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CONSTITUTIONAL PRINCIPLE OF JUSTICE AS A BASIS FOR ATTRACTING FOREIGN INVESTMENTS IN UKRAINE

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Abstract. The COVID-19 coronavirus pandemic has worsened Ukraine's economy, which was quite weak even without quarantine restrictions. The economic crisis leads to the bankruptcy of enterprises, to rising unemployment in the country. In such difficult conditions today it is advisable to attract foreign investment to improve the economic situation in the country. An obstacle to the work of foreign investors is the violation of the principle of justice in Ukraine. Therefore, the author of the article set himself the task to investigate the issue of compliance with the principle of justice in relations between the state and foreign investors in Ukraine, as there is a significant outflow of foreign investment from the state. Given the current situation, the topic of this article is particularly relevant. The author provides his suggestions for improving the investment climate in Ukraine. He emphasizes that foreign investment plays an important role in improving the economic situation. Therefore, it is necessary to create favorable conditions for foreign investors to work in the country. The positive experience of the member states of the European Union in order to implement it in domestic legislation is studied.

The aim of the work is to conduct a scientific study of the implementation of the constitutional principle of justice in relations with foreign investors in Ukraine. The author set himself the following tasks: 1) to identify the reasons that cause the outflow of foreign investment from Ukraine; 2) to improve the investment climate in Ukraine to study the positive foreign experience of EU member states in order to implement it in domestic legislation; 3) provide their own proposals for the approval of the constitutional principle of justice in Ukraine's relations with foreign investors.

The methodological basis of the article is a set of methods and techniques of scientific knowledge. Their use is determined by a systematic approach, which makes it possible to explore problems in the unity of their social content and legal form. With the help of the formal-legal method the problems of realization of the constitutional principle of justice in the relations between the state and foreign investors are investigated. The method of observation made it possible to summarize the knowledge to solve the problems mentioned in the article. The method of analysis helped to identify the impact of the principle of justice on public relations in attracting foreign investment in Ukraine. Using the method of synthesis, the relationship between the facts is traced, the reasons for the outflow of investments from Ukraine are clarified. The use of the comparative law method allowed for an objective assessment of the place and role of the experience of EU member states in solving problems in Ukraine. The dialectical method provided an opportunity to reveal the contradictions between the principle of fairness and the real conditions in which investors find themselves in Ukraine. The synergetic method made it possible to establish the influence of social and economic factors on the implementation of the constitutional principle of justice and the prohibition of discrimination against foreign investors. The systematic method was used in the analysis of the implementation of European standards in national legislation. Methods of modeling and abstraction were used in the process of formulating proposals to the current legislation of Ukraine.

Key words: justice, foreign investments, foreign investors, justice, court, European Union, Ukraine.

Introduction.

In the context of the COVID-19 coronavirus pandemic, the war in Eastern Ukraine, and the difficult economic situation, there is an outflow of foreign investment. The attraction of foreign investments is negatively affected by imperfection and constant changes in the legislation of Ukraine, significant tax pressure, dishonesty of counterparties, etc.

We believe that the subject of this article is a particularly relevant issue today given the difficult economic situation, the budget deficit. After all, in such a financial crisis, it is foreign investors who will help improve the situation. In our opinion, in order for a foreign investor to be willing to invest in the Ukrainian economy, he must be protected by the state.

In addition, the issue of implementation of the constitutional principle of justice in all spheres of public life is important, because it is justice that marks the line between what is allowed and what is not allowed. The Constitution of Ukraine enshrines the principle of justice, but in Ukraine it is only guaranteed, not implemented, which is one of the reasons for the outflow of foreign investment. Ensuring the principle of justice on the part of the state is the basis for attracting foreign investment to Ukraine.

It should be noted that such scientists as O. Baranovsky, O. Gosteva, M. Dykha, M. Klyuchkovsky, S. Kovalenko, D. Pokryshka, M. Soldatenko, K. Khrimli studied the above topics. Under the general editorship of V. Ustymenko, the monograph «Legal Enforcement of the Principle of Justice in Economic Management» was published, which states that tax policy is one of the areas of economic policy of the state and significantly affects the investment attractiveness of the state. At present, Ukraine's tax policy is not conducive to economic growth and is characterized by fiscal orientation. This state of affairs does not create a favorable investment image for Ukraine (Ustymenko, p.7).

Investment climate in Ukraine.

