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## **PROBLEM ISSUES OF THE DEFINITION BY COURT EXPERT-ECONOMIST OF A HARM MADE TO A COUNTRY OWING TO A VIOLATION OF BUDGET LEGISLATION**

The article deals with types of violations of the budget laws of Ukraine. The structure of such violations and their dynamics are analyzed. Definitions of the terms "violation of budget legislation" and "misuse of budgetary funds" are defined. The necessity of consolidating in the norms of the Ukrainian legislation the essence of the term "efficiency" is proved. It is established that in Ukraine the procedure for bringing to responsibility for the ineffective use of budget funds is normatively unregulated. Impact measures applied in case of budget violations are considered. It was found that in Ukraine there are no special regulations for determining the amount of harm (damage) inflicted to the state. The essence of the term "competence of the expert" is investigated and its limits are established.

**Keywords:** budget violations, misuse of budget funds, competence of a court expert-economist.

**Introduction.** Changes in the economy caused by the new economic conditions gave rise to various, previously unknown forms of financial irregularities. Among them is not targeted and not effective use of state budget funds. In order to obtain evidentiary information necessary to meet the needs of the investigating authorities, economic experts are invited. These entities, within the framework of their competences and current legislation, ensure the protection of the economic interests of the state and other business entities. In this regard, scientific research aimed at exploring the possibilities of economic expertise to prevent various kinds of financial abuses and violations are of particular relevance.

**The analysis of recent research and publications.** Issues of not targeted and not effective use of state budget funds was researched by R. Dovbash, V. Korzh, A. Kurman, Yu. Maslak, G. Mudritska, B. Romanyuk, L. Skalozub, P. Stepanyuk, S. Chernyavsky and other scientists. Competences of forensic experts were the subject of studies A. Vitnberg, V. Ermachenko, N. Klymenko, I. Panchenko, A. Cherednichenko, N. Chumachenko, M. Shcherbakovsky. However, in the writings of these scholars, court expertise in criminal proceedings regarding the misuse of budget funds were considered fragmentarily.

**The purpose of the article is** to study the problem issues of the establishment by a court expert-economist of a harm made to a country owing to a violation of budget legislation.

**Main material.** One of the principles on which a Ukrainian budget system is built is a principle of a targeted use of budget funds. Namely, budget funds are used for purposes defined by budget assignments and budget allocations only. However, annual reports of the Audit Chamber for the past decade testify the following: violations of the budget legislation have a stable downward trend (Fig. 1). Thus, for a period from 2008 to 2010 the level of budget violations had been growing yearly: in 2009 in comparison to 2008 – for 17,2 billion UAH and in 2010 – for 15,8 billion UAH and made up 17.2% of total expenditures of the State budget of Ukraine. In 2012 the number of budget violations reduced significantly to 28,6 billion UAH and made up 12,9 billion UAH. However, from 2013 to 2015 a downward trend appeared again. Namely, for 3 years the number of violations increased from 17,2 billion UAH (2013) to 22,7 billion UAH (2015) and made up 4% from total state budget expenditures. For the last three years the number of total budget violations in expenditures of State budget of Ukraine has shorted from 2,5% in 2016 to 1,1% in 2018. Moreover, inultimate expression its increases were not even. In 2016 the number of fixed budget violations made up 17,0 billion UAH, in 2017 – 23 billion UAH, in 2018 – 17,4 billion UAH<sup>1</sup>.

<sup>1</sup> Yearly reports (2018). *Official site of Clearing house*. <[https:// gov.ua/upload-files/Activity/ Reports/2018/ ZVIT\\_RP\\_2018.pdf](https://gov.ua/upload-files/Activity/Reports/2018/ZVIT_RP_2018.pdf)> (2019, July, 15).

