

Mariia Blikhar

Lviv Polytechnic National University,
Doctor of Juridical Sciences, Professor,
Professor at the Department
of Administrative and Informational Law
of Institute of Jurisprudence, Psychology and Innovative Education
ORCID : 0000-0003-2974-0419

**FINANCIAL AND LEGAL COMPONENT
OF LEGAL LIABILITY SYSTEM
IN THE FIELD OF INVESTMENT ACTIVITY**

<http://doi.org/10.23939/law2022.35.119>

© *Blikhar M.*, 2022

The current system of liability in the field of investment activity is considered in the article. It is proved that the legal institute of liability is an obligatory element of the mechanism of legal regulation of investment relations, as it directs the actions of all subjects of investment activity to lawful behavior. Attention is paid to the peculiarities of the legislation that determines the procedure for investment activities; legal liability in the field of investment law is considered as a complex legal phenomenon, that is, the legal obligation to comply with the requirements of investment law, which is implemented in lawful behavior of the subjects of investment activity, which is encouraged or approved by the state, and the legal relations that arise between the state in the face of regulatory authorities and the violator (subject of investment activity) of the requirements contained in the norms of law, as a result, there may be negative consequences for the subject of the offense in the legally prescribed procedural form. Various scientific positions on the grounds of legal liability have been studied, which allowed to divide the approaches of scientists to understanding the concept of legal liability into three main groups: 1) supporters of the so-called “negative” legal liability, who connect legal liability only with the commission of an offense; 2) supporters of positive legal liability, who base their position on the fact that legal liability is focused not only on the past, but also on the current and future behavior of the subject of legal relations; 3) scientists who consider legal liability not only as negative (retrospective) and positive (prospective), but as a holistic legal phenomenon with different forms of implementation. The types of legal liability for violation of the established procedure of investment activity are considered, which gives grounds to believe that the main specificity of liability for violation of investment legislation is its compensatory-punitive nature, because the content of the compensatory component lies in the necessity to compensate for the damage caused by illegal actions of officials of state financial control bodies. It is highlighted that officials of state financial control bodies who have violated the established procedure for investment activities, in addition to compensation and payment of penalties, are subject to administrative or criminal liability (for example, deprivation of the right to hold a certain position, etc.), and therefore, depending on the nature of the committed offenses, they can simultaneously bear several types of legal liability.

Key words: legal liability, material liability, disciplinary liability, economic and legal liability, financial liability, administrative liability, criminal liability, investment activity.

Formulation of the problem. The presence of different views on the problem of understanding such a multifaceted phenomenon as legal liability, creates difficulties in law enforcement practice and hinders the effective functioning of the mechanism of guaranteeing and ensuring the rights and freedoms of subjects of legal relations, including the investment ones. The concept of legal liability due to its practical significance is both the most researched and the most controversial. Legal liability has acquired the status of one of the basic institutions of law. Without this institution, no national legal system can be imagined. Thus, the legal institute of liability is an obligatory element of the mechanism of legal regulation of investment relations, as it directs the actions of all subjects of investment activity (together with the authorized persons of the supervisory authorities) to lawful conduct. Given this, the importance of investment in modern Ukrainian realities, the presence of a number of unresolved financial and legal components in the field of investment activity and the need to find and implement new vectors to improve the system of legal liability in this area determine the importance and timeliness of research.

Analysis of recent research and publications. In modern legal science there is a fairly small number of works on legal liability in the field of investment activity. This problem was studied in the works of leading domestic scientists, such as I. Ye. Krynytskyi, M. P. Kucheryavenko, L. A. Savchenko, O. P. Orlyuk, N. Ya. Yakymchuk and others.

Formulation of hypotheses and goal setting – to investigate the grounds and types of financial liability for investment offenses.

To achieve the goal and objectives, to ensure the reliability of the results obtained the methods of scientific knowledge have been used, including dialectical method to study the theoretical provisions of financial and legal regulation in the field of investment and comparative law method in the process of reviewing and studying legal literature, basic scientific approaches to solving tasks of research and analysis of domestic legislation.

Presenting main material. Today, legal liability is an important means of ensuring law and order in the country, proper implementation of the Constitution of Ukraine and current legislation. It stimulates the lawful behavior of the subjects of relations, promotes the formation of the population's respect for law and order, and therefore is an important factor in building the legal state.

