

**SPECIAL ECONOMIC REGIM: CONTENT AND PLACE
IN THE SYSTEM OF ECONOMIC LEGISLATION****СПЕЦІАЛЬНИЙ РЕЖИМ ГОСПОДАРЮВАННЯ:
ЗМІСТ ТА МІСЦЕ В СИСТЕМІ ГОСПОДАРСЬКОГО ЗАКОНОДАВСТВА**

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The article is devoted to the problem of defining the essence of the category "special economic regime". Today, it is quite important to determine the place of the special management regime in the system of economic legislation. This task has not only theoretical, but also practical significance.

On the basis of the analysis of economic legislation, the works of Ukrainian researchers – specialists in the specified field, the actual situation of economic entities in the conditions of martial law, as well as the correlation of the effectiveness of the national economic system with achievements in the defense sphere, conclusions were drawn about the need to revise the conceptual apparatus of economic law. It was determined that the special regime of management cannot be attributed to a normative-legal prescription, nor to a normative-legal act, nor to an institute or branch of legislation. It is an element of the mechanism of legal regulation of economic relations.

Defects of normative and legal regulation in Ukrainian legislation are revealed: there are no definitions of the main concepts and their consolidation at the legislative level (in particular, the concept of "special economic regime" is not enshrined in the Economic Code of Ukraine), there are no criteria for assigning certain rules of economic activity to special legal regimes, and the types of special economic regimes, as well as criteria for their classification, need to be revised. From these positions, the author offers his own definition of the concept of "special legal management regime", as well as its specific characteristics. Amendments to the legislation in this area are proposed.

The place and role of the special management regime in the system of economic legislation is defined. For this, the elements of the legislation system were compared with the content of this concept. The author emphasizes that the special regime is not a branch of legislation, as it applies to individual business relationships or individual business entities. The definition of a special economic regime as an institution is controversial, because the institution of legislation is an ordered set of normative legal acts. A special economic regime is a set of legal means combined in a certain way. The Institute of Economic Legislation may contain norms regarding both the special economic regime and the general economic regime. A special regime of management cannot be considered a normative-legal prescription or a normative-legal act. The author came to the conclusion that the special economic regime is an element of the mechanism of legal regulation of certain economic relations, fixed at the legislative level.

Key words: regime; legal regime; special legal regime; legal regulation; economic activity.

Стаття присвячена проблематиці визначення сутності категорії «спеціальний режим господарювання». Сьогодні досить важливим є визначення місця спеціального режиму господарювання в системі господарського законодавства. Це завдання має не лише теоретичне, але й практичне значення. На підставі аналізу господарського законодавства, праць українських дослідників – спеціалістів у зазначеній сфері, фактичного становища суб'єктів господарювання в умовах воєнного стану, а також взаємозв'язок ефективності роботи національної економічної системи із здобутками в оборонній сфері зроблено висновки про необхідність перегляду понятійного апарату господарського права. Визначено, що спеціальний режим господарювання не можна віднести ні до нормативно-правового припису, ні до нормативно-правового акту, ні до інституту чи галузі законодавства. Він є елементом механізму правового регулювання господарських відносин.

Виявляються вади нормативно-правового регулювання в українському законодавстві: відсутні визначення основних понять та їх закріплення на законодавчому рівні (зокрема, й поняття «спеціальний режим господарювання» не закріплено в Господарському кодексі України), відсутні критерії віднесення тих чи інших правил ведення господарської діяльності до спеціальних правових режимів, потребують перегляду й види спеціальних режимів господарювання, а також критерії їх класифікації. З цих позицій автором пропонується власне визначення поняття «спеціальний правовий режим господарювання», а також його специфічні характеристики. Запропоновано внесення змін до законодавства у цій сфері.

Визначено місце та роль спеціального режиму господарювання в системі господарського законодавства. Для цього було зіставлено елементи системи законодавства зі змістом цього поняття. Автор наголошує, що спеціальний режим не є галуззю законодавства, оскільки поширюється на окремі господарські відносини чи окремих суб'єктів господарювання. Визначення спеціального економічного режиму як інституту є спірним, оскільки інститут законодавства – це впорядкована сукупність нормативно-правових актів. Спеціальний економічний режим – це сукупність певним чином поєднаних правових засобів. Інститут господарського законодавства може містити норми як щодо спеціального економічного режиму, так і щодо загального економічного режиму. Спеціальний режим господарювання не може вважатися нормативно-правовим приписом чи нормативно-правовим актом. Автор дійшов висновку, що спеціальний економічний режим є елементом механізму правового регулювання певних економічних відносин, закріпленим на законодавчому рівні.

Ключові слова: режим; правовий режим; спеціальний правовий режим; правове регулювання; господарська діяльність.

