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STATE FINANCIAL CONTROL OVER COSTS OF RELIGIOUS ORGANISATIONS IN UKRAINE

State control over the activities of civil society subjects, along with any other state intervention in their activities, is one of the most sensitive social issues. The subject of state control may be the statutory activities of associations, compliance with the rights and freedoms of citizens, prohibitions established by the provisions of the law, and even financial resources and financial activities of associations.

In Ukraine, control over the financial resources of civil society entities (even though this type of control is the most elaborately regulated from a procedural point of view) gives rise to many disputes, including those of a legal nature. When it comes to state financial control over the activities of religious organisations, the issue is further complicated by the fact that the Constitution of Ukraine contains a provision on the separation of the church from the state. This becomes an additional reason for representa-

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tives of religious organisations to consider such control unacceptable and impossible, although Article 29 of the Law “On Freedom of Conscience and Religious Organisations” establishes the presence of state control in the activity of religious organisations¹. In addition, recently the issue of interaction between the state and religious organisations has moved into the political sphere, which contributes to an additional difficulty of a selected issue.

The issue of financial control has become the subject of consideration in judicial bodies. The Constitutional Court established the general requirements and rules for its implementation, in particular, “such control should not be excessive and prevent the legal activity of these associations and citizens’ exercise of their constitutional rights. The degree of state intervention in the functioning of civil society institutions must pursue a legitimate goal, be proportionate and consider the balance of private and public interests. <...> Measures of financial control over the activities of associations and their members, which do not exercise public authority or are not financed from the funds of the State Budget of Ukraine or local budgets, cannot be excessive or such as to disproportionately limit the freedom of political and public activity, level the essence the of the citizens’ right to freedom of association”².

Implementation of state financial control over the activities of religious organisations implies the existence of a private interest in minimising such control [Bochkov 2022]. On the other hand, the public interest consists of the requirement to comply with the established rules for dealing with financial resources. The search for a balance of such interests involves, on the one hand, the study of the rules governing the handling of financial resources and state control tools, and on the other hand, the disclosure of the goals aimed at by such intervention and control. This is what the presented article is dedicated to.

¹ On Freedom of Conscience and Religious Organisations, Law of Ukraine № 987-XII of 23.04.1991, <https://zakon.rada.gov.ua/laws/show/987-12> [accessed: 22.09.2022].

² Decision of the Constitutional Court of Ukraine № 3-p/2019 of 06.06.2019, <https://zakon.rada.gov.ua/laws/show/v003p710-19#Text> [accessed: 22.09.2022].

1. TYPES OF FINANCIAL CONTROL CARRIED OUT BY THE STATE OVER THE ACTIVITIES OF RELIGIOUS ORGANISATIONS

The most general type of financial control, which is carried out in Ukraine, is conducted by the State Financial Monitoring Service of Ukraine. It provides financial control which is aimed at the implementation of state policy in the field of prevention and counteraction to legalisation (laundering) of criminal proceeds, terrorist financing, and financing of proliferation of weapons of mass destruction. Such tasks determine, respectively, the ways and methods of carrying out control activities. State Financial Monitoring bodies collect, track down, and analyse information to monitor financial transactions; in the case of violation detections, they send summarised materials to law enforcement agencies and can trace the taking of appropriate measures based on the materials sent³. When assessing risks in the field of preventing and countering the legalisation (laundering) of criminal proceeds, religious organisations are classified as organisations with a high degree of risk⁴. They have received a high-risk factor, predominantly, due to the activities of international religious-extremist organisations, as well as the separatist entities of Donetsk People's Republic and Luhansk People's Republic (abbreviated as "DPR" and "LPR" respectively). At the same time, the Review on the Usage of Non-Profit Organisations for Illegal Purposes for 2020⁵ indicates that an appeal to the State Financial Monitoring Service regarding the activities of a religious organisation was made only in one case, and the reason was the inability of such an organisation to provide clarifying information upon the request of primary financial control bodies (the State Tax service). The content and subject of the requested clarifying information is not indicat-

³ On the approval of the Regulation on the State Financial Monitoring Service of Ukraine, Resolution of the Cabinet of Ministers of Ukraine № 537 of 29.07.2015, <https://zakon.rada.gov.ua/laws/show/537-2015-п#Text> [accessed: 20.09.2022].