E. Mordan rightly notes: «Today, foreign direct investment is the most necessary and relevant form of investment for countries with developing economies, because they provide an opportunity to implement large-scale projects. In addition, new technologies, new models of corporate governance and other modern practical experience are gradually being introduced in the country where such investments are attracted» (Mordan, 2017, p. 36).

The Law of Ukraine «On the Foreign Investment Regime» established equal conditions for a foreign investor in Ukraine with a domestic investor. The state provides guarantees to foreign investors to protect their investments. Foreign investments are not subject to nationalization (Law of Ukraine «On the Foreign Investment Regime», 2006).

In order for a foreign investor to work in Ukraine, it is necessary to improve the investment climate. Then our state will receive some benefit. This includes improving the economy, increasing incomes, increasing the number of jobs, sharing experiences, obtaining modern technologies and increasing demand for Ukrainian products on the world market (Mordan, 2017, p. 36).

Foreign investment is a driving force for improving the financial situation in the country. However, the investor must have guarantees to carry out its activities. Such a guarantee, in our opinion, is the right to a fair trial. Although in Ukraine foreigners have the same rights as citizens of Ukraine and stateless persons, the problem in practice is the corruption of Ukrainian courts. That is why it is quite difficult to achieve fair, honest justice in Ukraine. In addition, foreign investors are under pressure from the Ukrainian authorities. In practice, we often witness how government officials, such as tax authorities and customs authorities, violate the rights of foreign investors. Ineffective judicial protection of national courts leads to the fact that foreign investors turn to international courts and this is not a positive indicator for Ukraine.

T. Razina notes that «...the main integration process for Ukraine, which directly affects its investment climate, is the process of European integration. The task of public administration in this process is not only to harmonize national legislation in the field of investment activities with European Union law, but also to protect national interests in order to attract maximum investment in high-tech production of high value-added products» (Razina, 2020, p.11).

In general, it is quite difficult to talk about justice in Ukraine. In addition to the coronavirus pandemic, the problem is further complicated by the fact that corruption has permeated all spheres of

Ukrainian life. Legal nihilism prevails among the population. Attracting foreign investment will be facilitated by a fair trial with the participation of a foreign investor. After all, very often foreign investors need to be protected from the bureaucracy of the state, which is the main «raider» in the state. The protection of the rights of individuals and legal entities from violations by the subjects of power is carried out by administrative courts. However, as practice shows, they are under considerable political pressure, as one of the parties in the case is always the state. This state of affairs leads to an outflow of foreign investment, which has a detrimental effect on Ukraine's economy. Every investor strives to work where there is respect for the law, where justice prevails.

Attracting foreign investment in Ukraine's economy is the key to successful development of the state. At such a difficult time, there is an outflow of foreign investment due to the unstable situation in Ukraine. In order for an investor to work successfully in a foreign country, he needs guarantees – guarantees of state protection. At the World Economic Forum in Davos, the President of Ukraine stated that investors who invest more than \$ 100 million in Ukraine's economy will be protected by the state. The state will provide a manager – investment nanny, who will speak 5 languages and 24/7 this manager will solve all the problems that an investor in Ukraine will have (Echo of Davos. Three questions to the president about the fairness of benefits for investors).

In our opinion, such a statement by the President of Ukraine is expedient, but not entirely fair given the principle of equality of all before the law. After all, it is necessary not only to provide investment nanny to large investors, but also to small ones, which also have a positive impact on the economy of Ukraine. Exemptions from income taxes, which Volodymyr Zelensky also spoke about, should apply to small investors as well, not just large ones. It is necessary to create equal conditions for all investors, ensure a favorable investment climate and an effective system of investor protection.

The Law of Ukraine «On State Support of Investment Projects with Significant Investments in Ukraine» guarantees that from January 1, 2022, investors will receive state support if they implement large projects in Ukraine. (Law of Ukraine «On state support of investment projects with significant investments in Ukraine», 2020). However, it should be noted that «regulations governing the taxation of investment activities in Ukraine remain complex, unstable, contradictory, which negatively affects the activities of business structures, reduces the attractiveness of the national economy for investors» (Ustymenko, p. 17). As V. Ustymenko notes: «The principle of fair taxation should be the basis for a favorable investment climate in Ukraine. What is meant here is the principle of fair taxation of economic activity, due to which a balance of interests of public (state, public) and private (investors) will be created in Ukraine» (Ustymenko, p. 21).

Implementation of the principle of justice in constitutional and legal relations.