Legal liability is spoken of in an objective sense and in a subjective sense. In the objective sense, legal liability is an interdisciplinary institution that establishes sanctions of a personal, property or organizational nature for the offense, as well as the procedure for applying legal sanctions to the offender. In the subjective sense, legal liability is the right to protection for a person suspected or accused of committing an offense based on the adversarial principle and equality of parties, as well as imposing on the offender certain sanctions of personal, property or organizational nature, which are provided by law for this type of offense [13, p. 858].

Analysis of the legal literature allows us to divide the existing approaches among scholars to understand the concept of legal liability into three main groups: 1) supporters of the so-called “negative” legal liability, who connect legal liability only with the commission of an offense; 2) supporters of positive legal liability, who base their position on the fact that legal liability is focused not only on the past, but also on the current and future behavior of the subject of legal relations; 3) scientists who consider legal liability not only as negative (retrospective) and positive (prospective), but as a holistic legal phenomenon with different forms of implementation.

Financial and legal component of legal liability system in the field of investment activity

Negative legal liability is a special type of legal liability, which is a corresponding reaction of society and the state to the commission by a person of a guilty illegal act in any sphere of public relations. In practice, negative legal liability is associated with the commission of an offense and is accompanied by negative consequences for the perpetrator, and positive legal liability arises from the legal obligation of the relevant entities to carry out positive, useful for society functions and is implemented in the relevant regulatory legal relations. According to Yu. Shemshuchenko, such is the liability of the Cabinet of Ministers of Ukraine before the Verkhovna Rada of Ukraine, people's deputies of Ukraine before the voters, etc. [16, p. 347]. Finally, legal liability as a coercive means of influence, applied on behalf of the state by the relevant authorities, contains a clear legal nature, and is carried out in the forms prescribed by law and on legal grounds [3, p. 1–16].

In turn, the concept of positive legal liability is a voluntary form of implementation. Positive legal liability is a voluntary form of lawful activity of the subject of legal relations, which is realized through lawful behavior, namely awareness of the legal properties of his actions, their correlation with existing laws and regulations, willingness to answer for them before the state and society. One way or another, however, there are common features inherent in both positive and negative legal liability, as well as there are many interrelationships of ethics and responsibility in public relations, legal relations, etc. [5; 14, p. 719–739].

Before considering the main types of legal liability of subjects of public relations for investment offenses, we should note the existence of special measures of investment liability of persons carrying out investment activities.

As can be seen from Art. 8 of the Law of Ukraine “On Investment Activity”, the investor in the cases and in the manner prescribed by the legislation of Ukraine, is obliged to submit to the financial authorities a declaration of the amount and sources of his investments; to obtain a permit for construction works in the cases and in accordance with the procedure established by the Law of Ukraine “On Regulation of Urban Planning Activities”; to receive a written report of the examination of the construction project in the cases and in the manner prescribed by Article 31 of the Law of Ukraine “On Regulation of Urban Planning Activities”; to obtain a positive conclusion of the state examination of the investment project in the cases and in the manner prescribed by the Cabinet of Ministers of Ukraine [9].

With regard to the subjects of investment activity, they must comply with state norms and standards, the procedure for establishing of which is determined by the legislation of Ukraine; comply with the requirements of state bodies and officials nominated within their competence; submit accounting and statistical reports in the prescribed manner; prevent unfair competition and comply with the requirements of the legislation on protection of economic competition; pay taxes, fees (mandatory payments) in the amount and manner prescribed by the laws of Ukraine.

It is also important that in order to conduct economic activity that is subject to licensing, participants in investment activities must obtain an appropriate license, issued in the manner prescribed by law.

In case of non-fulfillment of these requirements by the subjects of investment activity, the legislator provide for a certain liability. Art. 20 determines that in case of non-compliance with contractual obligations, the subjects of investment activity bear property and other liability provided by the legislation of Ukraine and concluded agreements; the payment of fines and penalties for breach of contracts, as well as compensation for damages do not release the guilty party from its obligations, unless otherwise provided by law or contract.