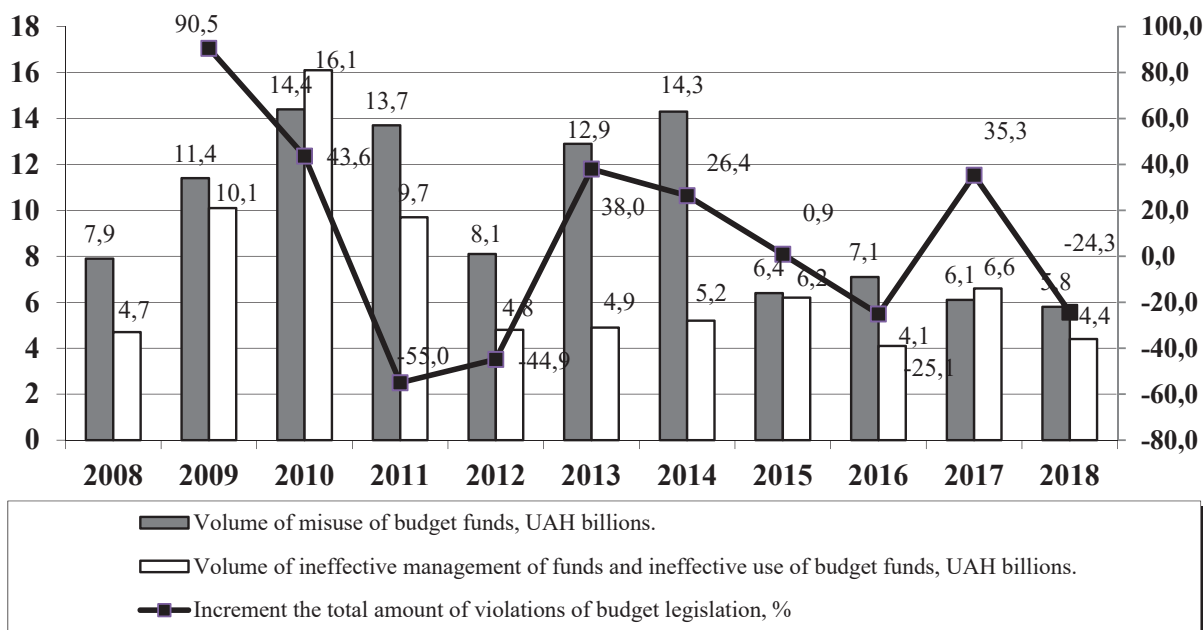


Fig.1. Facts of budget violations fixed by Audit Chamber

Built by an author of Audit Chamber I

The definition of “violation of budget legislation” is given in the article 116 of Budget Code of Ukraine (further BC of Ukraine). Namely, the violation of budget legislation is a process set by BC, by its participants or set by other budget legislation about norms of its compilation, consideration, approval, amendments, budget implementation and reports about its implementation<sup>1</sup>.

The list of violations of budget legislation is set by the article 116. This list consists of 40 kinds of violations. It also includes a probability of setting other cases of budget legislation violations. One of the most common violations is a not objective usage of budget funds during the completion of state targeted programs, exceedance of construction and services prices. Cases of not paid usage of natural and material resources, sales of goods and services for decreased prices, decreases in leasing prices etc. are also common. Furthermore, it is also illegal to transfer all state and municipal property to people of not state forms of tenure; to charge off and not to cash out funds and material assets<sup>2</sup>. It is also worth mentioning that in the article 119 BC of Ukraine it is stated that not objective expenditures of state budget funds are spending it on things which do not comply with budget intended use, set by the law about State budget of Ukraine (local budget decisions); which also do not comply with directions of budget money distribution, set in passport of budget program (in case of usage of program-targeted method in budget process) or in order of budget money usage; budget money allocations (budget estimate allocation, plan of budget money usage). Therefore, in 2018 its amount made up 5,8 billion UAH or almost 33% from overall sum of set budget violations. In 2015 they made up 6,4 billion UAH or 28,2% from total sum of set budget violations<sup>3</sup>.

In addition to that, according to the point 6, part 1, article 7 of BC of Ukraine, a budget system of Ukraine is based on principles of effectiveness and efficiency. Namely, by completion of budgets all participants of budget process should have a common desire to achieve goals planned on the basis

<sup>1</sup> Бюджетний кодекс України, 2010 (Верховна Рада України). Офіційний сайт Верховної Ради України <<https://zakon2.rada.gov.ua/laws/show/2456-17>> (2019, July, 15).

<sup>2</sup> Нечитайло, В.А. (2013). Характеристика проведення спеціальних експертиз суду під час розслідування злочинів перед зверненням до суду. Злочини, пов’язані з цілеспрямованим використанням бюджетних коштів. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*, 2, 269-278.

