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Olena KHANDII¹

Abstract

In the article the notion of tax-legal culture is analyzed from the world-outlook and methodological positions of anthroposociocultural approach and application of the instruments of system analysis. The concept of system of financial law by P.Patsurkivskyy and the system of paradigm constants of financial law by R.Havrylyuk were extensively applied. With the help of them civilizational determination of the contents and the scope of the notion of tax-legal culture was grounded, the system nature of tax legal culture as a social phenomenon and its determination by respective sociocodes of the society as a self-regulating processual system of social cooperation of individuals. It is shown that tax culture is an unalienable part of the culture of the people at large, its character, psychological, behavioral patterns, which formed the people as a united whole. Special attention is drawn to the understanding of civilizational face of tax-legal culture of Ukrainians by different researchers, who applied not only different, but the opposite instrumentarium to the research of it.

It is concluded that tax is one of the most unique phenomena of human civilization. Having emerged simultaneously with it, the tax has transformed into one of the key factors of the mankind evolution, has become the system core of special tax-legal culture. Tax-legal culture is ontologically embedded, mentally and officially envisaged system of special sociocodes as fundamental anthroposociocultural values that define the individuals and their societies' behavior in relation to satisfying their public needs. Anthroposociocultural approach to the research of tax-legal culture on the basis of the instruments of system analysis and synthesis is relevant to the anthropocentric nature of tax-legal culture.

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Tax; tax-legal values; tax-legal sociocodes; tax-legal culture.

Introduction

In its broadest – philosophical –sense culture is a system of ultrabiological programs of human activities which evolve historically and ensure the reproduction and evolution of social life in all of its manifestations. Culturologists regard culture as an analogue of the genetic code of a person, namely their sociocode with the help of which all of the obtained social experience is communicated from person to person, from generation to generation, from one society to another. The universals of culture which are the components of a relevant sociocode determine world-outlook of the subjects, are its bearers, and form their basic mental orientations. No essential social changes are possible without respective changes in the culture of people which accompany and ensure the so-called “social heredity” [1, 2, 3, 4, 5].

Tax-legal culture of a certain society is a hefty separate layer of the human culture. In turn, tax-legal cultures differ crucially, being the opposites in different times as well as among different peoples. For instance, the founder of the anthroposociocultural approach in tax law R. Havrylyuk has proved that tax-legal cultures of the Ancient Greek polis states and Ancient Roman imperial state were opposite by all the essential parameters. Their opposition was determined by the civilizational at first and redistributive later on revolutions which took place over the Antic human civilization. As a consequence of the abovementioned revolutions all the values of the respective societies which had been the basic sociocodes of the social systems as a whole and tax relation in particular changed acutely [6: 276-450].

At one of the international “round-table” discussions P. Patsurkivskyy has reasonably drawn attention to the point that such civilizational determination and matching of all social phenomena and their definitions is not random, on the contrary, it is regular. He argued that right this way all the concrete-historical values, including tax law as a value can be adequately self-identified by contemporaries and perceived by descendants. Civilizational approach allows to fix in common notions “atomic” (which are the basis of everything)

components of the deepest layers of intentional structure of the personality in the unity of the subjects of their aspirations (the aspect of future), a special feeling – possession (the aspect of present) and maintenance of the legacy for the next generations (the aspect of past). Not accidentally, this was also the focus of A.J.Toynbee, who viewed civilization as a culture that reached the limits of self-identification [7]. P. Patsurkivskyy has summarized that there are no less tax-legal cultures and their definitions in particular as well as financial-legal cultures and their definitions at large than human civilizations, that existed throughout the history [8].

So is it possible to give a unified definition of tax-legal culture given that it has such an unlimited number of manifestations? Or does this definition already exist? The analysis of abundant scientific and other literature on this matter persuades that such a notion, unfortunately, has not yet been developed in tax law, even though the research has been being conducted long before; this has already been discussed in tax law research [9]. Despite a great variety of scientific approaches to the research of the notion of tax-legal culture, determined by the pluralism of methodological approaches [10], as well as the asymmetry of the tax and tax law [11], all of them can be grouped into to paradigmatically opposite types – the etatist and the human-centric. The first one is characterized by elementaristic approach to determining the external features of the phenomenon of tax-legal culture, the other one – by systems approach. Both of these types have their own laws of development: the first one has more than one thousand years and has plentiful bibliography, the other one can be characterized as only finishing its qualitative separation.