Thus, the special measures of liability of the subjects of investment activity include economic and legal liability and measures to suspend or terminate investment activity. At the same time, in our opinion, special responsibility for violating the requirements of investment legislation performs not only incentive, but also other functions, in particular, prevention of investment offenses, monitoring the effectiveness of its entities, informing investment participants about the results of their and their partners' activities.

The main forms of economic and legal liability in the field of investment activities include the following: compensation for losses (used in case of breach of contractual obligations, damage to

investment entities and other participants); operational and economic sanctions (refusal to extend the contract; early termination in the prescribed manner of investment contracts in case of gross breach by the other party of contractual obligations; change the order of payment, in accordance with the terms of the contract, for avoidance of recurrence of violations of payment deadlines; acceptance of performance after the application of a special procedure provided by the contract in case of detection of violations of the quality of performance, etc.); deprivation of benefits provided by law; taking measures to ensure the fulfillment of the obligation (payment of penalties, sanctions, fines, etc.); cancellation of the state registration of the innovation structure and its removal from the State Register of Innovation Structures (carried out by the Ministry of Education and Science of Ukraine in case of non-compliance of its activities with the criteria set by the Commission on organization of activities of technology parks and innovation structures of other types).

At the same time, it should be noted that the possibility of establishing liability for violation of the order of investment activity in the case of contractual relations by the provisions of these regulations is not limited, as the contract may contain other conditions (eg. obligations to implement programs of technical re-equipment of production, implementation of advanced technologies, compliance with antitrust law, preservation of the nomenclature and volume of production (services) in accordance with the investment business plan; maintenance of objects of social and household purpose, etc).

Another special measure is the suspension or termination of investment activities. According to Part 1 of Art. 21 of the Law of Ukraine "On Investment Activity" termination of investment activity is carried out by the decision of: a) investors (investors compensate for losses to participants in investment activities); b) a competent state body. The decision of the state body to suspend or terminate investment activities may be made for the following reasons: if its continuation may lead to a violation of statutory sanitary and hygienic, architectural, environmental and other norms, rights and interests of citizens, legal entities and the state protected by law; bankruptcy of an investor due to insolvency in accordance with the procedure established by law; as a result of a natural disaster or the imposition of a state of emergency.

To implement the provisions of legislation relating to ensuring the sanitary and epidemic welfare of the population, as well as state sanitary norms, rules and hygiene standards for investments of citizens, legal entities (regardless of subordination and types of ownership) and the state for the sale of property and intellectual values, which are invested in objects of entrepreneurial and other activities, in order to create a profit (income) or achieve a social effect, measures are taken to suspend or terminate investment activities. In this case, the suspension of investment activity is applied if the investment project (program) does not have the conclusion of the state sanitary and hygienic examination or if as a result of investment activity there is a violation of sanitary and hygienic requirements, which can be eliminated. In turn, the termination of investment activity is applied if the continuation of investment activity according to the conclusion of the state sanitary and hygienic examination will lead to violation of sanitary and hygienic requirements and it is impossible to prevent such violation by other means (except termination), and also if investment activity is carried out concerning objects, the creation and use of which does not correspond to sanitary norms [10].

It should be noted that in accordance with Art. 399 of the Economic Code in case of termination of investment activity in Ukraine, a foreign investor has the right to return his investment no later than six months after the termination of this activity, as well as income from these investments in cash or in goods, as the other is not established by law or agreement of the parties [2].

Norms of special liability for investment violations are scattered in various regulations, which significantly complicates the application procedure.

Despite the existence of a number of special liability for violating investment legislation, the most effective legal means of strengthening law and order in its implementation include measures of legal liability applied to persons guilty of violating investment legislation.

According to the current legislation, the liability of officials of controlling bodies occurs under the following conditions: illegality of adopted decisions, actions or inaction of officials; the

presence of damage to persons or their property; the causal link between the wrongful decision of the official and the damage.

The delimitation of administrative and financial liability is also mentioned in the decision of the Constitutional Court of Ukraine of May 30, 2001 in the case No. 7-pn/2001, where it is stated that the provisions of Art. 92 of the Constitution of Ukraine do not directly establish the types of legal liability. Therefore, the provisions of the Code of Ukraine on Administrative Offenses, which determine the procedure for bringing to administrative liability, cannot be applied as regulating the issue of bringing to liability of other type, as well as the fact that administrative liability does not cover special types of legal liability provided by other branches of law (tax, banking, budgetary and legal (types of financial and legal liability)) [11].

