

Sudarenko O. V.,*Ph.D. in Law, Associate Professor,
Associate Professor at the Department of Administrative,
Financial and Informational Law
Kyiv National University of Trade and Economics***Senchenko L. V.,***Ph.D. in Law, Associate Professor,
Associate Professor at the Department of Administrative,
Financial and Informational Law
Kyiv National University of Trade and Economics***LEGAL REGULATION OF PARTICIPATION OF STATE IN FINANCING OF CULTURE****ПРАВОВЕ РЕГУЛЮВАННЯ УЧАСТІ ДЕРЖАВИ У ФІНАНСУВАННІ КУЛЬТУРИ**

The article investigates the issues of legal regulation of the state's participation in the financing of culture in the medium-term budget planning and decentralization reforms. Such forms of state participation in the financing of culture as direct (main) and indirect are determined. The directions for the improvement of legislation in this area are proposed.

Key words: *budget financing of culture, budget funds executors, own funds of budget institutions, intergovernmental transfers, grants in the field of culture.*

Статтю присвячено дослідженню питань правового регулювання участі держави у фінансуванні культури в умовах середньострокового планування бюджету та реформи децентралізації. Визначено такі форми участі держави у фінансуванні культури, як безпосередня (основна) та опосередкована. Запропоновано напрями вдосконалення законодавства у зазначеній сфері.

Ключові слова: *бюджетне фінансування культури, розпорядники бюджетних коштів, власні кошти бюджетних установ, міжбюджетні трансферти, гранти у сфері культури.*

Статья посвящена исследованию вопросов правового регулирования участия государства в финансировании культуры в условиях среднесрочного планирования бюджета и реформы децентрализации. Определены такие формы участия государства в финансировании культуры, как непосредственная (основная) и опосредованная. Предложены направления совершенствования законодательства в указанной сфере.

Ключевые слова: *бюджетное финансирование культуры, распорядители бюджетных средств, собственные средства бюджетных учреждений, межбюджетные трансферты, гранты в сфере культуры.*

Relevance of the research. Each state independently determines the limits of participation in the financing of its functions, and in particular, the culture. The main source of funding for culture in Ukraine was budget funds. Despite the fact that «<...> the state tries to allocate to all subjects of budget law the amount of funds necessary for the performance of their functions» [1, p. 196], and in these funds there is a deficit, the question of legal regulation of state participation in financing culture at the present stage was not the subject of comprehensive studies in Ukraine. However, in our opinion, this is not the only problem in providing adequate funding for culture. One of the issues that is also in need of scientific study is the question of the existence of conflicts between the norms of cultural legislation and budget law.

The purpose of the study is to determine the forms of state participation in the financing of culture and their legal regulation, worked out directions for the improvement of legislation in this area.

Analysis of recent research and publications. The first comprehensive study of the legal basis for financing cultural expenditure in Ukraine was made by Nechaj A.A. in 1995 [2]. Today the issue of legal regulation of culture funding was devoted to a series of articles [3; 4], however, a comprehensive study was not

carried out, and the question of funding culture is not covered in the textbooks on financial law. All this leads to the need to investigate the issue of legal regulation of state participation in financing of culture, especially in the context of decentralization reform and medium-term budget planning reform.

Presenting of main material. The main form of state participation in financing the culture is budget financing. However, the share of expenditures on culture put into the actual subsistence minimum is 1.7 percent that is 63 hryvnia per month [5]. Budgetary funds for financing of culture can be allocated from all levels of the budgetary system of Ukraine. Thus, clause 10, 11 part 1 of Art. 87, clause 5 part 1 of Art. 89, clause 5 part 1 of Art. 90 of the Budget Code of Ukraine provides for financing of culture and art at the expense of expenditures from the State Budget of Ukraine, from the budget of the Republic of Crimea and region budgets, from budgets of cities of republican and region level, district budgets, budgets of united territorial communities [6]. However, it should be noted here that if territorial communities unite against a long-term plan, and now there are 36 of them, then they are not subject to the norms of the budget legislation envisaged for the united territorial communities [7]. At the same time, funding of cultural and artistic programs of local level may be made from

all budgets that are part of the budget system of Ukraine [6, par. 6 part 1 Art. 91].

