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Prejudice on discretion in law enforcement of financial legal provisions

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Abstract
Imperfection of procedure for implementing prejudice during the judicial review of cases could cause instability of practice, which indicates relevance of the research topic regarding formulation of clear criteria for the mechanism of applying prejudice at one's own discretion in the enforcement of financial provisions of law. In view of the above, the purpose of the article is to identify peculiarities of discretionary powers bias in enforcement of financial provisions of law. The basis of the methodological toolkit is general philosophical (dialectical, hermeneutic), general scientific formal (empirical in the form of observation, description and comparison; axiomatic; hypothetical-deductive; formalization; unity of historical and logical) and specific scientific methods (formal-logical; comparative-legal; system-structural), as well as the methodology of revocation and monitoring of a preliminary judgment, which allows to investigate theoretical and practical issues of discretionary powers in the enforcement of financial and legal norms in unity of their substantive component and external form of reflection. Classification of prejudice has been proposed by: level of law enforcement; legal force of prejudice; meaning of established factual circumstances that are included in the subject of proof; nature of accusation; subject. The psychological dimension of using prejudicial categories has been studied as a metacognitive activity for establishing and taking into account values of prejudice in view of accuracy of empirical generalizations, formulating judgments to identify future consequences of decision-making with prejudicial categories given in the original decision. The article outlines the mechanism for implementing legal policy regarding the use of financial prejudicial categories, which should be based primarily on the instrumental and procedural characteristics of this model of legal influence. It has been established that in the organizational and legal aspect, conditions for the entry of the national market segment into the cross-border space are formed by streamlining interaction procedures of the subjects of legal relations through appropriate forms of legal influence. The practical value of the results is that they could be used to determine the procedure for using prejudice at the supranational and national levels, in particular, in the context of applying the practice of the Court of the European Union

Keywords:
legal framework; legal regulations; functions of law; legal interpretation; evaluation; preliminary categories; atypical regulations

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Introduction

The relevance of the subject under study concerns the insufficiently developed normative prescriptions related to the establishment of the impossibility of appealing against the existence of already proven facts, which have been assessed and consolidated in a legal act that has entered into force. The imperfect procedure for implementing the prejudice during the judicial resolution of cases could cause instability of practice, which proves the urgency of formulating clear criteria for the mechanism of applying the prejudice on discretion in law enforcement of financial legal provisions.

The anthology of legal thought about the relevant concepts shows the emergence of new substantive characteristics of prejudice as: properties of individual legal phenomena; reception of legal equipment; act of law enforcement; intellectual and volitional activity of proving; the fact established by the court; a conclusion made by one court, which is binding. At the stage of modern and postmodern of legal intelligence, common features of prejudice are its presumed truth and universality in the consideration and resolution of cases in which the relevant legal facts are investigated with the participation of the same persons or persons in respect of whom the circumstances are established. This means that the use of preliminary categories excludes the possibility of refuting the legal credibility of an already proven fact. That is, the establishment of a legal fact based on the results of verification and evaluation indicates its establishment (presumption of truth), which does not require a new proof.

The latest doctrine presents narrowly profiled areas of interpretation of discretion in the application of financial provisions of law. According to the approach regarding the separation from the abuse of the right, this category is considered by the controlling authorities and payers in the context of tax regulation as not identical to the concept of abuse of the right, i.e. the purposeful action of the subject of tax legal relations considering the exercise of a legally established subjective right contrary to the interests of the tax legal regulation, causing damage or creating a real threat of causing it to the rights and legitimate interests of other subjects of legal relations (Makukh, 2019).

The "statutory" approach rests on the assumption that such discretionary powers should be limited by law (Huivan, 2019). As for procedural discretion, such an opportunity of an administrative court, which considers and decides a case, regulated by the norms of administrative procedural law, and based on the norms of substantive law and factual circumstances, is connected with the adoption of a procedural decision of own choice (Bevzenko & Panova, 2018).

The axiological approach is reduced to the psychological concept of common sense during law and order enforcement, when discretion is to be exercised reasonably and pursuant to the objective circumstances of the case as a manifestation of the normatively established freedom in the exercise of powers by public administration bodies (Khanova, 2018).