For example, N. Yakymchuk also highlights the differences between financial and legal liability and administrative liability, namely: 1) financial and legal liability occurs only for violation of financial norms that establish rules of conduct for financial entities, protect the financial interests of the state; 2) financial legal relations by their nature have property character, so offenses in this area always cause property damage to the state and society as a whole. Due to the property nature of financial legal relations, the construction of financial liability is dominated by sanctions related to deprivation of mainly property character [17, p. 79–84].

It is worth pointing out the different procedures for applying financial and legal, as well as administrative sanctions. For example, the process of bringing to liability of the managers of budget funds for violations of budget legislation, although similar to the administrative process, takes place in accordance with the procedures provided by budget legislation in the case of violation of financial and budgetary discipline. In fact, financial and budgetary discipline is understood as the observance by officials of executive bodies of the rules and procedures established by law regarding the procedure for spending budget funds.

Among the main violations of financial and budgetary discipline, according to the classification of violations in the analytical reports of regulatory authorities, are the following:

1) loss of financial and material resources as a result of violations of the law: lack of financial resources; incurring expenses in violation of the law; non-target expenditures of state resources; illegal expenses; shortcomings;

2) loss of financial and material resources due to ineffective management actions: lost profits; unproductive (extra) costs.

As for the legislator's position on financial liability, it is not entirely clear. Direct reference to financial liability as a separate type is contained in the Tax Code of Ukraine. As follows from paragraph 1 of Art. 111 of the Criminal Code of Ukraine, for violation of laws on taxation and other legislation, the control of which is entrusted to the supervisory authorities, the following types of legal liability are applied: paragraph 1.1 of Art. 111 financial; paragraph 1.2 of Art. 111 administrative; paragraph 1.3 of Art. 111 criminal.

According to paragraph 2 of Art. 111 of the Criminal Code of Ukraine, financial liability for violation of laws on taxation and other legislation is established and applied in accordance with this Code and other laws [7].

The existence of financial liability is also evidenced by the norms of the Budget Code of Ukraine, which provide for financial and legal liability for budget violations.

According to paragraph 11 of Art. 7 of the Budget Code of Ukraine, the principle of liability of participants in the budget process is defined as such that each of them is responsible for their actions or inaction at each stage of the budget process. Together with the principles of the Lima Declaration of Guiding Principles of Control, in particular economy (minimization of costs incurred for a particular activity while maintaining the quality of results), effectiveness (the degree of achievement of goals and the ratio of planned results to factual) and efficiency (the ratio between the cost of production of inventory,

work or other values and the amount of resources spent on such production) [4], this principle creates the basis for financial and budgetary discipline by managers of budget funds.

For example, L. Savchenko also points out that the Budget Code of Ukraine at the legislative level enshrined the concept of budget violation as non-compliance by the participant in the budget process established by law acts of the procedure for drafting, reviewing, approving, amending, execution of budget or budget execution report [12, p. 339]. Thus, the Ministry of Finance of Ukraine, as the controlling body, may suspend budget allocations in case of untimely and incomplete submission of reports on budget execution, non-compliance with accounting requirements, preparation of reports and internal financial control over budget funds and non-compliance with the procedure for transferring these funds, submission of unreliable reports and other information on budget execution, violation by budget managers of requirements for their budget commitments, non-targeted use of budget funds.

Many scholars consider financial sanctions as an integral part of the financial and legal norm. For example, O. Orlyuk believes that it is in the sanction of financial and legal norms that the imperative nature of regulations in the field of financial activity is expressed. In case of violation of the established conditions, the legislation provides for the possibility of applying financial, administrative, disciplinary measures. Sanctions of financial and legal norms are in essence economic and legal (property), because the disadvantage and undesirable measures envisaged by them is to reduce the property of the offender through his money and funds. In this regard, it can be stated that the financial sanction in its understanding as an element of financial and legal norm is precisely the element that connects the norms of financial law with the norms of other branches of law, allows you to use the possibilities of their normative constructions and institutions to achieve the goals of financial and legal regulation [6].