The analysis of the norms of the Budget Code of Ukraine gives grounds to conclude that the object of allocating funds from the budgets in Ukraine is the state cultural and educational programs and events, theatrical-entertainment programs and cultural and artistic events. At the same time, the legislation on culture operates with another terminology. In particular, Art. 23 of the Law of Ukraine «On Culture» defines the list of the basic network of cultural institutions of the national and local level [8]. It is logical to assume that institutions of the state level are financed by the State Budget (their list is approved by the central executive body, which ensures the formation of state policy in the spheres of culture and arts (hereinafter – the Ministry of Culture)), and the basic network of local culture institutions (the list of which is approved local executive authorities and local self-government bodies) from local budgets. The above mentioned conclusion is confirmed by the Report of the Council of Europe Experts on the Review of the Cultural Policy of Ukraine, which states that «<...> basic cultural services are provided and financed through local administrations, including support for libraries, cultural buildings, clubs, museums, theaters or exhibitions. Local cultural infrastructure is taken by local authorities (regional and municipal) under the control of the Ministry» [9].

In order to ensure timely, complete and effective financing, funds should be provided for in the budget act (Law of Ukraine «On the State Budget of Ukraine for the relevant year», decision about the local budget). In order to comply with this condition, it is necessary to adhere to the budget norms concerning the planning of budget funds for the corresponding purpose. According to Part 3 of Art. 4 of the Law «On Culture» in cases stipulated by the law or stipulated by the Program for the Development of Culture and the Arts (hereinafter – the Program of Activities), the financial support of socially important cultural and artistic activities is carried out by the Ministry of Culture. For this purpose, the Ministry of Culture annually, no later than the first of October, develops and submits to the Government of Ukraine a draft Program of activities [8]. However, in October, the draft law on the state budget is already under consideration in the Parliament of Ukraine, therefore, the Ministry of Culture as the main executor of budget funds cannot provide adequate funding for the corresponding budget expenditures for implementing program measures. Also, the above mentioned Ministry does not belong to the entities submitting proposals to the draft budget at the third stage of the budget process, and among the reasons for the second reading of the draft law on the State Budget there is no ground such as clarifying budget requests by the main budget funds executors. In order to ensure balance of budget indicators, timeliness and completeness of budget reflection on the amount of funds needed to finance a culture, amendments to Art. 4 of the Law of Ukraine «On Culture», which will take into account the requirements of the budget legislation of Ukraine.

Starting from 2015, cultural institutions, like other businesses, have acquired the right to receive state aid –

support in any form of economic entities through state resources or local resources [10]. If at the expense of the budget in any form government assistance is provided to economic entities, the main executors of budget funds shall add to the budget request a copy of the relevant decision of the Antimonopoly Committee adopted in accordance with the Law of Ukraine «On State Aid to Business Entities», or notify in writing on their exemption from the obligation to notify new state aid with reference to the provisions of mentioned Law and the regulations that establish the appropriate conditions for exemption [6, part 4 of Art. 35]. If institutions of culture simultaneously with the main non-profit activities, which provide state support, carry out other commercial activities, the possibility of cross-subsidization of commercial activity at the expense of state support should be excluded (for example, by distributing accounts for accounting of the main type of activity in the field of culture (non-commercial activities) and an additional type of activity (commercial activity)) [11]. To ensure the targeted use of funds by the cultural institution, the corresponding funds from the budget are allocated in the form of transfers.

State aid may be recognized as admissible if it is provided for the purpose of maintaining and preserving the national cultural heritage, provided that the impact of such state aid on competition is insignificant [10, Clause 4 part 1 of Art. 6; 12].

The Law of Ukraine «On State Aid to Business Entities» does not extend to the support of projects implemented by the Ukrainian Cultural Foundation [10, Clause 3 part 2 of Art. 3]. The Ukrainian Cultural Foundation is a budget institution whose activities are directed and coordinated by the Ministry of Culture [13]. The Ukrainian Cultural Foundation has the right to grant grants for projects whose value exceeds 150 minimum salaries established on the first of January of the respective year, as well as the right to support projects under co-financing conditions. This is another two forms of state participation in the financing of culture.