As for the approach of pragmatism, it is about analytical, intellectual, creative activity within the limits and method established by the legislation, the subject authorized by the law to apply a possible variant of behaviour, by evaluating the actual circumstances of the case to fulfil a legitimate goal in compliance with the principles of the rule of law, justice, prudence, efficiency, with subsequent selection of the optimal solution in a specific administrative case (Zherdiev & Mikhailina, 2018).

Researchers turn to the definition of legal issues (Kuftyriev, 2018), issues of a reasonable balance (in terms of exercising discretion) between public and private interest to ensure the achievement of the objectives of legal regulation, i.e., the free choice of decision-making without the need for reasons for making such a decision (Krasovska, 2020).

The doctrine emphasizes that both transparency and security are crucial (Leerssen & Mooij, 2023) when exercising the prejudice within the application of financial provisions of law. Data protection legal framework covers financial intelligence units (Brewczyńska, 2021), helping to prevent discrimination (van Bekkum, 2023), when connecting blockchain and artificial intelligence as two distinct technologies (Eszteri, 2022).

The purpose of the paper is to reveal the features of prejudice on discretion in law enforcement of financial legal provisions. The research tasks cover defining the essence, basic characteristics, functions, and types of the prejudice, algorithms to establish appropriate procedural limits for discretion in law enforcement of financial legal provisions.

Materials and Methods

The research deals with using contemporary general philosophical, general scientific and specific scientific instruments. The choice of these tools of knowledge is determined by a systematic approach. This provides an opportunity to explore theoretical and practical issues of discretion in law enforcement of financial legal provisions in the unity of their content component and external form of reflection.

General philosophical methods (dialectical, hermeneutic) have been used to reveal the procedural dimension of prejudicial application of financial legal provisions.

The main group of formal methods has been used in the article as general research methods. General research methods of theoretical research (axiomatic, hypothetical-deductive, unity of the historical and logical, formalization) have been used in the coverage of studies on the issues of the formation and development of this legal institution. General research methods (analysis and synthesis, induction and deduction, abstraction and generalization, analogy) have been used when clarifying the fundamental dimension of the prejudicial categories.

As for specifically research methods of scientific knowledge, the article is based on a formal-legal method to characterize the normative dimension of prejudice; the comparative legal method in relation to research studies of the issues of formation and development of this legal institution; system-structural method regarding the procedural measurement of prejudice in the discretionary application of the financial legal provisions.

Results and Discussion

The essence and procedure of implementing the prejudice

It is possible to distinguish between objective and subjective limits of prejudice on discretion in law enforcement of financial legal provisions. The objective limits include the facts established by the relevant procedural act, which were not subject to proof. The subjective limits are the range of persons to whom the preliminary categories apply. Preliminary categories are atypical regulations that declare the establishment of legal facts as proven, i.e., those that have passed the assessment, the results of which cannot be challenged, and have entered into force. This means that the circumstances, set out in such an act, are considered binding in cases where the subject of the investigation is under the same circumstances. In this way, the prohibition of re-evaluation of already proven and evaluated facts is implemented. As a result, procedural savings are achieved.

The judiciary interprets preliminary categories similarly (Fig. 1). The Supreme Court has specified that the prejudice is a binding nature of the facts established by a court decision, which has entered into force, in one case for the court in other cases. Preliminary significance is not the legal conclusions of the court, but the circumstances (facts) established by the court in another case[1]. The conclusions of the courts on the rights and obligations of the parties are not prejudicial to other courts in their consideration of cases involving the same persons or the person in respect of whom these circumstances are established.

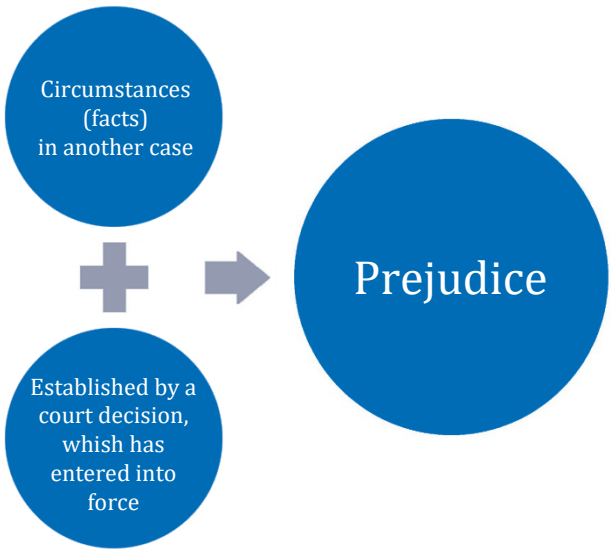

Figure 1. Interpretation of prejudice
Source: developed by the author based on the results of Supreme Court's practice in the case No. 160/5671/21[2]