Summarizing the above, financial responsibility can be defined as a legal obligation of the subjects of financial legal relations to comply with the requirements of financial legislation, which is implemented in lawful conduct, and in the case of a financial offense the obligation of the offender lies in bearing condemnation and restriction of property or non-property nature.

The next type of legal liability of subjects of public relations for investment offenses is disciplinary liability.

Disciplinary liability to the subjects of public legal relations is applied, in accordance with Art. 64 of the Law on Civil Service and other special regulations, for non-performance or improper performance of official duties specified in this law and other regulations in the field of civil service, and as well as for violations of ethical conduct and other violations of professional discipline.

The basis for bringing to disciplinary liability is the commission of a disciplinary misdemeanor by an official of the controlling body, that is, illegal culpable act or omission or decision-making consisting in non-compliance or improper fulfillment by a civil servant of his/her official duties and other requirements established by the Law on Civil Service and other normative legal acts [8].

In this case, the offenders may be subject to penalties provided for by the rules of internal procedure, disciplinary statutes and regulations, the Law on Civil Service: remarks; reprimand, warning of incomplete official responsibility; transfer to another job, dismissal.

Thus, disciplinary liability is the only tool that allows the manager to distance himself from the violation. And if the manager covers up a dishonest or irresponsible employee, that is, shows inaction, he becomes an accomplice to the violation and must also bear liability. That is why the above norms of Part 4 of Art. 63 of the Law on Civil Service are relevant today and should have a positive impact on the service discipline of the subjects of public legal relations.

In our opinion, changing approaches to disciplinary practice, disciplinary sanctions for every offense committed by a civil servant – this is something that can work to clean up the government better than any lustration and certification. This fully applies to officials of regulatory authorities.

The following two types of legal liability (material and civil) of the subjects of public legal relations are regulated by the Labor Code of Ukraine, with some features that are in other laws, including the Law on Civil Service, and the Civil Code of Ukraine.

Financial and legal component of legal liability system in the field of investment activity

Both civil and material liability have some identical features, the main of which are the property and compensatory nature of liability. The functions and the main criteria are similar – the grounds and conditions for the emergence of subjects of public legal relations of civil and material liability. In both cases, it is a matter of inflicting property damage as a result of illegal actions of the person concerned.

Civil liability is applied differently in contractual and non-contractual obligations.

In the professional literature, civil liability is mainly considered as the obligation of participants in civil relations to suffer additional deprivation of property for the offense.

The main feature of bringing the subjects of public legal relations to material and civil liability for violation of the established procedure for investment activities is that they are liable only for direct actual damage to the budget due to violation or non-performance of their official duties and provided that such damage is caused by guilty illegal actions (inaction).

Forms of civil liability and material liability that lie in the burden of compensation for damages imposed on the subject of public relations are similar. Thus, in order to implement the principle of full compensation, damage caused to a physical or legal person by illegal decisions, actions or inaction of an official of a public authority of local government body in the exercise of his / her powers should be compensated by the state or local government regardless of the guilt of this person (Article 1174 of the Civil Code of Ukraine [15]). Similar provisions are contained in Art. 80 of the Law on Civil Service, Part 1 of which establishes the obligation to compensate for material and moral damage caused to physical and legal persons by illegal decisions, actions or inaction of civil servants in the exercise of their powers [8].

Thus, the material and civil liability of the state in the face of regulatory bodies is based on the principle of objective liability, that is, in the presence of a causal link between the wrongful decision, action or inaction of an official of the state financial control body and the damage caused to the business entity carrying out investment activity. The peculiarity of their occurrence is that the presence of guilt in the actions (inaction) of a particular official of the supervisory body is not required. An illegal act or inaction of a specific official of the supervisory body may be committed innocently (for example, as a result of execution of a decision or direct instruction of a higher body or official, which turned out to be illegal, as a result of which damage was caused).

The most severe type of legal liability of officials of the subject of public legal relations is criminal liability, to which officials of state financial control bodies are brought in accordance with the Criminal Code of Ukraine.

Criminal liability, in contrast to the already mentioned types of legal liability, arises as a result of committing a criminal offense which is a socially dangerous act, the composition of which is provided for in the criminal law.

The procedure for the implementation of criminal liability is strictly regulated and established only by the Code of Criminal Procedure of Ukraine. A person guilty of a crime can be brought to criminal liability only by a court. No one can be found guilty of any crime and punished other than by a court sentence and in accordance with the law.