The first approach is most consistently represented by tax law and financial law scholars of post-socialist countries. In these countries etatist comprehension of tax law is still thoroughly and persistently cultivated and non-scientific elementaristic approach to its analysis is projected. P.Patsurkivskyy has recently published a comprehensive philosophical and methodological analysis of post-Soviet approaches to understanding phenomena of financial law at large and tax law in particular [12]. I fully agree with Professor's evaluations and conclusions. The research of R.Havrylyuk has considerably complemented the aforementioned article by P.Patsurkivskyy with the thorough analysis of criterial foundations of qualitative separation of

financial law on the whole and tax law by post-Soviet legal scholars [13]. A.Khudyk has shown that normative, primarily constitutional definitions of relevant phenomena are taken by the statist doctrine regarding the definitions in public finance area, including taxes and tax law [14].

The abovementioned research by P.Patsurkivskyy and R.Havrylyuk encourage legal scholars to analyze the phenomenon of tax-legal culture from the systems approach since they managed to enrich noticeably the scientific knowledge about their subjects of analysis. However, it was not their aim to argue the attributiveness of systems approach to defining the notion of tax-legal culture as a system and dynamic by nature phenomenon.

The aim of the article is to argue the need of application of anthroposociocultural approach to the definition of tax-legal culture and application of the instruments of systems analysis and synthesis for that.

The objectives are to explore the system nature of tax-legal culture as a social phenomenon and its determination by relevant sociocodes of society as a “self-regulating processual system of individuals’ social cooperation” [6: 39].

Basic materials

In order to define system features of tax-legal culture, it is necessary to explore the nature of tax, tax law and the factor which determine it. These issues have been and remain to be the focus of those who researched tax law before or analyzes it now. The vast majority of researchers continue to regard tax law as the attribute of the state and to infer its basic features therefrom – determination of tax by law, coercive character of taxpayer’s duty, fiscal nature of tax law of state, asymmetry of tax law of state, punitive-sacrificial character of responsibility for violation of tax law of the state [15, 16, 17].

Such an approach contradicts generally accepted historical facts according to which tax law as redistributive law is not solely the state law, but is a public phenomenon and that it historically preceded the state, is wider than the state phenomenon and is not production of the state. Tax law as a public phenomenon is embedded in common human needs which are determined by the dual nature of a person [18, 19]. It is scientifically substantiated that the first historical form of tax law was

the pre-state redistributive law of societies. Its emergence coincided in time with the emergence of a man as a social creature. This law, as stated by R.Havrylyuk, is characterized by such features as anthropicity, constructivity, contextuality [20: 80, 94, 109].

Anthropicity of this law as its feature was shown in public needs attributive to individuals, thus the means to satisfy them was human-like. Constructivity as a feature of pre-state tax law was created by collective intentional orientations of people and their practical actions according to rules set by them during their lifetime. Contextuality of pre-state tax law was determined by the fact that it was by its nature a dynamic system of symbolic texts and contexts, the variety of certain legal situations, basically typical, but different in their contents and peculiarities, contextual, in which the majority or all the individuals of respective societies were actually involved in the process of satisfying their own public needs [20: 80-121, 21-7].

One of the conditions of emergence and affirmation of substantial states over the next historical epochs, as stated by R.Havrylyuk, was seizure and embezzlement of the public tax law of pre-state societies [20: 14]. This was not a one-moment act, it encompassed the entire historical epoch. In Ancient Roman Empire it lasted from the rule of Emperor Octavian Augustus until the rule of Emperor Diocletian. The quintessence of all transformations, connected with the change of tax-legal culture was the transformation of its citizens into the subjects of the Empire [20: 14].