Among the features of prejudice in law enforcement of financial legal provisions, there are the following: at least one obligatory participant is to be the same person in respect of whom the relevant factual circumstances have been established (the subject composition might not be completely identical, but the person who did not participate in the case with the established preliminary categories has the right to refute such circumstances); legal facts and compositions are established by a court decision of a court of any jurisdiction and instance of the judicial system; a court decision of both intermediate and final nature, in which preliminary categories are formulated, is to enter into force; the facts established in the motivating and/or operative parts of the court decision, concerning the presence or absence of which a dispute has arisen, shall have preliminary significance; exceptions in the practice of law enforcement of preliminary categories are established in procedural or substantive law.

Prejudicial categories in the application of the provisions of financial law affect the process of conducting administrative proceedings regarding the bindingness

[1]Resolution of the Supreme Court No. 160/5671/21. (2022, August). Retrieved from https://reyestr.court.gov.ua/Review/105577291.
[2]Ibidem, 2022.

for all other bodies of judicial power of conclusions about the facts established by court decisions that have entered into force. In fact, it is about the axiomatic truth of such circumstances within the scope of the proof procedure in another court case. At the same time, in the practice of administrative proceedings, a detailed mechanism for implementing prejudiciality has not yet been regulated, so judges interpret the specified category quite broadly, sometimes expanding its meaning.

Psychologism in the use of preliminary categories is to be conditioned by the elimination of discrimination by ethnic, racial, national, or religious parameters, through group identity, etc. To this end, we could use the methodological tools of evolutionary game theory to study the dynamics of discriminatory behaviour, formation of cooperation strategy (Whitaker *et al*., 2018). It is necessary to avoid favouritism. Thus, it is possible to maintain a "balance" between such fundamental principles as autonomy, independence, universality and consistency of decisions, competition and dispositiveness. Similar potential consequences should arise for future autonomous artificial intelligence systems in the administration of justice, specifically in human-machine interaction (Barikova, 2021). This will reduce the bias of the parties in consideration and resolution of the case. As a subject of law enforcement or law-making, one must think globally, which is an imitation of social pluralism.

From the stated provisions on the essence and features of the prejudicial categories, their functions follow as regulatory, protective, and defensive. In the protection of legal relations, these functions have a preventive nature in relation to the prevention of procedural abuse. The protective dimension is manifested in the consequences of committing illegal acts, i.e., torts, non-performance or improper performance of duties within the procedural discretion. The balance between security and protection measurements is maintained by the regulatory function of prejudice. Coordination and purposeful activity of law enforcement entities regulates public relations in the direction of compliance with the rules of conduct established by law, taking into account the appropriate and lawful scope of competence according to the established preliminary categories.

There is a variability of prejudicial categories in the discretionary application of law. Their classification by such criteria could be practically useful: according to the level of law enforcement: supranational (decisions of the European Court of Human Rights, which are the basis of another court decision); national (intersectoral and sectoral); by the legal force of prejudice: normative and administrative acts, final court decisions, especially, homogeneous, the facts established by the act of the subject of public administration; under the value of the established factual circumstances which are part of the subject of proof: procedural and legal; by the nature of the accusation: accusatory; acquittals; according to the subject.

The psychological dimension of the use of prejudicial categories in the application of law is primarily due to the limits of discretion, considering the public interest. As a rule, it is the issue of applying the *PRAM methodology*, i.e., Pre-judgment Recall and Monitoring. This methodology is a metacognitive activity to establish and take into account the values of prejudice given the accuracy of empirical generalizations, formulating judgments to identify future consequences of decision-making with the prejudicial categories given in the original decision. The influence of decisions through direct or indirect reciprocity is to be considered within the discretion. In the first case of reciprocity of decisions, the subject of law enforcement is bound by the provisions of the law. In the second case, the preliminary nature of the next decision is considered, provided that there is a connection between the established legal facts and compositions, as well as legal relations with the circumstances of the derivative case with the participation of the same entities.