Summing up the review of types of legal liability for violation of the established procedure for investment activity, we believe that the main specificity of liability for violation of investment legislation is its compensatory and punitive nature, because the content of the compensatory component lies in the necessity to compensate for the damage caused by illegal actions of officials of state financial control bodies.

Conclusions. Analysis of the types of legal liability for violation of the established procedure for investment activity gives grounds to believe that the main specificity of liability for violation of investment legislation is its compensatory and punitive nature, because the content of the compensatory component lies in the necessity to compensate for the damage caused by illegal actions of officials of state financial

control bodies. At the same time, the application of liability is aimed at the individual punishment of a particular offender. Thus, officials of state financial control bodies who have violated the established procedure for investment activities, in addition to compensation and payment of penalties, are subject to administrative or criminal liability (for example, deprivation of the right to hold a certain position, etc.), and therefore, depending on the nature of the offenses, they can simultaneously bear several types of legal liability.

Given the peculiarities of the legislation, which determines the procedure for investment activities, legal liability in the field of investment law is considered as a complex legal phenomenon, that is, the legal obligation to comply with the requirements of investment law, which is implemented in lawful behavior of the subjects of investment activity, which is encouraged or approved by the state, and the legal relations that arise between the state in the face of regulatory authorities and the violator (subject of investment activity) of the requirements contained in the norms of law as a result of which negative consequences may occur for the subject of the offense in the legally established procedural form.

REFERENCES

1. Blikhar, M. M. (2017). Finansovo-pravova vidpovidalnist pry zdiysnenni investytsiynoi diialnosti. *Visnyk Natsionalnoho universytetu "Lvivska Politehnika". Seriya: "Yurydychni nauky" [Scientific Bulletin of National University "Lviv Polytechnic". Series: Law Sciences]*, Issue 865, pp. 169–176. URL : <https://doi.org/https://doi.org/10.23939/law2017.865.169>.
2. Hospodarskyi kodeks Ukrainy No. 436-IV. (2003). URL : <http://zakon3.rada.gov.ua/laws/show/436-15>.
3. Eckert, Julia, Knöpfel, Laura. (2020). Legal responsibility in an entangled world. *Journal of Legal Anthropology*, No. 4(2), pp. 1–16. URL : <https://doi.org/10.3167/jla.2020.040201>.
4. Kerivni pryntsypy z audytu derzhavnykh finansiv. (2003). Zbirnyk bazovykh dokumentiv INTOSAL: Proekt PROON z vryaduvannya "Dobrochesnist na praktytsi".
5. Machado, Andreia, Correia, Antonio. (2020). Corporate Ethics and Social Responsibility. *International Journal of Humanities and Social Science*, No. 25(6). URL : <https://doi.org/10.9790/0837-2506052637>.
6. Orlyuk, O. P. (2010). Finansove pravo: akademichnyi kurs : pidruchnyk. K. : Yurinkom Inter.
7. Podatkovyi kodeks Ukrainy 2755-VI. (2010). URL : <http://zakon2.rada.gov.ua/laws/show/2755-17>.
8. Pro derzhavnu sluzhbu: Zakon Ukrainy 889-VIII. (2015). URL : <http://zakon3.rada.gov.ua/laws/show/889-19>.
9. Pro investytsiynu diialnist: Zakon Ukrainy 1560-XII. (1991). URL : <http://zakon5.rada.gov.ua/laws/show/1560-12>.
10. Pro zatverdzhennia poriadku zupynennia abo prypynennia investytsiynoi diialnosti pry porushenni sanitarnoho zakonodavstva: nakaz Ministerstva okhorony zdorovia Ukrainy No. 65. (1995). URL : <http://zakon5.rada.gov.ua/laws/show/z0132-95>.
11. Rishennya Konstytutsiynoho Sudu Ukrainy No. 7-pn/2001. (2001). URL : <https://ccu.gov.ua/docs/430>.
12. Savchenko, L. A. (2008). Pravovi osnovy finansovoho kontrolyu : navchalnyi posibnyk. K. : Yurinkom Inter.
13. Tatsiy, V. Ya. (2016). Velyka ukraïnska yurydychna entsyklopedia. Pravo. Vol. 3.
14. Torelli, R. (2021). Sustainability, responsibility and ethics: different concepts for a single path. *Social Responsibility Journal*, No. 17(5), pp. 719–739. URL : <https://doi.org/10.1108/SRJ-03-2020-0081>.
15. Tsyvilnyi kodeks Ukrayiny No. 435-IV. (2003). URL : <http://zakon2.rada.gov.ua/laws/show/435-15>.
16. Shemshuchenko, Yu. S. (1998). Yurydychna entsyklopedia. Vol. 1. Ukrayinska yurydychna entsyklopedia.
17. Yakymchuk, N. Ya. (2008). Pytannya isnuvannya byudzhethno-pravovoyi vidpovidalnosti. *Visnyk Natsionalnoi akademii prokuratury Ukrainy [Scientific Bulletin of National Prosecutor's Office of Ukraine]* Issue 2, pp. 79–84. URL : <http://www.visnyknapu.gp.gov.ua/ua/arhiv-nomeriv>.