Today, in the conditions of a full-scale war in Ukraine, the national economic system of the state, its stabilization and growth (albeit minimal) are critically important for the survival of the entire nation. The urgency of strengthening the country's economy now does not cause any opposition from any groups of society: the combat effectiveness of our army depends entirely on the level of spending on it. It is possible to increase the amount of expenditures of the State Budget of Ukraine at the expense of the tax system. It is common knowledge that the vast majority of taxes are paid by business entities (as a rule, medium and large businesses).

Therefore, today there is an urgent need to review the conditions of their economic activity. And it is necessary to start with an understanding of the basic terminology,

the content of which should change in response to global social changes in the state and the world in 2022. One of these basic concepts, which can directly affect economic entities, is the understanding of the category "special economic regime".

The concept of a special economic regime was reflected in the works of A. V. Balyan, A. G. Bobkova, O. M. Vinnyk, O. R. Zeldina, R. I. Zimenkov, Yu. V. Makogon, V.K. Mamutov, A. V. Matvieieva, V. I. Pyla, O. P. Podtserkovny, L. V. Taran, and others. In their works, both the theoretical issues of the content, features and types of the special management regime, as well as the problems of functioning of various types of special management regimes, for example, the special regime of investment activity, the special regime of innovative activity, etc., were investigated.

Despite the fact that some legal scholars were engaged in researching the content of the special legal regime of management, at the current stage of the development of our society, the understanding of this term requires new research and revision of its essence in accordance with the conditions of the new time. First of all, it is necessary to rethink the very content of this category in accordance with the requirements of wartime. At the same time, it is important to resolve the issue regarding the prevailing concepts of interpretation of the category "special economic regime".

The purpose of this article is to reveal the essence and content of the category "special management regime", its specific features, as well as its place in the system of economic legislation.

The business sphere is rather heterogeneous. And of course, it is impossible to regulate completely different industries in the same way: construction and financial activities, transportation of goods and circulation of securities, trade in food products and trade in pharmaceuticals, etc. This determines the emergence and functioning of various modes of economic activity in the field of management.

As the authors of the Scientific and Practical Commentary to the Economic Code of Ukraine rightly note, the field of management cannot be imagined as an absolutely homogeneous field – it consists of multifaceted economic relations that require adequate special legal regulation depending on specific conditions [1, p. 682]. Of course, the variety of types of economic activity determines different approaches to its legal regulation. Indeed, the legal basis of economic activity is constantly influenced by both external and internal factors. This is due to the peculiarities of certain branches of the economy, economic conditions, social needs, the territory of implementation and other factors.

The activity of business entities in the sphere of public production, regardless of whether such activity is carried out with the purpose of obtaining profit or without such a purpose, is carried out within the limits of a certain legal regime and in compliance with its requirements.

Along with the general rules of economic activity, the Economic Code of Ukraine provides for the possibility of economic activity in special economic regimes. In Ukrainian legislation, the concept of "special economic regime" appeared with the adoption of the Economic Code of Ukraine. Chapter 8 of this Code also regulates the main types of special management regimes.

However, there is still no legal definition of the concept of a special economic regime. Also, there are no legislatively fixed features of it, means of state regulation, which are an integral part of any legal regime, criteria for demarcation into types, i.e., as A. V. Matvieieva rightly points out, "the basic tools of a special regime are not actually fixed by law management" [2, p. 40].

Despite the fact that the category "special economic regime" was fixed at the legislative level back in 2003, there is still no unified approach to the interpretation of the concept of special regime. So, a special economic regime is defined as:

- the institution of economic legislation, which defines a special procedure for the implementation of economic activity in a certain territory, in a certain branch of the economy or in the process of implementing an economic contract, which differs from the general regime of economic activity provided for by legislation and is introduced to achieve the goals established by the state [3, c. 835; 1, p. 612];

- a special order of legal regulation of certain social relations, which is established relative to a certain circle of subjects or their sphere of activity and which differs from the general regime either by the preferential or restrictive direction of the regulation, conditioned by the public interest, manifested in all elements of its mechanism, in particular, through guarantees, benefits, forms of state support, restrictions, prohibitions and additional grounds for legal liability [4, c. 86];

- a legal regime that establishes a special procedure for the organization and implementation of economic activity in a certain territory, in a certain sector of the economy, which differs from the general regime of economic activity provided for by legislation, and is introduced by the state in order to ensure a reasonable combination of public and private interests by establishing restrictions and /or incentives for business entities [3, c. 4] etc.

Due to such a variety of interpretations of the concept of "special management regime", it is quite difficult to define its role and place in the system of economic law. Especially considering the fact that each special management mode is quite specific compared to each other.