The relevant judicial practice of the Supreme Court has been highlighted regarding the characteristics and limits of prejudice. Preliminary categories affect the process of applying the provisions of financial law regarding the binding nature of all other subjects of law enforcement. It is a question of axiomatic truth of such circumstances within the procedure of proof. As a rule, prejudice is based on the rule of taking the facts into account from the standpoint of their legality and validity as established circumstances, relevant to the resolution of the case. At the same time, this kind of legal assumption could be refuted in case of newly discovered circumstances or in view of other grounds regulated by law. In addition, the subject of law enforcement is not bound by the legal assessment of the preliminary categories provided by these facts in other cases. All this complicates the law enforcement process and sometimes leads to errors that violate the rights and legitimate interests of the individual.

The mechanism for implementing the legal policy in the use of preliminary categories

Considering the mechanism for implementing the legal policy in the use of preliminary categories, it should be based primarily on the instrumental and procedural characteristics of this model of legal impact. In addition, given the regulatory core of the financial law, the quintessence of the relevant mechanism is its administrative and legal dimension. In this perspective, the mechanism of legal policy implementation is to be considered as a dynamic category. This approach in the legal doctrine is perceived as a dynamic administrative and legal regulations affecting the anatomy of legal reality, legal substance through the elements of the legal system that are subject to regulatory impact.

For example, the qualification of circumstances as prejudicial is related to the right of the court during

the consideration of the case based on them to independently qualify the behaviour of a person and to reach its own conclusions regarding the legality of such behaviour with the appropriate application of the necessary material and legal norms (Fig. 2). The prejudicial nature of the circumstances of the case established in the court decision, which has become legally binding, is also revealed in the fact that the court takes such circumstances into account, even if this court decision was not actually executed[1].

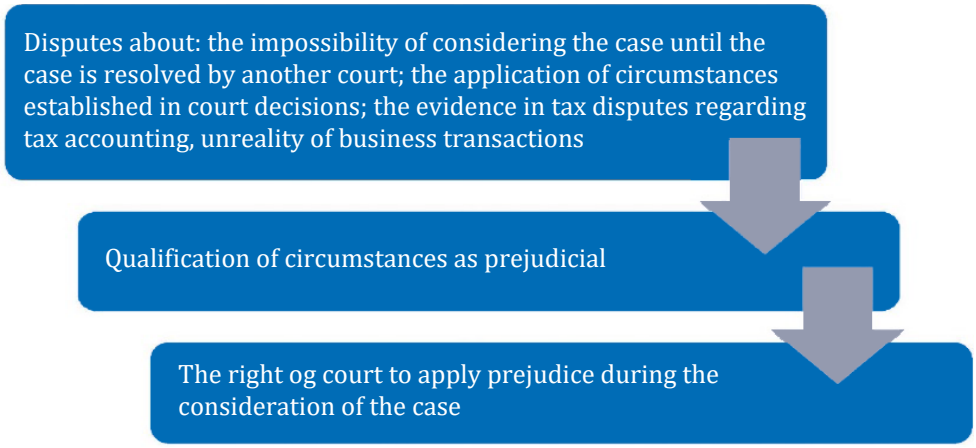

Figure 2. The prejudicial nature of the circumstances of the case
Source: developed by the author based on the results of the Supreme Court's practice in the cases No. 160/4454/20[2], 480/1390/19[3], 808/2099/17[4], 823/865/16[5], 826/17523/15[6]

The current level of implementation is to determine the motivational orientation, taking into account the needs and interests of subjects of the financial law. The system of value orientations of such subjects apropos the pursuance of the mechanism for implementing the legal policy should reflect the anthropo- and sociocentric orientation of the law based on the dominant value-motivational, as well as rational and emotional aspects of the worldview and motivation of the subjects.

Hence, the mechanism for implementing the financial policy is to be understood as functional elements, legal relations and tools that structure the conduct rules for the subjects of the financial law, specifically, in the implementation of public governance to achieve the goals and objectives of the rule of law, ensuring the lawful behaviour of subjects, their administrative legal personality and fulfilment of public interest to ensure unhindered access to the competitive market and the provision of appropriate quality services. The constituent elements of this mechanism in the second phase will ensure the proper regulatory framework for public interest and competition.