⁴ State Financial Monitoring Service of Ukraine. Report on conducting a national risk assessment in the field of prevention and countermeasures against the legalization (laundering) of criminal proceeds and the financing of terrorism, 2019, p. 185, <https://fiu.gov.ua/assets/userfiles/310/HOP/Документи/Zvit.pdf.pdf> [accessed: 22.09.2022].

⁵ State Financial Monitoring Service of Ukraine. Review of the use of non-profit organizations for illegal purposes for 2020, https://fiu.gov.ua/assets/userfiles/411/Огляд%20НКО/Oglad_NPO_2020.pdf [accessed: 22.09.2022].

ed, however, from the content of the same reporting materials, it follows that the materials were not handed over to law enforcement agencies.

Therefore, in connection with the narrow scope of financial control carried out by the bodies of the State Financial Monitoring Service, and the special subject of control activity, this direction of state financial control over the activities of religious organisations in Ukraine will not be covered by us in this article. The analysis will be carried out according to the positions presented below.

Hence, religious organisations in Ukraine can act both in the status of a legal entity and without such. However, the possibility of not registering a charter and not forming a legal entity applies only to a religious community. Accordingly, most types of religious organisations are formed and operate in the form of legal entities. At the same time, the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" dated 16.07.1999 No. 996-XIV defines the need for accounting and financial reporting by all legal entities, regardless of their organisational and legal types and forms of ownership. Accordingly, this requirement also applies to religious organisations that have the status of a legal entity.

Therefore, first of all, it is crucial to analyse the need for accounting by a religious organisation as a tool of state influence on it and the requirement to submit financial statements as a form of state financial control.

Secondly, religious organisations can receive funding from local budgets. It should be noted here that the legislation does not prohibit the financing of religious organisations from public funds. However, Chapter 14 of the Budget Code of Ukraine (Articles 87-91), demarcates the expenses between budgets and clearly defines in what directions the expenses of different level budgets can be targeted at. The provisions of such norms do not stipulate the possibility of making expenses for the maintenance of religious organisations. However, funding of religious organisations from the budget is possible if religious organisations participate, for instance, in carrying out activities in the field of social protection (social support for large families and single-parent families, rehabilitation and social protection of persons with special needs, provision of social services aimed at overcoming poverty, etc.), to finance monuments of cultural heritage (if the building or other structures of a religious organisation belong to monuments of history and culture) and in other cases.

Thirdly, to fulfil their statutory tasks, religious organisations have the right to establish publishing, printing, production, restoration and construction, agricultural and other enterprises, as well as charitable institutions (shelters, boarding schools, hospitals, etc.) that have the right of a legal entity. These legal entities, formed by religious organisations, serve as subjects of state financial control, despite the fact that their founders are non-profit organisations, subjects of civil society. Also, under the provisions of the Law “On Freedom of Conscience and Religious Organisations”, profit from production activities and other incomes of enterprises of religious organisations are taxed in accordance with current legislation in the manner and amounts established for enterprises of public organisations.

Fourthly, in terms of state financial control, financial institutions, namely, non-state pension funds, stand out among all legal entities formed by religious organisations. Their formation is not yet widespread in Ukraine, but since 2008, the non-state pension fund “Pokrova” has been operating, formed by a sole founder – the religious organization “Leading Center of the Patriarchal Curia” of the Ukrainian Greek-Catholic Church⁶. The leadership of the Orthodox Church of Ukraine is also discussing the creation of a similar fund [Epifaniy 2021]. Therefore, the implementation of state financial control should be analysed in this direction separately.

And, finally, in the context of Russian aggression against Ukraine, the issue of personal financial sanctions imposed on the leaders of the Russian Orthodox Church due to its support for the war against Ukraine cannot be ignored. Sanctions include blocking the assets of the head of the Russian Orthodox Church and seven more of its representatives, stopping the transit of resources, suspending the fulfilment of economic and financial obligations, banning participation in the privatisation and leasing of state property, stopping cultural exchanges and cooperation, canceling official visits, etc⁷. The disclosure of this issue, of course, does not concern the issue of state financial control over the activities of religious organisations within the limits stipulated by the tasks of this study. However, due to the relevance and urgency of the issue, we could not avoid it either.