<sup>3</sup> Yearly reports (2018). *Official site of Clearing house*. <[https:// gov.ua/upload-files/Activity/ Reports/2018/ ZVIT\\_RP\\_2018.pdf](https://gov.ua/upload-files/Activity/Reports/2018/ZVIT_RP_2018.pdf)> (2019, July, 15).

of the national system of values and tasks of innovative development of economy. It must be achieved by providing a qualitative service guaranteed by the state, Autonomous Republic of Crimea, local self-government (further – only guaranteed services). It also has to be achieved by using a minimum of budget funds and achieving a maximum result by using a restricted and allocated by the state budget. Therefore, a not affective usage of budget funds is a budget violation.

A part of not effective budget funds usage is significant in the overall volume of budget violations. Thus, its relative weight in the overall volume of budget violations made up 24,8% in 2008 or 4,7 billion UAH; in 2010 – 27,7% or 10,1 billion UAH, in 2015 – almost 27,4% (6,2 billion UAH), in 2018 – 25,4% (4,4 billion UAH)<sup>1</sup>. In addition to this, definition “effectiveness” is not defined normatively and this fact creates certain issues when evaluating a rate of ineffective budge usage. In order to solve this problem, rational rates close to norms and standards should be created. For instance, in construction field there should be normatively defined approximate expenditures for complete reconstruction of 1 square feet. (thousands of UAH) that will allow to track a rate of effectiveness and usage of budget funds according to separate budget program.

It is important that in passport of the budget program an effectiveness is broken down in productivity, effectiveness of results and cost of program<sup>2</sup>. In addition to this, evaluation of productivity of budget money usage foresees establishment of balance in terms of results of activities of and manager and recipient of budget money and used for achieving such results with the help of budget money. The evaluation of economy of budget money usage also foresees establishment of the level of compliance of actual manager’s as well as recipient’s activity results. It should happen through a minimal budget money volume or through achievement of a maximal result with the help of defined budget volume usage.

For violation of budget legislation, budget process participants have to do certain actions according to part 1 article 117 of BC of Ukraine. One of such actions is a return of budget funds according to a specific budget. Such measure of impact is being used in case of not targeted usage of budget funds. It is focused on reparation to a budget and also on financial situation rehabilitation. Furthermore, according to article 210 of Criminal Code of Ukraine a criminal responsibility is envisaged. It is envisaged for not targeted usage of budget funds and budget allocation as well as credit provision from budget without set budget assignments or its exceedance of State budget of Ukraine in a certain year<sup>3</sup>. At the same time, currently there are no special legal acts in Ukraine concerning determination of losses made to a country because of not effective usage of budget money. Professor Getmanets O.P. is of the opinion that: “a question of legal origin of financial-legal responsibility and specificities of its usage in budget relations as well as different kinds budget-legal responsibility are being demanded and debated in legal field”<sup>4</sup>.

Based on abovementioned it raises a question: what are the lines of competence of court’s expert-economist who makes expert decisions concerning confirmation of damages made to a country because of budget legislation violation. In addition to this not targeted budget money usage is also considered.

It is worth mentioning that “competency” is defined as “a number of questions in which somebody is a good specialist”<sup>5</sup>. In a new dictionary of Ukrainian language “competency” is defined as a “good knowledge of something; the scope of the authority of any organization, institution, person”<sup>6</sup>. In the mentioned definitions of competence the same is in the semantic basis of both: knowledge that a person must obtain, the scope of questions in which a person must be educated, experience needed to successfully complete a job in accordance with set rules, rights, and laws.

<sup>1</sup> Yearly reports (2018). *Official site of Clearing house*. <[https:// gov.ua/upload-files/Activity/ Reports/2018/ ZVIT\\_RP\\_2018.pdf](https://gov.ua/upload-files/Activity/Reports/2018/ZVIT_RP_2018.pdf)> (2019, July, 15).

<sup>2</sup> *Правила складання паспортів бюджетних програм місцевих бюджетів та звітів про їх виконання, 2014* (Міністерство фінансів України). *Офіційний сайт Верховної Ради України* <<https://zakon.rada.gov.ua/laws/show/z1104-14>> (2019, July, 12).

<sup>3</sup> *Кримінальний кодекс України, 2001* (Верховна Рада України). *Офіційний сайт Верховної Ради України* <<https://zakon.rada.gov.ua/laws/show/2341-14#n1432>> (2019, July, 15).

<sup>4</sup> Гетманець, О. П. (2017). Правовий характер відповідальності за порушення бюджетного законодавства. *Підприємство, економіка, право: науково-практичний та економічно-правовий журнал*, 2, 198-202 <<http://pgp-journal.kiev.ua/archive/2017/2/39.pdf>> (2019, July, 15).