Дата надходження: 23.05.2022 р.

Марія Бліхар

Національний університет “Львівська політехніка”,
доктор юридичних наук, професор,
професор кафедри адміністративного та інформаційного права
Інституту права, психології та інноваційної освіти
ORCID : 0000-0003-2974-0419

**ФІНАНСОВО-ПРАВОВА КОМПОНЕНТА
СИСТЕМИ ЮРИДИЧНОЇ ВІДПОВІДАЛЬНОСТІ
У СФЕРІ ІНВЕСТИЦІЙНОЇ ДІЯЛЬНОСТІ**

Розглянуто чинну систему відповідальності у сфері інвестиційної діяльності. Доведено, що правовий інститут відповідальності є обов’язковим елементом механізму правового регулювання інвестиційних відносин, оскільки спрямовує дії усіх суб’єктів інвестиційної діяльності до правомірної поведінки. Звернено увагу на особливості законодавства, що визначає порядок здійснення інвестиційної діяльності. Юридичну відповідальність у сфері інвестиційного права розглянуто як комплексне правове явище: правовий обов’язок дотримуватися вимог інвестиційного права, що реалізується у правомірній поведінці суб’єктів інвестиційної діяльності, яка заохочується або схвалюється державою, та правовідносини, які виникають між державою в особі контролюючих органів та порушником (суб’єктом інвестиційної діяльності) вимог, що містяться в нормах права, внаслідок чого можуть настати негативні наслідки для суб’єкта правопорушення в законодавчо встановленій процесуальній формі. Досліджено різні наукові позиції щодо підстав юридичної відповідальності, що дозволило поділити наявні серед науковців підходи щодо розуміння поняття юридичної відповідальності на три основні групи: 1) прихильників так званої “негативної” юридичної відповідальності, які пов’язують юридичну відповідальність лише зі скоєнням правопорушення; 2) прибічників позитивної юридичної відповідальності, які ґрунтують свою позицію на тому, що юридична відповідальність орієнтована не лише на минулу, але й на сьогодишню та майбутню поведінку суб’єкта правовідносин; 3) науковців, які розглядають юридичну відповідальність не тільки як негативну (ретроспективну) і позитивну (перспективну), але як цілісне правове явище з різними формами реалізації. Розглянуто види юридичної відповідальності за порушення встановленого порядку здійснення інвестиційної діяльності, що дає підстави вважати, що головною специфікою відповідальності за порушення інвестиційного законодавства є її компенсаційно-каральна сутність, адже зміст компенсаційної складової полягає у необхідності відшкодування шкоди, завданої неправомірними діями посадових осіб органів державного фінансового контролю. Виділено, що посадові особи органів державного фінансового контролю, які порушили встановлений порядок здійснення інвестиційної діяльності, окрім відшкодування шкоди та сплати штрафних санкцій, притягуються до адміністративної чи кримінальної відповідальності (наприклад, позбавлення права обіймати певну посаду тощо), а отже, залежно від типу вчинених дій можуть одночасно нести кілька видів юридичної відповідальності.

Ключові слова: юридична відповідальність, матеріальна відповідальність, дисциплінарна відповідальність, господарсько-правова відповідальність, фінансова відповідальність, адміністративна відповідальність, кримінальна відповідальність, інвестиційна діяльність.