⁶ The official website: <http://pokrovanpf.com.ua/index.html>

⁷ On the decision of the National Security and Defense Council of Ukraine of October 19, 2022 “On the application and introduction of changes to personal special economic and other restrictive measures (sanctions)”, Decree of the President of Ukraine № 726/2022, <https://www.president.gov.ua/documents/7262022-44481> [accessed: 19.10.2022].

2. FINANCIAL REPORTING AND ACCOUNTING OF A RELIGIOUS ORGANISATION – LEGAL ENTITY

The status of a legal entity determines the obligation of religious organisations to maintain accounting records and submit financial statements. However, here for a religious organisation, as for any other association of citizens, it is important to include them in the Register of non-profit institutions and organisations, after which they cease to be taxpayers of corporate income tax. Such a register in Ukraine is an automated system for collecting, accumulating and processing data on non-profit enterprises, institutions and organisations, where information is entered by the State Tax Service of Ukraine. Non-profit organisations are only legal entities, and separate divisions of such non-profit organisations without the status of a legal entity are not subject to separate inclusion in the register [Bilash and Karabin 2020, 68].

At the same time, the inclusion in the Register of non-profit institutions and organisations does not in any way affect the obligation to keep accounting records and keep accounting documents. Non-profit organization cannot distribute income or profits among the founders and members of such an organization, as well as employees. Revenues or profits of a non-profit organization under Art. 133.4.2. of the Tax Code of Ukraine should be used exclusively to finance expenditures for the maintenance of the organization, the implementation of the purpose, goals, objectives and activities defined by its constituent documents⁸. But concerning religious organizations, the provisions of Part 2 of Art. 19 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations,” which stipulates that amounts of their profit, which are used for charitable purposes, are not taxed. Therefore, in addition to maintaining the organisation itself, income can be directed to charitable purposes. Currently, it is a common practice to direct the funds collected by a religious organisation to the needs of the Armed Forces of Ukraine: the purchase of cars⁹, the purchase of necessary ammunition and equipment¹⁰.

⁸ Tax Code of Ukraine, Law № 2755-VI of 2.12.2010, <https://zakon.rada.gov.ua/laws/show/2755-17> [accessed: 22.09.2022].

⁹ Tradytsiya Pokrovs'koyi yarmarky: pry khramakh UPTS provely blahodiyini zakhody dlya pidtrymky Zakhysnykiv Ukrayiny ta lyudey, yaki potrebuyut' dopomohy, <https://news.church.ua/2022/10/17/tradiciya-pokrovskoji-yarmarki-pri-xramax-upc->

Accordingly to the provisions of the Law “On Accounting and Financial Reporting in Ukraine”, religious organisations as well as other entities belong to enterprises, therefore they independently determine their accounting policy, choose the form of book-keeping as a certain system of registers, the order and method of registration and generalisation of information in them; develop a system and forms of internal accounting, reporting, and control of economic operations; approve the rules of document circulation and reckoning information processing technology, an additional system of calculations and registers of analytical accounting¹¹. This means that in the conditions of modern Ukraine, there is no reason to talk about special forms of accounting for religious organisations. Religious organisations can choose any of the existing forms of accounting, but must, of course, keep records on a general basis, both for income and for expenses. Among the peculiarities that experts draw attention to, it is noteworthy that religious organizations practically neglect the issues of accounting policy formation, despite the fact that it is the basis of organisational elements [Bochkov 2022a, 240] and reflects an independent choice of ways and methods of accounting, based on the specifics of the activity [Korchahina 2021, 75].