<sup>5</sup> Ожегов, С.И. (2019). *Словарь Ожегова. Толковый словарь русского языка* <<http://www.ozhegov.org>> (2019, July, 15).

<sup>6</sup> *Словник української мови* (2019). *Академічний тлумачний словник (1970-1980)* <<http://sum.in.ua>> (2019, July, 15).

The abovementioned confirms thoughts of court's expert A. P. Cherednichenko that competency of experts-economists in the area of maternal science-economy and followed by it methodological and procedural claims, principles of court-expert activity legitimacy, independence, objectiveness and fullness of investigation. Beyond the borders of experts-economist's competency there are questions that have audit connection. There are also questions concerning material damages made by actions of officials<sup>1</sup>. Thus, in the article 242, part 1 of the Criminal Procedure Code of Ukraine it is mentioned that expertise is not allowed for questions concerning law clarification<sup>2</sup>.

Therefore, the following decisions have to be considered as a violation of borders of competency:

- decisions made by expert-economist that have a relation to a subjective side of budget legislation violation (defined by an article 116 of BC of Ukraine or by other budget legislation about norms concerning completion, confirmation, changes implication, reports about completion);
- completion of revision actions (for instance, calculation of damages made to a country as a result of budget legislation violation);
- clarification and collection of proofs with the help of obtaining evidence from accused and witnesses.

Concerning determination of borders of competence of court's experts in case of harm determination as a result of budget legislation violation we agree that "experts-economists in the scope of their competence can solve problems concerning documental and normative confirmation of damage's estimation which was given to the court by the claimant or was made by the auditor in the act of verification"<sup>3</sup>. Besides, by defining damages made to a country as a result of budget legislation violation it is recommended to exit from legal determination of material damage – as a cost of lost assets or not fully obtained income which is determined by accounting data and financial reports of controlled objects or with the help of expert's evaluation and other means determined by the legislation. This all information is given in the Common decree of Directorate for the integrated reconstruction of railways and the construction of railway transport facilities, Ministry of Internal Affairs and Security Service of Ukraine from 19.10.2006 № 346/1025/685/53<sup>4</sup>.

Facts of not targeted budget money usage are in the following documents: documents of accounting and reports (main books, balances, memorial warrants, statements from banks, calculated payroll and other documents), with the help of which the following is determined: volume, distribution and targeted character of budget funds usage (plans of budget provisions, assignments, cost estimations, plans about budget money usage), treasury accounting that set the volume of officials responsibilities, acts of audits<sup>5</sup>.

**Conclusions.** Therefore, experts-economists make investigations that are in their scope of competence. They give conclusions based only on documents that confirm or do not confirm only the fact of targeted usage of budget money according to demands of an actual budget legislation and correctness of calculations. These calculations are in the acts of controlling organs concerning damages made to the country because of budget legislation violation.

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<sup>1</sup> Чередніченко, А. П. (2012). Сфера компетенції експерта-економіста суду. *Незалежний аудитор*, 11, 86-88.

<sup>2</sup> *Кримінальний процесуальний кодекс України, 2012* (Верховна Рада України). *Офіційний сайт Верховної Ради України* <<https://zakon.rada.gov.ua/laws/show/4651-17>> (2019, July, 15).

<sup>3</sup> Назар, Ю. С. (2014). Основа використання повернення бюджетних коштів до певного бюджету. *Науковий вісник Львівського державного університету внутрішніх справ*, 1, 181-190.

<sup>4</sup> *Наказ про затвердження Порядку взаємодії органів державної контрольно-ревізійної служби, органів прокуратури, внутрішніх справ, Служби безпеки України* (Головне Контрольно-Ревізійне Управління України, Міністерство Внутрішніх Справ України, Служба Безпеки України, Генеральна Прокуратура України). *Офіційний сайт Верховної Ради України* <<https://zakon.rada.gov.ua/laws/show/z1166-06>> (2019, July, 15).

<sup>5</sup> Хомутенко, В. П., Костін, О. Ю.: ред. (2017). *Теорія та практика проведення судових експертиз за напрямком інженерних, економічних, товарознавчих видів досліджень та оціночної діяльності: монографія*. Одеса: ФОП Гуляєва В. М., 350.

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