R.Havrylyuk states, “this made possible (and from the etatist standpoint – mandatory) a profound qualitative transformation of the nature of public interest and public needs in Ancient Roman society. If throughout many centuries of existence of the republican tradition of understanding the public and especially the ancient Greek local tradition of its understanding it was actually narrowed down to the general or prevailing interest of the citizens, with their destruction as a social phenomenon in Ancient Roman Empire public interest started to be considered as state interest, more accurately – the needs of the substantive state. Among these needs there was no place left for genuinely public needs of the individuals, which comprised the population of the Roman Empire... This rebirth of the public into its opposite is the quintessence of the Ancient Roman redistributive revolution” [20: 206-7].

Therefore, it is obvious that tax, tax law, tax-legal culture are one of the profound exhibitions of respective civilization, which has already been mentioned above. These phenomena are an essential feature, an attribute of any society. They pervade all the social life phenomena. Over the centuries tax law as the law of redistributive relations in the society constantly changes its legal forms and external exhibitions, evolves from the ransom of life by enslaved peoples to the value added tax, обчислюваного with special tax nanotechnologies, remaining to be unchanged in its profound nature as one of the fundamental sociocodes of society.

A famous Ukrainian expert in tax law D. Hetmantsev emphasizes reasonably that tax culture is an unalienable part of the culture of people, its character, psychological, behavioral patterns, which raised and formed the people as a unified whole. “We can call it bad heredity, character or spirit of the people but the fact remains: we were formed on certain values which are impossible to replace just by amending the law; the values which are impossible to be abandoned by the authorities, that are unable to change what rests in the masses’ conscience. We are not saying that these values are bad or good. Their genuineness can be tested only by the centuries of history. However, it is obvious that in the present historical context our approaches to taxation, to say the least, are not only our competitive advantage, they weaken our competitiveness, throwing us in the middle of nowhere” – summarizes he [21].

This statement is determined by active efforts of Ukrainian authorities to transfer mechanically the European practices of taxation, which positively approved themselves in other countries, onto domestic grounds. In this case the need to contrast national tax-legal mentality and culture at large with the adequate phenomena of European peoples and discover whether they are comparable, same-rooted or not? If they are different, and in most of the cases this is so, the opposite result will be inevitably obtained, clash of civilizations, of which Samuel Huntington since the 1990s warned persuasively, will take place [30].

Different researchers of tax-legal culture of Ukrainians see its civilizational face differently. D.Hetmantsev insists that “understanding of law as ransom by our [Ukrainian. – O.Kh.] civilization was formed from the beginning... the stages of our history following Mongolian

yoke, already under the Russian Empire, fostered the development of the paradigm of tax – **tribute in our people’s conscience**” [21].

R. Havrylyuk proceeds from original, attributive anthropocentrism, typical of Ukrainian tax-legal culture, as well as the whole culture of Ukrainian society [23]. Yet Ukrainian society, unlike the majority of European societies, states R.Havrylyuk, could not continue its own evolutional advancement according to the original sociocode. Destructing external factors were in the way, the most devastating of which was Mongol-Tatar Yoke in 12-15 centuries and especially the servitude of Ukraine by Moscow Tsardom and the Russian state later on [23: 446]. Moscovites, however, did not manage to destroy Ukrainian tax-legal culture to the entire extent [20: 1].

The author of this article together with P.Patsurkivskyy hold the position that over the years both anthropocentrism and etatism were and remain to be common to tax-legal culture of Ukrainians [10: 198].

What is common for all of these approaches is that tax-legal culture is considered by their authors to be a complex dynamic social phenomenon, a complete system, that should be researched as a system. A curious observation of society as a self-regulating processual system has been made by R.Havrylyuk. After a thorough analysis of traditional atomistic and substantial doctrines and cooperative concept of society, which is a production of anthroposociocultural paradigm, she reasonably concluded that since the cooperative model of society is based on the principle of self-referentiality, while the substantial doctrine tends to search for extra-human factors of emergence and functioning of the society, the atomistic concept cannot account for its processual nature, they concede to the cooperative conception by the heuristic potential and the extent of justification and credibility [20: 12].