In detailing the mechanism for implementing the legal policy, such a mechanism in the administrative and legal dimension responds not only to regulatory but also to doctrinal characteristics. This is due to the need for the primary formulation of theoretical postulates of the rationale for updating the procedural and substantive aspects of the financial functioning.

The dogmatization of the financial law in terms of the markets convergence might affect the implementing the legal policy in this area. This contributes to the implementation of progressive international approaches at two levels, i.e., "basic" and "current". Within the framework of the "basic" level, there are rules of law, crystallized throughout the civilizational development of society, which objectively exist and act separately from the changing factors, the will of individuals and are reflected in the principles of law (the basis for the formation of the "current" level and the objective factor of the integration process). The substantial component of the "current" level is determined by the level of legal awareness, culture of society, state forms, law-making activity. Therefore, in the context of the integration processes, it is appropriate to unify the implemented legal policy in such a way as to take into account the supranational law principles in terms of reducing, and in eventually eliminating the gap between the "basic" and "current" levels of the legal system. The indicated proposal could be implemented making allowance for the criteria for understanding the essence of the categories "rule of law", "law", "legal", etc., as well as the "basic" level of the financial law system.

[1]Resolution of the Supreme Court No. 480/1390/19. (2022, January). Retrieved from https://reyestr.court.gov.ua/Review/1030299236
[2]Resolution of the Supreme Court No. 160/4454/20. (2022, December). Retrieved from https://reyestr.court.gov.ua/Review/108025526.
[3]Resolution of the Supreme Court No. 480/1390/19. (2022, January). Retrieved from https://reyestr.court.gov.ua/Review/103029923.
[4]Resolution of the Supreme Court No. 808/2099/17. (2022, May). Retrieved from https://reyestr.court.gov.ua/Review/104340916.
[5]Resolution of the Supreme Court No. 823/865/16. (2019, December). Retrieved from https://reyestr.court.gov.ua/Review/86504399.
[6]Resolution of the Supreme Court No. 826/17523/15. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107251359.

Supranational and national dimensions of prejudice
In the international legal dimension, the legal policy is to be guided by the rules of international law, namely supranational laws. These rules should be implemented in the national financial law, including with the aid of participants in international legal relations. In the future, the constitutional and legal dimension of the mechanism for implementing the legal policy is to be involved regarding the convergence of markets. Moreover, it is important to take into account the constitutional provisions, as well as political decisions on the digitalization of such legal policy. The parliament and the government of the country concerned should be key actors in this process.

Henceforth, the described mechanism is to "descend" to the administrative and legal dimension. Here, through the rule of law, the subjects of public administration, as well as the subjects of delegated powers in institutional and procedural terms, affect the interests of all subjects. In addition, this dimension is closely related to the private law dimension of the mechanism. At the same time, none of these "static" material national dimensions of the mechanism for implementing the legal policy could be implemented without taking into account the procedural dimension. The latter provides the dynamics of pursuing the institutions, especially, through the institution of administrative justice for resolving the conflicts between the subjects of public administration and entities of private law, as well as the institute of administrative justice for consideration of cases and adjudication by a competent court.

Within discretional dimension, a digisprudence is being established as the design of legitimate code (Diver, 2021), when law, authority, and respect are three waves of technological disruption (Brownsword, 2022). Algorithmic regulation leads to appearance of a new "Lex Ex Machina" concept (Pečarič, 2021), when it is urgent to adopt the Artificial Intelligence Act (Hacker, 2021). Artificial intelligence is to be considered as a service with legal responsibilities, liabilities, and policy challenges (Cobbe, 2021). However, AI-based decisions could lead even to disappearance of law (Razmetaeva & Satokhina, 2022).

In fact, it is suitable to find a balance between the harmonization of the regulatory array, the performance of rights and legitimate interests of the subjects and ensuring the synchronism of a discretionary development process. Through such factors, the relevant conditions for the digitalization and protection of the rights, freedoms and legitimate interests are institutionalized. In the organizational and legal perspective, this point of view means that the conditions for the entry of the national market segment to the cross-border space are formed by streamlining the procedures for the cooperation of subjects in legal relations, through the corresponding forms of legal influence with the use of proper methods.