In accordance with Part 3 of Art. 11 of the Law "On Accounting and Financial Reporting in Ukraine" for non-entrepreneurial entities (religious organisations in the vast majority considered as such) an abridged financial reporting by indicators is established. However, it occurs that religious organisations keep records in an ordinary student's notebook, writing payables and receivables in a free manner, as well as data on the movement of stocks, fixed assets, without signatures and dates, as well as

proveli-blagodijni-zaxodi-dlya-pidtrimki-zaxisnikiv-ukrajini-ta-lyudej-yaki-potrebuyut-dopomogi/ [accessed: 17.10.2022]; Khram na Chukarina provede yarmarok, aby zibraty koshty na avto dlya ZSU, <https://sykhiv.media/hram-na-chukarina-provede-yarmarok-aby-zibraty-koshty-na-avto-dlya-zsu/#> [accessed: 13.10.2022]; 150 tysyach na avtomobili dlya ZSU zibraly parafiyany Tserkvy sv. vmch. Varvary smt. Shklo, <http://javoriv-rda.gov.ua/zahody-rda/150-tysiach-na-avtomobili-dlia-zsu-zibraly-parafiiany-tserkvy-sv-vmch-yuriiia-smt-shklo/> [accessed: 17.10.2022].

¹⁰ U Kalushi parafiyany mistsevoho soboru zibraly mayzhe 50 tysyach hryven' na pidtrymku ZSU, <https://armyinform.com.ua/2022/07/18/u-kalushi-parafiyany-miscevogo-soboru-zibraly-majzhe-50-tysyach-gryven-na-pidtrymku-zsu/> [accessed: 20.09.2022].

¹¹ About accounting and financial reporting in Ukraine, Law of Ukraine № 996-XIV of 16.07.1999, <https://zakon.rada.gov.ua/laws/show/996-14#Text> [accessed: 20.09.2022].

without references to primary documents¹². Such records cannot be considered as accounting records. In this case, it is regarded that there is no accounting, financial, tax and statistical reporting cannot be based on such records, and a financial offense takes place.

Here it is worth noting that the law “On Freedom of Conscience and Religious Organisations” generally regulates the property of religious organisations, but the settlement of the concept and structure of income of religious organisations (as well as other associations of citizens) has not found its separate regulatory expression. In scientific studies, an analysis of various norms is carried out, which give the right to religious organisations to receive income from various sources, the classification of the income of civil society institutions in general and religious organisations in particular is carried out [Tkachuk 2019].

The income of religious organizations consists mainly of received donations; fees for the fulfilment of needs (providing services); income from public organisations, charitable funds; fees for the distribution (sale) of items of religious purpose; leasing of property (not for religious purposes), as well as property purchased in other ways that do not contradict the law (for example, under a gift contract, from inheritance under a will), etc [Gliobova and Voloshan 2011]. However, accounting in religious organisations becomes a hostage to centuries-old church traditions and the canonical church system. Specific objects of accounting, in particular icons, church utensils, anonymous donations in the form of “plate collection”, returnable waste in the form of candle sticks, liturgical clothes (robe) of clergymen, voluntary donations for needs, expenses of the pilgrimage center at the church, etc. provide the accounting system of religious organizations of an individual flair, despite the general methodological and organisational consistency with the accounting of other off-budget non-profit organisations [Vysochan 2018, 154].

Voluntary donations are the main source of funds for religious organisations. They can be given through a donation box, which should have a sign stating the purpose of the collection. At the end of each day, the committee opens this box, counts the amount received and draws up an act, according to the organisation's approved accounting policy. Then the

¹² Osnovy bukhhalters'koho obliku relihiynykh orhanizatsiy, <http://consultant.parus.ua/?doc=05NYM89933&abz=8V0NR> [accessed: 20.09.2022].

withdrawn amount is handed over to the cashier according to a profitable cash order, where in the line “Received from” an entry is made: “According to the act of opening the box for donations”, in the line “Reason” it is indicated, for example, “For the repair of the temple”¹³.

This method of legal regulation of accounting provides grounds for individual researchers to draw conclusions about excessive state intervention in the financial activities of religious organisations [Shytyi 2016]. However, such intervention should be correlated with the goals of mandatory accounting by religious organisations. In fact, the state's interest is not to control the composition and amount of income of religious organisations, although such information is also necessary for statistical purposes. It is necessary to properly and reliably inform the founders and members of the organisation itself, interested individuals, and legal entities. After all, the content of financial statements of religious organisations does not constitute a commercial secret and is not confidential information, and therefore financial statements must be provided to employees, founders, copies of financial statements - as well as to legal entities and individuals upon information request in the manner prescribed by the Law “On Access to Public Information”.