Thus, the cooperative concept of public phenomena as self-referential is applicable for the definition of the notion and features of tax-legal culture. To explore them, according to P.Patsurkivskyy, who I agree with, it is necessary to apply “the general theory of systems by N.Luhmann and philosophical-legal concepts of the internal form of law by G. Spencer-Brown and R. Unger” [12: 32-7, 155]. In my opinion, R. Havrylyuk fairly suggests to complement this cognitive instrumentarium with the methods of structural-functional analysis by Claude Lévi-Strauss, genetic structuralism of L. Goldmann, structural functionalism of L. Goldmann, T. Parsons, R. Merton, A.R. Radcliffe-Brown, B.

Malinowski and cybernetic approach of G. Bateson, and a number of other cognitive instruments [28 p6]. Paradigm constants of financial, including tax law of the state cannot be applied, as R.Havrylyuk argues, for the abovementioned purposes [12: 142].

Nonetheless, in order to form the notion and define basic features of tax-legal culture as system civilizational phenomenon not only system methodological instrumentarium is necessary. Systems thinking is also required for that, as J. O'Connor and I. McDermott say, it goes vertically, horizontally, inward and around a circle" [24: 69]. Concerning the analysis of tax-legal culture of Ukraine it is of crucial importance as in domestic society profound changes in perceiving the latter by taxpayers as a phenomenon have already occurred. To put it shortly, the concept of "tax as a non-present for the state" [25] emerged in mass conscience of Ukrainian taxpayers.

One of the persuasive displays of this is the judgment of the ECHR in case of "Fedorenko v. Ukraine". It is stated in paragraph 21 of the judgment that according to the established case-law of the Convention organs, "possessions" can be "existing possessions" or assets, including claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. ECHR has drawn attention to the fact that for Ukrainian taxpayers such legitimate expectations are determined by paragraph 4.1.9. of the Tax Code of Ukraine, by which the lawmaker set an imperative norm, which creates reasonable "legitimate expectations" of taxpayers concerning the possessions (tax) that they have to (or do not have to) pay in the next tax period, holding or losing their possessions. Therefore, although the taxpayer does not have a right to claim for the repeal of a law, adopted violating paragraph 4.1.9. of the Tax Code of Ukraine, when they prove, that additional expenses arose as a consequence of violating their legitimate expectations [26].

Ukrainian taxpayers have become interested in the *actiones populares* doctrine and the experience of its application in foreign countries. As we know, this doctrine allows the citizen as the representative of society, including taxpayer, to appeal to court in order to protect social interests. Swedish, Dutch, Polish, but most of all American taxpayers, as they are given especially extensive opportunities to appeal the legitimacy of local budget revenues, have noticeable experience of the application of this doctrine. The US Supreme Court

states that the interest of such a taxpayer to the use of budgetary funds by municipal entities is “direct an immediate”, similar to the interest of a stockholder to the joint-stock company, and is subject to judicial protection. The doctrine envisages that every citizen has a right to claim that public funds costs are not wasted. This changes the mindset of taxpayers a lot [25].

Not accidentally, owing to the efforts of Ukrainian lawmaker the Tax Code of Ukraine has recently outrun traditional etatist tax-legal culture in its comprehension of this concept. What is meant here is a relatively new for Ukrainian tax law legal construction of “service taxpayer care” which presupposes providing by the state of administrative, consultative, informational and other services, that are connected with taxpayers’ rights and duties implementation [27]. Ukrainian science of financial law silently ignores for now this construction. Legal practice treats it with caution, the lawmaker avoids it where possible, having bravely complemented article 14 of the Tax Code of Ukraine with the definition of service care, has caught its breath. *перехопив подих*. It happens so every time common social tax-legal culture goes behind the innovations of practice, but has already accepted their inevitability.

Conclusions

Thus, tax is one of the most unique phenomena of human civilization. Having emerged simultaneously with it, the tax has transformed into one of the key factors of the mankind evolution, has become the system core of special tax-legal culture. Tax-legal culture is ontologically embedded, mentally and officially envisaged system of special sociocodes as fundamental anthroposociocultural values that define the individuals and their societies’ behavior in relation to satisfying their public needs. Anthroposociocultural approach to the research of tax-legal culture on the basis of the instruments of system analysis and synthesis is relevant to the anthropocentric nature of tax-legal culture.

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