Taking into account the scarcity of budgetary funds allocated for financing the culture, the legislation states that in the case of receiving funds from the provision of paid services, voluntary donations of individuals and legal entities, including foreign ones, from other sources not prohibited by law, in particular, «<...> financing certain cultural programs, shares of state authorities» [14, p. 123], budget allocations of state and communal institutions of culture shall not decrease [8].

From 2015 the process of decentralization continues in Ukraine [15]. In 2015-2019, 4110 territorial communities were united in 884 united territorial communities (37.5% of the total number of bases councils as of 01 January 2015) [7]. Positive aspects of decentralization should include the fact that there is an annual increase in local budgets' own revenues. Thus, local budgets increased their own revenues in January 2019 compared to January 2018 by UAH 3.3 billion (+ 21.4%), and budgets of cities of region level – by UAH 1.4 billion (+ 20.6%) [7]. In 2020, the second stage of the decentralization reform in Ukraine will begin – the administrative

consolidation of those united territorial communities that did not participate in voluntary unions, the creation of 100 capable districts and 1600-1800 capable communities, consolidation of financial self-sufficiency of local self-government, the formation of an effective control system [16].

Since December 2015, state and municipal cultural institutions have acquired the right to place part of their revenues received on a current account in banks of the state sector of the economy (State Oshhadbank of Ukraine, State Export-Import Bank of Ukraine, Ukrghazbank and Pryvat Bank) received as a payment for services provided by them in accordance with the basic activities, charitable contributions and grants [6; 17]. The institution of culture should agree the appropriate decision with the main executors of budget funds. As for communal institutions of culture, such a decision must necessarily be reflected in the decision of the local council during approving the local budget for the following budget period. Funds are accumulated on separate current accounts with banks, and cultural institutions use them in accordance with the requirements of Articles 13 and 51 of the Budget Code. When accruing interest on the balance of funds on current accounts, they are credited to a special registration account at the Treasury Office. Consequently, the state gives the right not only to keep funds in banks, but also to receive interest on the balance of funds.

Conclusions. Ukraine takes direct and indirect participation in financing the culture. Thus, the main forms of state participation in financing the culture are direct budgetary financing (at the expense of state and local budgets). The indirect participation of the state in the financing of culture is the provision of certain special rights for the more efficient use of own funds by budget institutions – cultural institutions, namely: the right to state and communal institutions of culture to allocate part of their revenues to current accounts with public sector banks; granting the right to receive interest on the balance of funds in the current account with the trans-

fer of these funds to a special registration account for enrollment of subgroup 3 of the second group of own revenues in the organs of the State Treasury; the right to receive state aid in the form of intergovernmental transfers; the right to receive grants. Taking into account the scarcity of budgetary funds allocated to culture, the state does not prohibit receiving funds from other sources of financing not prohibited by law, without reducing budget allocations.

Based on our research, in order to resolve the conflicts that exist between fiscal legislation and cultural legislation, we believe that a number of changes should be made. In order to ensure balance of budget indicators, timeliness and completeness of budget reflection on the amount of funds needed to finance a culture, amendments to Art. 4 of the Law of Ukraine «On Culture», which will take into account the requirements of the budget legislation of Ukraine.

Taking into account the difference in the powers of village, settlement, city councils, their executive bodies and powers of the united territorial communities in particular in the sphere of the budget [18], amendments to Art. 3 and Art. 6 of the Law of Ukraine «On the Protection of the Cultural Heritage», defining the powers of the mentioned subjects in the sphere of cultural heritage protection.

Without the attention of the state, support for the financing of culture in the conditions of decentralization remained. We believe that in Art. 24-1 of the Budget Code of Ukraine, provision should be made for allocating funds for financing the culture in the amount of at least 10 percent of the State Fund for Regional Development. Taking into account the annual increase of own revenues of local budgets, we consider it expedient to foresee in the Budget Code of Ukraine provisions regarding the transfer of part of funds with a surplus of the local budget to finance the culture.

The article covers only with the most important problems that require urgent solution, further research and a detailed mechanism for legal regulation of cultural financing is still to be created.

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