Conversely, the expenses of religious organisations consist mainly of the expenses for wages of employees, financial support of priests and church workers, including deductions to social insurance funds; communal services (electricity, water, heat supply, etc.) to ensure the functioning of religious and other buildings; purchase of materials for use in religious services (candles, incense, lamp oil), religious items (icons, candlesticks, etc.), household equipment (containers for household needs and water consecration, benches, tables, chairs, etc.), items for distribution (books, prayer books, souvenir products); repair of religious and other buildings, etc [Zolotukhin 2009].

However, this is where the issue of non-profitability of a religious organisation should be appealed to. This status is decisive in the field of tax relations and within the context of exemption from income tax. However, not only within this issue. The inclusion of legal entities in the list of non-profit organisations gives reasons for the controlling bodies to monitor the

¹³ Osnovy bukhhalters'koho obliku relihiynykh orhanizatsiy, http://cons.parus.ua/_advice_view.asp?rnx=05NYM533bddaedc843daeeafc37e271334442 [accessed: 20.09.2022].

directions of use of the income of religious organisations: whether the income is used only to finance expenses for the maintenance of the organisation itself and the realisation of its statutory goals, whether there are any violations.

At the same time, in this case, the bodies of the State Tax Service of Ukraine act as financial control bodies. A religious organisation prepares and submits a report based on the results of the reporting year on its use of funds as a non-profit organisation¹⁴. Instead, the bodies of the state tax service are authorised to carry out investigations of indicators related to the definition of objects of taxation (cl. 1 part 6 of the Regulation on the State Tax Service of Ukraine)¹⁵. Establishing by the authorities of the State Tax Service of Ukraine the fact of the income use with violations (not for the maintenance of the organisation itself and the realisation of its statutory goals) serves as the basis for the exclusion of such an organisation from the Register of Non-Profit Organisations and the assessment of a tax liability from the income tax of enterprises, fines and penalties, respectively to the norms of the Tax Code of Ukraine. Tax obligations, fines, and penalty are calculated starting from the first day of the month in which such a violation was committed (clause 133.4.4. of article 133 of the Tax Code)¹⁶.

Thus, in this case, the intervention of the state in the activity of a religious organisation and the conduct of control activities at the expense of religious organisations is attributed to the benefits provided for the payment of income tax. The subject of control is the fulfilment of the conditions defined by the Tax Code for receiving benefits from paying income tax. Accordingly, the question of the settled goal for intervention in the religious organisations financial activities and the proportionality of the control activities implementation does not raise doubts in this case.

¹⁴ Order of the Ministry of Finance of Ukraine № 553 of 17.06.2016, <https://zakon.rada.gov.ua/laws/show/z0932-16#Text> [accessed: 20.09.2022].

¹⁵ Resolution of the Cabinet of Ministers of Ukraine № 227 of 6.03.2019, <https://zakon.rada.gov.ua/laws/show/227-2019-n#Text> [accessed: 20.09.2022].

¹⁶ Tax Code of Ukraine, Law of Ukraine № 2755-VI of 2.12.2010, <https://zakon.rada.gov.ua/laws/show/2755-17> [accessed: 20.09.2022].

3. STATE FINANCIAL CONTROL OVER BUDGET FUNDS TRANSFERRED TO RELIGIOUS ORGANISATIONS

Financing of religious organisations in European countries has different historical traditions and is formed depending on the relationship between the state and the church and is regulated by legislative acts [Bilash 2014, 172]. In Ukraine, the state and local self-government bodies can direct expenses exclusively in the directions defined in Articles 87-91 of Chapter 14 of the Budget Code¹⁷. The Budget Code does not provide for the possibility of state funding of religious organisations as institutions of civil society. Nevertheless, religious organisations can still receive budget funding, but in the process of implementing individual state and self-government programs¹⁸.