O. R. Zeldina defines a special business regime as a legal regime that determines the order of organization and implementation of economic activity in a certain territory, in a certain branch of the economy, which differs from the general regime of economic activity provided for by legislation, and is introduced by the state with a specific purpose to ensure a reasonable combining public and private interests by establishing restrictions and/or incentives for business entities [5, p. 9]. Although this definition contains, as we imagine, most of the main features of a special economic regime, we cannot agree with the use of such a phrase as "reasonable combination of public and private interests" in the definition, as this may lead to an arbitrary interpretation and understanding of the essence of the special regime management by those who will be engaged in law enforcement.

The analysis of the above definitions of the concept of "special economic regime" allows us to single out its characteristic features, in particular:

- 1) such regime is established by legislation and ensured by the state;

- 2) is a special legal method of regulating economic relations;

- 3) this regime consists of a set of legal means and is characterized by their appropriate combination;

- 4) creates a certain degree of favorability or disadvantage for satisfying the interests of economic entities.

The Economic Code of Ukraine enshrines the possibility of creating and operating the following types of special economic regimes [6]: 1) special (free) economic zones (Chapter 39, Articles 401-405); 2) concessions (Chapter 40, Articles 406-410); 3) the exclusive (maritime) economic zone of Ukraine (Article 411); 4) economic activity on the state border of Ukraine (Article 412); 5) economic activity in sanitary and protective and other protective zones, on territories and objects that are specially protected (Article 413); 6) special management regime in certain sectors of the economy (Article 414); 7) carrying out economic activity in conditions of emergency, emergency environmental situation (Article 416); 8) carrying out economic activity in the conditions of martial law (Article 417).

Based on the analysis of legislative constructions regarding the formulation of types of special business regimes, A. V. Matvieieva offers her own classification of types of special business regimes: general type special legal regime of business and branch special legal business regime. At the same time, the author focuses on the fact that a special legal regime of a general type determines the "rules of the game" for the types of economic activity provided for by Chapter 8 of the Civil Code of Ukraine. The sectoral special legal regime of business concerns only certain branches of the economy, directly defined by law as requiring stabilization and accelerated development [2, c. 40-41]. Although the proposed classification is controversial, it made it possible to single out specific features that can be used to distinguish a special economic regime from a general economic regime: a special economic regime is characterized by either a preferential or restrictive direction of legal regulation; a special regime is established

in a certain territory or in a certain branch of the economy; a special regime is established either relative to a certain circle of subjects or to their sphere of activity [2, p. 41]. At the same time, from the above signs, in our opinion, it is not entirely clear how they cover the regime of martial law, the regime of a state of emergency, since the Economic Code of Ukraine contains reference norms. This issue needs further detailed study.

In his dissertation study, O. R. Zeldina proposes to classify special management regimes depending on the legal means used by the legislator. Thus, the author divided all special economic regimes into three groups [5, p. 12]: 1) a restrictive special business regime is a regime where the legislator, by establishing restrictions in the process of economic activity, achieves certain goals for the protection of territories, objects, etc. (economic activity on the state border of Ukraine, in conditions of a state of emergency, an emergency environmental situation, under martial law, the exclusive (maritime) economic zone, as well as economic activity in the Armed Forces of Ukraine);

2) incentive-restrictive special business regime – these are those regimes where, with the help of a combination of certain restrictions in the process of carrying out economic activity and providing benefits, the necessary goals are achieved (concession, economic activity in sanitary and protective and other protective zones that are specially protected);

3) special incentive regime of management are regimes, the introduction of which is connected with the need to solve socio-economic problems, attracting investments to a certain territory of the state, in a certain branch of the economy, creating new jobs by providing various incentives for business entities. (S(F)EZ, territories of priority development, as well as management in certain sectors of the economy.

On the basis of this classification, the scientist notes that the features of the special management regime include: a combination of legal norms that establish the specifics of legal regulation to achieve certain goals; use of specific legal means; separation of legal norms that comprehensively regulate the organization and implementation of economic activity [5, c. 9]. L. V. Taran quite rightly notices that one of the essential features of a special legal regime is that it is granted to a special subject [4, c. 126].

Thus, it is possible to draw conclusions about the concept and main features of a special economic regime, as well as about directions for further research in this area.

The analysis of the above definitions and features of the special economic regime allows us to generalize and propose our clarification of the definition of this category. We believe that, taking into account the above proposals of scientists and our considerations, the following should be included among the signs of a special economic regime:

1) it is one of the varieties of the legal regime, which contains all its main features, but differs in the specifics of the industry itself;

2) a special business regime always has its own defined purpose, and therefore it is characterized by the presence of a preferential, restrictive or preferential-restrictive direction of legal influence;

3) a special economic regime is always a unique combination of legal means of regulating economic activity;

4) depending on the purpose of introduction, special management regimes are characterized by preferential, restrictive or preferential-restrictive orientation;

5) the main purpose of introducing a special management regime is the comprehensive regulation of the organization and implementation of economic activity;

6) the special business regime is extended in individual cases to special entities;

7) a special regime is established in a certain territory or in a certain branch of the economy, or in relation to a certain circle of subjects or to the sphere of their activity.