Deviation from prejudice might be justified if there is a need for a "live" transition to interpretation, filling gaps and open "legitimate" completion of the law. Relevant changes are to be implemented in a natural, gradual, and coordinated manner. It is possible to offer such order of overcoming of legal force of prejudicial. The general obligation of prejudice is conditional. The standard legitimate way to reject a prejudice is to review decisions on legality and reasonableness when making them. Confirmation of the error "cancels" the preliminary nature of such a decision (Barikova, 2020). If the draft decision contradicts the preliminary categories given in another decision that has entered into force, it is necessary to review unacceptable legal facts and compositions. For example, these might be procedural abuses, artificial distortion (creation or forgery) of evidence, etc.

Conclusions

Consequently, it is necessary to assess the preliminary relationship between decisions on the established legal fact or composition, consequences or requirements arising from the same legal relationship in the original process. Such prejudice applies to the cases of application of law on: 1) the emergence, change or termination of basic legal relations in the primary process, affecting the use of prejudicial categories in derivative legal relations in the next process; 2) the emergence of a legal relationship not generated by the primary relationship, which contains interdependent substantive provisions of law; 3) the recognition of a claim for a conviction due to confirmed preliminary categories by a primary court decision, etc.

As a general conclusion regarding the preliminary application of the provisions of financial law, it follows that prejudice in law enforcement is obligatory on the basis of the rule of law. Deciding in the next process is not possible without making a final decision in the primary process, the consequences of which determine the decision of a particular case. Optional prejudice is possible in the consideration and resolution of disputes in the absence of a binding reference for a preliminary ruling. The preliminary nature of the next decision will be manifested in the formulation of a legal position on the confirmation or refutation of legal facts or compositions, legal relations given in the decision, which entered into force, provided that they are related to the circumstances of the case involving the same participants. Thus, there is a legal fiction of independent establishment of the circumstances of the case, which are the subject of proof.

Prospects for further research are related to establishing procedural features of applying the prejudice during the resolution of certain categories of disputes regarding taxation and the implementation of public financial policy. In the context of the European integration of Ukraine, it is necessary to pay attention to the potential possibility of applying the practice of the Court of Justice.

Conflict of Interest

None.

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References

[1] Barikova, A.A. (2020). Prejudice within the scope of administrative proceedings. *Slovo of the National School of Judges of Ukraine,* 3(32), 75-83. doi: 10.37566/2707-6849-2020-3(32)-6.

[2] Barikova, A.A. (2021). Prejudice to enforcement discretion. *Bulletin of the Higher Qualification Commission of Judges of Ukraine,* 1-2, 9-13.

[3] Bevzenko, V.M., & Panova, H.V. (2018). *The essence and grounds of the intervention of the administrative court in the discretion of the subject of public administration*. Kyiv: Dakor.

[4] Brewczyńska, M. (2021). Financial Intelligence Units: Reflections on the applicable data protection legal framework. *Computer Law & Security Review,* 43, article number 105612. doi: 10.1016/j.clsr.2021.105612.

[5] Brownsword, R. (2022). Law, authority, and respect: Three waves of technological disruption. *Law, Innovation and Technology,* 14(1), 5-40. doi: 10.1080/17579961.2022.2047517.

[6] Cobbe, J. (2021). Artificial intelligence as a service: Legal responsibilities, liabilities, and policy challenges. *Computer Law & Security Review,* 42, article number 105573. doi: 10.1016/j.clsr.2021.105573.

[7] Diver, L. (2021). Digisprudence: The design of legitimate code. *Law, Innovation and Technology,* 13(2), 325-354. doi: 10.1080/17579961.2021.1977217.

[8] Eszteri, D. (2022). Blockchain and Artificial Intelligence: Connecting two distinct technologies to comply with GDPR's data protection by design principle. *Masaryk University Journal of Law and Technology,* 16(1), 59-88. doi: 10.5817/MUJLT2022-1-3.

[9] Hacker, P. (2021). A legal framework for AI training data – from first principles to the Artificial Intelligence Act. *Law, Innovation and Technology,* 13(2), 257-301. doi: 10.1080/17579961.2021.1977219.

[10] Huivan, P.D. (2019). Determination of authorities' discretionary powers. *Legal Position,* 1(22), 81-88. doi: 10.32836/2521-6473-2019-1-81-88.

[11] Khanova, N.O. (2018). The content of the 'discretion' concept in tax law. *Law Bulletin,* 7(1), 145-160.

[12] Krasovska, D. (2020). Problematic issues for applying discretionary powers of the National Bank of Ukraine in the process of bank liquidation. *Scientific Herald of National Academy of Internal Affairs,* 115(2), 103-111. doi: 10.33270/01201152.103.