The most common cases of directing public funds to religious organisations are financing from the local budget of church buildings under programs for the restoration of architectural monuments, if they belong to such. From the state budget, the legislation allows financing of only those objects that are in state ownership (item 14 part 2 of article 87; item 2 article 89 of the Budget Code). It should be noted here that the large-scale state program of the Ministry of Culture and Information Policy “Great Restoration”, which started in 2021 in Ukraine (unfortunately, it was almost canceled completely due to the war, however, we are convinced that it will be renewed after its end), also provides for direct financing only for state-owned objects, and subventions to local budgets for the restoration works implementation only for communally owned cultural heritage monuments. Therefore, despite the scale of the project, it will not affect the financing of religious organisations either directly or indirectly.

Aside from objects of cultural heritage (monuments of state or local importance), educational institutions formed by religious organisations can

¹⁷ Budget Code of Ukraine № 2456-VI of 08.07.2010, <https://zakon.rada.gov.ua/laws/show/2456-17#Text> [accessed: 20.09.2022].

¹⁸ Here, of course, we are not talking about the funds that the State Committee of Ukraine for Nationalities and Religions receives from the state budget of Ukraine under the budget program “Measures related to ensuring freedom of conscience and religion.” As they are directed to conducting seminars, conferences, renting premises, spending on polygraphy and printing materials related to the topic of freedom of conscience and religion (Order of the State Committee of National Religions dated 03.06.2008 No. 19).

be financed at the expense of local self-government budgets (rural, city, regional): elementary schools, gymnasiums, orphanages, educational and rehabilitation centres, including - resource centres, etc. (clause 2, part 1, article 90 of the Budget Code); state and local social welfare programs to which religious organisations are involved: shelters for children, centres for social and psychological rehabilitation of children deprived of parental care; centres for social rehabilitation of children with disabilities (clause 4, part 1, article 90 of the Budget Code); registration centres and social protection institutions for homeless persons, centres for social adaptation of persons released from penal institutions, various programs for youth, women, and family, including support for the activities of youth centres (item 3, part 1, Article 91 of the Budget Code).

In any of the above cases of joining the project, the religious organisation acquires the status of a recipient of budget funds¹⁹ and receives budget funds through an open account in the territorial body of the State Treasury Service of Ukraine. Such an organisation is obliged to ensure targeted and effective use of funds during the entire period of implementation of the budget program and to report on the spending of the provided budget funds [Savchuk, Demyanyuk and Lobodina 2017, 23].

In this case, state financial control is attributed to the targeted method in the budget process. In accordance with the provisions of the budget legislation, measures to supervision, analyse and control the targeted and effective use of budget funds are carried out on the basis of the indicators of budget programs, as well as other information contained in budget requests, estimates, passports of such programs, reports on the implementation of estimates and reports on implementation of budget program passports (Article 20 of the Budget Code). Such control is aimed at preventing and detecting misuse of funds, as well as at detecting overestimation of the need for financing. Managers of budget funds²⁰, bodies of the State

¹⁹ The recipient of budget funds is a business entity, public or other organisation that does not have the status of a budget institution, authorised by the manager of budget funds to carry out measures provided for by the budget program, and receives budget funds for their implementation (clause 38, part 1 of Article 2 of the Budget Code).

²⁰ The manager of budget funds is a budget institution that is authorised to receive budget allocations, make budget commitments and make budget expenses (item 47, item 1, article 3 of the Budget Code).

Treasury Service of Ukraine and bodies of the State Audit Service of Ukraine perform as controlling subjects.

Managers of budget funds through which religious organisations receive funds from the budget (cultural heritage protection bodies, social security bodies, directorates in the field of education, culture, religion, etc.) are the primary subject of control activities. It is to them and the territorial bodies of the State Treasury Service of Ukraine that religious organisations submit financial statements, if they are recipients of budget funds under budget programs.

State Audit Service of Ukraine serves as the special control body. It is intended to carry out state financial control over the use of state financial resources, effective use of funds and property, the condition and reliability of accounting and financial reporting, compliance with budget legislation, including religious organisations that receive funds from budgets of all levels²¹. In accordance with the provisions of the Law “On Basic Principles of State Financial Control in Ukraine”²², such control can be carried out through state financial audit and inspection (revision). Control over the implementation of budget programs is carried out in the form of a state financial audit²³, based on the results of which a report is drawn up and measures are taken to eliminate negative consequences. Since the subject of the audit is generally the implementation of a specific budget program by a separate manager of budget funds (local self-government body), a religious organisation can be involved in the implementation of control measures only within the scope of the implementation of the corresponding program as a recipient of budget funds.

