ЭКОНОМИЧЕСКИХ ОТНОШЕНИЙ
(ВОПРОС ЮРИДИЧЕСКОЙ ИДЕНТИФИКАЦИИ)**

В статье поставлена проблема феноменологии экономической власти, систематизации ее субъектов и конфигурации распределения как ключевой концепт взаимодействия государства и субъектов экономических отношений, в первую очередь субъектов хозяйствования. Особой проблемой видится формирование круга типов субъектов экономической власти, которые связаны между собой системой экономических и правовых связей. Поэтому сделан вывод, что именно конфигурация распределения экономической власти в национальном хозяйстве будет определять наличие тех или иных дисбалансов, а затем и дисфункций в национальном хозяйственном механизме.

Ключевые слова: экономическая власть, экономическая концентрация, хозяйственная организация, холдинговая компания, распределение экономической власти.

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**ЕКОНОМІЧНА ВЛАДА ЯК КЛЮЧОВИЙ ОБ'ЄКТ
РЕФОРМУВАННЯ ЕКОНОМІЧНИХ ВІДНОСИН
(ПИТАННЯ ЮРИДИЧНОЇ ІДЕНТИФІКАЦІЇ)**

Постановка проблеми. Україна відзначила 25-річчя своєї незалежності у складних політичних умовах. Однак одним із джерел оптимізму щодо життєздатності української держави є її національна економіка, що інтегрована в глобальну економічну систему і має певні параметри власної конкурентоздатності. Разом із тим слід визнати, що ефективність вітчизняного господарського механізму викликає дуже багато застережень.

Аналіз останніх досліджень і публікацій. Проблематика економічної влади є доволі нерозкритим науковим питанням у його предметному контексті. Разом із тим кратологія як наука, предметом якої є влада як така, отримала увагу в роботах В. В. Желтова, В. Ф. Халіпова, В. Г. Ледеясва, Е. Вейнера, Ф. І. Шамхалова.

Формулювання цілей. Основна мета цієї статті полягає в з'ясуванні феноменології самої категорії «економічна влада», системної природи її функціонування, виділенні типових суб'єктів економічної влади та їх зв'язку із відповідними категоріями господарського права.

Виклад основного матеріалу. Як уявляється, економічна влада є самостійним базовим типом суспільної влади, що виникає та реалізується в межах економічної системи у відносинах між її суб'єктами, яким властивий особливий за характером, змістом та інтенсивністю вольовий вплив на економічну поведінку інших суб'єктів, на порядок функціонування економічних інститутів з метою використання належних переваг для забезпечення власних інтересів. Слід зазначити, що економічна влада, її властивості тісно «прив'язані» до функціональної природи суб'єктів – її носіїв, їх місця в самій економічній системі.

І якщо в економічній системі створено дисбаланс на користь якогось одного типу економічної влади, то економічний розвиток країни відповідно буде спотвореним. У цьому сенсі механізм засобів державного макроекономічного регулювання є фактором другого порядку в проблемі забезпечення гармонійного та перспективного економічного розвитку країни. Але, кажучи про топографію такого розподілу економічної влади, слід урахувати не тільки визначені її типи, але й інші критерії сегментації національної економіки.

Отже, розподіл економічної влади можна визначити як одну з найважливіших функцій держави в економічній сфері, яка полягає в забезпеченні економічної багатоманітності, економічної конкурентності, економічного народовладдя та суверенітету держави, яка реалізується засобами економічної політики з метою встановлення відповідного балансу між основними носіями публічної та приватної, сукупної та одноосібної економічної влади в усіх найважливіших сегментах національної економічної системи, наслідком чого має стати досягнення такої внутрішньосистемної топографії економічних влад, за якою вони взаємодітимуть у режимі стримувань і противаг.

Режим стримувань і противаг між суб'єктами економічної влади може бути встановленим лише як наслідок створення відповідної моделі та механізму, по-перше, розподілу таких влад на окремі сегменти, шаблі тощо, по-друге, – встановлення балансу між ними, що виключає руйнівне домінування будь-якої з них у масштабі системи.

Висновки. 1. Проблемою господарсько-правової науки та законодавства слід визнати необхідність визначення системи кваліфікаційних критеріїв господарських організацій – суб'єктів економічної влади.

2. Актуальним питанням господарсько-правової науки слід визнати розробку організаційно-правових форм для консолідації інших типів суб'єктів економічної влади – малого бізнесу, споживачів, власників прав на об'єкти промислової власності тощо.

3. Правової інституціоналізації не тільки на господарсько-правовому рівні, але на рівні конституційно-правового регулювання потребують поняття: «баланс економічної влади в економічній системі»; «розподіл економічної влади в економічній системі»; «економічне народовладдя».

Коротка анотація статті

Анотація. У статті поставлено проблему дослідження феноменології економічної влади, систематизації її суб'єктів та визначення конфігурації її розподілу як ключовий концепт взаємодії держави та суб'єктів економічних відносин, у першу чергу суб'єктів господарювання. Для господарських організацій наявність ознак економічної влади може бути пов'язана з певними параметрами економічної концентрації, з домінуючим положенням на ринку певних товарів та послуг, але може кваліфікуватись і без зазначених ознак. Особлива проблема вбачається у формуванні кола типів суб'єктів економічної влади, що пов'язані між собою системою економічних та правових зв'язків. Тому зроблено висновок, що саме конфігурація розподілу економічної влади в національному господарстві буде визначати наявність тих чи інших дисбалансів, а відтак і дисфункцій у національному господарському механізмі.

Ключові слова: економічна влада, економічна концентрація, господарська організація, холдингова компанія, розподіл економічної влади.