Relying on the given signs of a special economic regime, it is possible to approach the disclosure of the essence of this category. Thus, in our opinion, a special economic regime should be understood as a legal regime that introduces a special procedure for carrying out economic activity in a certain territory, in a certain branch of the economy, in relation to a certain circle of persons or in relation to a certain circle of persons, which is characterized by either preferential or restrictive, or mixed direction of legal influence on economic relations to achieve the goal defined by the legislator.

At the same time, it is worth considering the place in the system of economic legislation. According to the amount of regulatory material in the horizontal structure of the legislation system, the following are distinguished: 1) normative legal prescription; 2) regulatory act; 3) institute of legislation; 4) branch of legislation [7, p. 265].

Normative-legal prescription is actually the rules of conduct, principle, definition and other elements of the legal system, which are fixed at the legislative level. That is, in their literal sense, they are articles of a normative legal act, their parts, clauses, etc. A normative-legal act is a written document issued by a state authority within the limits of its powers, which contains normative-legal prescriptions. The institution of legislation is usually understood as a set of interrelated and mutually complementary legal prescriptions aimed at regulating the corresponding personified set of social relations. And the branch of legislation is an interconnected system of legislative acts.

What is the place among all these components of a special economic regime? If you compare all these categories with the concept of "special economic regime", then its legal nature and place in the legal system will become quite clear. Of course, the special regime is not a branch of legislation, because it extends to individual economic legal relations or to certain business entities. In addition, the definition of a special management regime as an institution is quite controversial. In particular, on the grounds that the institution of legislation is an ordered array of normative legal acts, and a special economic regime is a set of legal means combined in a certain way. At the same time, one institution of economic legislation may contain norms regarding both the special economic regime and the general regime, as well as other issues. It is quite obvious whether or not the special regime of management is classified as a normative-legal prescription and normative-legal acts. The special management regime contains regulatory and legal prescriptions in a certain set of them. At the same time, a special regime is not and cannot be a normative legal act, because the elements of a special management regime are fixed in normative legal acts. Considering the above, it should be noted that the special economic regime is an element of the mechanism of legal regulation of certain economic relations, fixed at the legislative level.

A special management regime is applied in a specifically defined territory during a clearly established period and provides for the presence of special legal norms regulating the procedure for carrying out economic activities within the limits of this regime. At the legislative level, varieties of special business regimes are enshrined in the Civil Code of Ukraine, and at the doctrinal level, a classification of special regimes has been carried out, which, depending on the presence of encouraging or restrictive conditions for economic activity.

The main work that should be carried out today when studying the issues of the special economic regime today should be reduced to establishing the essence and main features of the special economic regime at the legislative level, expanding and analyzing the criteria for assigning certain rules of economic activity to the special economic regime, as well as revising already existing types of special modes of economic activity.

REFERENCES:

1. Науково-практичний коментар Господарського кодексу України /за заг. ред. Г.Л. Знаменського, В.С. Щербини; кол. авт.: О.А. Беяневич, О.М. Вінник, В.С. Щербина та ін. К.: Юрінком Інтер, 2008. 720 с.
2. Матвеева А. В. Спеціальний правовий режим господарювання: поняття і види. *Право та інновації*. 2018. № 4. С. 39-44.
3. Хозяйственное право: учебник /В. К. Мамутов, Г. Л. Знаменский, К. С. Хахулин и др.; под ред. В. К. Мамутова. Київ: Юрінком Інтер, 2002. 910 с.
4. Таран Л. В. Специальный правовой режим предпринимательской деятельности в свободных экономических зонах Украины (комплексное исследование). Харків: Видавець СПД ФО-П Вапнярчук Н.М., 2004. 256 с.
5. Зельдіна О. Р. Теоретичні аспекти спеціального режиму господарювання : автореф. дис. ... д-ра юрид. наук. Донецьк, 2007. 40 с.
6. Господарський кодекс України від 16.01.2003 р. № 436-IV. URL: <http://zakon4.rada.gov.ua/laws/show/436-15> (дата звернення 30.08.2022 р.).
7. Загальна теорія держави і права: підручник /М. В. Цвік, О. В. Петришин, Л. В. Авраменко та ін.; за ред. д-ра юрид. наук, проф., акад. АПрН України М. В. Цвіка, д-ра юрид. наук, проф., акад. АПрН України О. В. Петришина. Харків: Право, 2009. 584 с.