In recent years, the stake of non-targeted expenses of state resources in the structure of violations of legislation discovered by employees of the State Audit Service of Ukraine, which led to the loss of financial and ma-

²¹ On the approval of the Regulation on the State Audit Service of Ukraine. Resolution of the Cabinet of Ministers of Ukraine № 43 of 03.02.2016, <https://zakon.rada.gov.ua/laws/show/43-2016-п#Text> [accessed: 22.09.2022].

²² About the main principles of state financial control in Ukraine, Law of Ukraine № 2939-XII of 26.01.1993, <https://zakon.rada.gov.ua/laws/show/2939-12#Text> [accessed: 20.09.2022].

²³ The procedure for conducting a state financial audit of the implementation of budget programs by the State Audit Service and its interregional territorial bodies. Resolution of the Cabinet of Ministers of Ukraine № 1017 of 10.08.2004, <https://zakon.rada.gov.ua/laws/show/1017-2004-п#Text> [accessed: 20.09.2022].

terial resources during 2019-2021, increased on average²⁴. However, the review of the audit results reports during this period and the analysis of the list of control objects on which the inspection was carried out gives grounds for the conclusion that the activities of religious organisations during this period were not the subject of control activities of the State Audit Service in the context of the budget programs implementation.

4. FINANCIAL CONTROL OVER THE ENTREPRENEURIAL ACTIVITIES OF ENTERPRISES OF RELIGIOUS ORGANISATIONS

According to Art. 19 of the Law “On Freedom of Conscience and Religious Organisations”, religious organisations have the right to establish publishing, printing, production, restoration and construction, agricultural and other enterprises necessary to ensure the activities of these organisations. Article 112 of the Commercial Code of Ukraine²⁵ defines that an enterprise formed by a religious organisation is a unitary enterprise based on the property of a religious organisation to carry out economic activities for the purpose of fulfilling the statutory tasks of such a religious organisation.

The commercial activity of enterprises founded by religious organisations constitutes a fairly significant layer of social relations [Bochkov 2022, 49], which stays under constant control of state regulatory bodies, just like the economic activity of any other participant in economic legal relations. In this case, the legislation did not provide for exceptions and benefits for enterprises founded by religious organisations. The Commercial Code clearly defines that enterprises, regardless of the form of ownership, organisational and legal form, as well as the founding documents on the basis of which they are created and operate, have equal rights and obligations (Part 3 of Article 62). Moreover, the participation of enterprises founded by religious organisations in economic activity is often related to the production and sale of consumer goods, the use of which is also possible outside of worship performance [Bochkov 2020, 79].

²⁴ The official website of the State Audit Service of Ukraine: <https://dasu.gov.ua/ua/plugins/userPages/1306>

²⁵ Commercial Code of Ukraine № 436-IV of 16.01.2003, <https://zakon.rada.gov.ua/laws/show/436-15#Text> [accessed: 20.09.2022].

However, in the initial version of the Law "On Freedom of Conscience and Religious Organisations" dated 1991, tax benefits were still established. Thus, Article 19 of this law also had a second part, according to which profits from production activities and other incomes of enterprises of religious organisations, which were used for charitable purposes, were not taxed. Despite the fact that such provisions contradicted the provisions of the law "On Taxation of Enterprise Profits"²⁶ which had been in force at that time, it existed for almost two years until the suspension of the second part of Article 19 in the part of exemption from income taxation by Decree No. 12-92.

State financial control in Ukraine is carried out whenever necessary and within the limits of their competence by various state administration bodies, namely: the Accounting Chamber, local state administrations and executive bodies of local councils, the National Bank of Ukraine, the Ministry of Finance of Ukraine, the State Audit Service of Ukraine, the State Treasury Service of Ukraine, State Tax Service of Ukraine, State Customs Service of Ukraine, etc [Ivanchenkova, Skliar, Tkachuk and Gnatyeva 2022, 122]. However, the activities of publishing, printing, restoration and construction, agricultural and other enterprises founded by religious organisations are mostly subject to tax control only. Occasionally there are grounds for conducting customs control or monitoring compliance with the requirements of permit documents (credentials, licences, etc.). In addition, currently, during the period of state of war introduced by the Decree of the President of Ukraine No. 64 of February 24, 2022, measures of state supervision (control) and state market supervision are suspended²⁷. Meanwhile, during the state of war, it is allowed to make planned entries in other areas, which will prevent from the uncontrolled increase in prices for goods, which may have a social significance, in the presence of a threat that has a significant negative impact on the rights, legitimate interests, life and health of a person, protection of the natural environment and ensuring the security of the state.