[13] Kuftyriev, P.V. (2018). *Judicial discretion in the theory of law*. Kyiv: In Yure.

[14] Leerssen, P. (2023). An end to shadow banning? Transparency rights in the Digital Services Act between content moderation and curation. *Computer Law & Security Review,* 48, article number 105790. doi: 10.1016/j.clsr.2023.105790.

[15] Makukh, O.V. (2019). Discretion and abuse of law in tax and legal regulation. *Law and Innovations,* 26, 100-106.

[16] Mooij, A.M. (2023). Reconciling transparency and privacy through the European Digital Identity. *Computer Law & Security Review,* 48, article number 105796. doi: 10.1016/j.clsr.2023.105796.

[17] Pečarič, M. (2021). Lex Ex Machina: Reasons for algorithmic regulation. *Masaryk University Journal of Law and Technology,* 15(1), 85-118. doi: 10.5817/MUJLT2021-1-4.

[18] Razmetaeva, Y., & Satokhina, N. (2022). AI-based decisions and disappearance of law. *Masaryk University Journal of Law and Technology,* 16(2), 241-267. doi: 10.5817/MUJLT2022-2-5.

[19] Van Bekkum, M. (2023). Using sensitive data to prevent discrimination by artificial intelligence: Does the GDPR need a new exception? *Computer Law & Security Review,* 48, article number 105770. doi: 10.1016/j.clsr.2022.105770.

[20] Whitaker, R.M., Colombo, G.B., & Rand, D.G. (2018). Indirect reciprocity and the evolution of prejudicial groups. *Scientific Reports,* 8(1), 1-14. doi: 10.1038/s41598-018-31363-z.

[21] Zherdiev, O.A., & Mikhailina, T.V. (2018). Limits for applying administrative discretion. *Bulletin of the Student Scientific Society of the Donetsk National University named after Vasyl Stus,* 1, 36-42.

Преюдиція щодо дискреції в правозастосуванні норм фінансового права

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Анотація
Недосконалість порядку реалізації преюдиції під час судового розгляду справ може спричинити нестабільність практики, що свідчить про актуальність теми дослідження щодо формулювання чітких критеріїв механізму застосування преюдиції на власний розсуд у правозастосуванні норм фінансового права. З огляду на зазначене, метою статті є виявлення особливостей упередженості дискреційних повноважень у правозастосуванні норм фінансового права. Основу методологічного інструментарію становлять загальнофілософські (діалектичний, герменевтичний), загальнонаукові формальні (емпіричний у вигляді спостереження, опису та порівняння; аксіоматичний; гіпотетико-дедуктивний; формалізація; єдність історичного та логічного) та конкретно-наукові методи (формально-логічний; порівняльно-правовий; системно-структурний), а також методологія відкликання та моніторингу попереднього судження, що дає можливість дослідити теоретичні та практичні питання дискреційних повноважень у правозастосуванні фінансово-правових норм у єдності їх змістової складової та зовнішньої форми відображення. Запропоновано класифікацію преюдиції: за рівнем правозастосування; за юридичною силою преюдиції; за значенням установлених фактичних обставин, що входять до предмета доказування; за характером обвинувачення; за предметом. Досліджено психологічний вимір використання преюдиційних категорій як метакогнітивну діяльність для встановлення та врахування цінностей упереджень з огляду на точність емпіричних узагальнень, формулювання суджень для виявлення майбутніх наслідків прийняття рішень з преюдиційними категоріями, наведеними в первісному рішенні. У статті окреслено механізм реалізації правової політики щодо використання фінансових преюдиційних категорій, який має ґрунтуватися насамперед на інструментально-процесуальних характеристиках такої моделі правового впливу. Встановлено, що в організаційно-правовому аспекті умови для входження національного сегмента ринку в транскордонний простір формуються шляхом упорядкування процедур взаємодії суб'єктів правовідносин через відповідні форми правового впливу. Практична цінність результатів полягає в тому, що їх може бути використано для визначення порядку використання преюдиції на наднаціональному та національному рівнях, зокрема в контексті застосування практики Суду Європейського Союзу

Ключові слова:
правова база; правові норми; функції права; юридичне тлумачення; оцінка; настановні категорії; нетипові положення