Ukraine aspires to become a full member of the European Union. To do this, it is necessary to adopt the positive experience of the Member States of the European Union in order to implement it into national law. Consider the experience of such developed European countries as Poland and Austria.

K. Khrimli writes: «It should be noted that in Poland, foreign investors are guaranteed free access to domestic markets and are allowed to participate in the privatization process. There is also a system of customs benefits in Poland: under Polish law, foreign investors are exempt from paying duties on equipment purchased abroad for three years of investment activity. In order to encourage foreign investment, the Polish local government can exempt the investor from paying real estate tax, provide benefits to pay for electricity, prepare the basis for business activities at a reduced price» (Khrimli, 2019, p. 59).

According to O. Gavrilyuk, S. Sidenko, B. Aragau, «when carrying out investment activities in Austria, the most attractive for foreign investors are the tax benefits on income received as a result of participation in the activities of another company. If an Austrian company receives dividends from a foreign company, then, according to national law, they are not subject to income tax subject to the following conditions: the legal form of the foreign company must comply with Austrian counterparts; the share of investments of the Austrian enterprise should make not less than 25% of their total volume; investments must be made within 12 months; the share of investments in other similar companies should not exceed 25% of the total activity of a foreign enterprise (except for companies

that own a bank). Austrian law exempts from taxation profits those companies from which dividends are received in their countries of origin. Exemption of foreign investments from taxes also applies to hidden profits» (Gavrilyuk, Sydenko, Aragau, p. 17).

According to V. Ustymenko, «fairness of taxation should be based on a harmonious combination of financial interests of the state, society and taxpayers. The tax incentive has a clear direction – to encourage investment that meets the financial interests of the state, society, and therefore is fair to the state. It is worth noting that in the case of attracting investment in the economy of Ukraine, it will have a positive impact on the economy of Ukraine as a whole, and therefore all businesses will be able to take advantage of these benefits. This indicates that for other business entities that are not related to investment activities, a preferential tax regime for investors will be fair» (Ustymenko, 2017, p. 31).

As O. Zeldin and V. Hryshko rightly point out: «Investors seek to invest in enterprises located on the territory of large industrial sites. Small places remain unattractive for investment, potential investors are reluctant to invest in their development. Therefore, the task of the state is to offer the investor such incentives that could compensate for the problems and inconveniences associated with investing in small places. This will allow investors to solve the problems facing the state and society.

Moreover, incentives should be provided to investors for a clearly defined time, which will allow the investor to start production and solve other problems associated with the start of investment activities» (Zeldina; Hryshko, 2017, pp. 69-70). However, not only the favorable tax policy of the state plays a significant role in attracting foreign investment. Courts and law enforcement agencies also influence the investment climate in Ukraine.

M. Klyuchkovsky, M. Soldatenko note: «The spread of coronavirus can lead to certain violations in the judicial and law enforcement systems and, as a consequence, weaken their ability to protect the rights of investors at the appropriate level.

For example, law enforcement agencies, which may be overburdened with quarantine functions, are still required to do everything possible to protect investments from illegal actions by third parties (such as raiding), otherwise there is a risk of violating Ukraine's international obligations.

Quarantine measures also affect the functioning of the judiciary, creating delays in proceedings, and the effectiveness of judicial protection may decline. It can also theoretically lead to a violation of investors' rights» (Klyuchkovsky; Soldatenko).

An important role in the implementation of the principle of fairness is played by administrative courts, which protect the rights of investors from the arbitrariness of tax, customs and more.

However, this principle is embodied not only in the administration of justice, but also in the execution of court decisions. It is thanks to the actual execution of the court's decision that justice makes sense. The problematic issue in practice is that the enforcement of administrative court decisions is a complex category of enforcement proceedings. Therefore, it is necessary to strengthen judicial control over the implementation of this category of cases, as in Ukraine about 80 percent of court decisions are not enforced.

As M. Klyuchkovsky and M. Soldatenko rightly point out: «Investment agreements also require a fair and equal attitude of the state to foreign investments. Prohibitions that are disproportionate to the aim pursued, discriminatory and arbitrary are also prohibited. Therefore, it cannot be ruled out that quarantine measures that unduly interfere with or discriminate against foreign business compared to domestic business may create potential grounds for claims by foreign investors.

To date, all the restrictive measures taken by the Ukrainian authorities, as well as the steps taken to support business in difficult conditions, do not diversify between Ukrainian and international business and apply equally to all. But if, for example, the government decides to compensate for losses or provide other state aid to national businesses to overcome the negative effects of the pandemic, investment agreements may require similar support to foreign investors. Otherwise, investors will have a chance to demand appropriate compensation through arbitration. This will also apply to those situations when the authorities allow the activities of Ukrainian enterprises, while extending the ban on foreign business» (Klyuchkovsky; Soldatenko).

In practice, we often witness how government officials, such as tax authorities and customs authorities, violate the rights of foreign investors. Ineffective judicial protection of national courts leads to the fact that foreign investors turn to international courts and this is not a positive indicator for Ukraine. Attracting foreign investment will be facilitated by a fair trial with the participation of a foreign investor. After all, very often foreign investors need to be protected from the bureaucracy of the state, which is the main «raider» in the state. We believe that in Ukraine it would be expedient to establish the Supreme Court on Foreign Investments, which would consider disputes between foreign investors and the state authorities of Ukraine and implement the principle of fairness in life.

However, it is necessary to give such a court the right to monitor the implementation of its decisions. After all, the problem in Ukraine is the non-enforcement of court decisions. About 80% of court decisions are not enforced or are enforced improperly. This is a significant obstacle to Ukraine's accession to the European Union. Tax burdens, corruption, imperfect and contradictory legislation lead to investors refusing to invest in those sectors of the economy that require government assistance. The situation in attracting foreign investment is also negatively affected by the war in eastern Ukraine, as it creates uncertainty for foreign investors.

Therefore, as rightly noted in the monograph «Legal support for the principle of fairness in economic management»: «Therefore, the level of investment activity in Ukraine is directly affected by tax incentives. The main tax incentives for attracting investment into the economy of Ukraine can be: investment tax credits; differentiated rates from corporate income tax, VAT (depending on the sectors of the economy); benefits for reinvestment of profits; depreciation preferences for businesses that use new technologies; simplification of tax reporting for investors» (Ustymenko, p. 32).

In order to improve the investment climate, it is necessary to provide the investor with fair taxation. E. Mordan and A. Gushcha note: «The mechanism of tax stimulation of investment activity is imperfect, declarative, not stable, and therefore does not allow to support the investor at the appropriate level and to promote investment in the economy of Ukraine. To increase investment attractiveness and solve economic problems that exist in Ukraine, it is necessary to provide a differentiated system of tax incentives, using international experience, adapting it to the specifics of the Ukrainian economy, which will gradually increase investment capital inflows into Ukraine's economy. The main tax incentives for attracting investment into the economy of Ukraine can be: investment tax credits; differentiated rates from corporate income tax, VAT (depending on the sectors of the economy); benefits for reinvestment of profits; depreciation preferences for businesses that use new technologies; simplification of tax reporting for investors» (Mordan, Gushcha, p. 34).

Conclusions.

With the introduction of restrictive measures through COVID-19, the war in eastern Ukraine, political and economic instability, the issue of implementing the principle of justice in all spheres of public life to protect the rights of foreign investors in Ukraine has become a topical issue today.

The situation in which Ukraine finds itself is not the best for foreign investors. Given the current economic situation in our country, effective measures are needed to attract foreign investment. It is necessary to create a favorable investment climate and assist foreign investors in carrying out their activities by easing tax pressures and ensuring the stability of Ukrainian legislation. Both large and small investors in order to implement the principle of fairness must provide a manager – invest nanny and exempt all investors from income tax. In addition, it is necessary to adopt the positive experience of the Member States of the European Union.

Effective judicial protection is needed to protect the violated rights of foreign investors. It would be appropriate to establish a Supreme Court for Foreign Investment. A problematic issue in practice is the issue of actual implementation of court decisions, including decisions of the European Court of Human Rights. Unfortunately, in Ukraine most court decisions are not enforced. Therefore, it is necessary for the court to monitor the implementation of its decisions and to amend the legislation to increase the debtor's liability for non-compliance with the court decision. It is important to implement the constitutional principle of justice, to ensure equal treatment of both investors and Ukrainian businessmen, the absence of any discrimination.

The COVID-19 coronavirus pandemic has worsened Ukraine's economy, which was quite weak even without quarantine restrictions. The economic crisis leads to bankruptcy, unemployment.

The positive consequence of the pandemic is that it has caused a demand for a just society, by which we mean a society in which each of its members has an equal chance in the economy. Therefore, to ensure justice in the economy, a necessary step for the state is to build an effective judicial system.

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