²⁶ The profit of enterprises of public organisations, the founders of which are public organizations of the disabled, is exempt from taxation (clause 7.12 of the Law "On Taxation of Enterprise Profits")

²⁷ On the termination of measures of state supervision (control) and state market supervision under martial law. Resolution of the Cabinet of Ministers of Ukraine № 303 of 13.03.2022, <https://zakon.rada.gov.ua/laws/show/303-2022-n#Text> [accessed: 10.10.2022].

It is also significant to highlight separately the control exercised by the state and its bodies over the formation and activity of financial institutions formed by religious organisations, namely, non-state pension funds among which is "Pokrova", formed by a sole founder - the religious organisation "Leading Centre of the Patriarchal Curia" of the Ukrainian Greek-Catholic Church.

Legislation, and the law "On non-state pension provision"²⁸ in particular, does not make a difference in the subject of control and control procedures for the activities of the pension fund, depending on the type or number of founders. State financial control in the field of non-state pension provision in Ukraine is carried out by the National Securities and Stock Market Commission and the National Bank of Ukraine. They apply supervision and inspection tools, whenever necessary, carry out corrective measures, early intervention measures and influential measures, prepare and publish statistical and analytical information on the functioning of the financial services market and the activities of its participants.

CONCLUSION

State financial control over the activities of religious organisations must comply with the principle of proportionality. This principle imposes a requirement to carry out control activities based on the purpose of such control and the need to ensure a reasonable balance between private and public interests. Financial control, among other things, should also provide for a risk-oriented approach and take into account the circumstances and conditions of a specific situation. Therefore, the goals and content of state control over activities should be analysed in terms of separate groups of legal relations.

First of all, the requirement of proper accounting by a religious organisation performing as a legal entity is driven by the need to create primary documents on which objective financial, tax and statistical reporting can be based. An important task of accounting for income and expenses is also to reliably inform the founders and members of the organisation itself, in-

²⁸ About non-state pension provision, Law of Ukraine № 1057-IV of 09.07.2003, <https://zakon.rada.gov.ua/laws/show/1057-15#Text> [accessed: 10.10.2022].

interested individuals and legal entities, because the content of the financial statements of religious organisations does not constitute a commercial secret and is not confidential information.

Secondly, control over the direction of funds usage by religious organisations stems from the inclusion of such organisations in the list of non-profit organisations. In this case, the intervention of the state in the activities of the organisation and the implementation of control activities for expenses is conditioned by the benefits provided to them from the payment of income tax. The subject of control is the fulfilment of the conditions defined by the Tax Code for non-profit organisations: the use of income by a religious organisation can be carried out only to finance expenses for the maintenance of the organisation itself, the implementation of its statutory goals and charitable activities.

Thirdly, state financial control over the targeted and effective use of funds is carried out when a religious organisation receives budget funding amid implementing various types of programs. Control is determined by the program-target method of the budget process and is aimed at preventing and detecting the use of funds not for their intended purpose, as well as at detecting overestimation of the need for financing.

Fourthly, financial control over the activities of business entities that are formed by religious organisations (publishing, printing, manufacturing, restoration and construction, agricultural and other enterprises) is conditioned by the legally established equality of enterprises regardless of the forms of ownership, organisational and legal forms and type the founder. The difference in the form and methods of control activity may depend on the type of the legal entity activity: if a non-state pension fund is formed by a religious organisation.

And, finally, the question of the ratio of the control activity goals and the limits of interference in the activities of religious organisations in the context of the Russian Federation brutal aggression against Ukraine does not allow to bypass the issue of financial control, which is aimed at prevention and counteraction to legalisation of criminal proceeds, terrorist financing, and financing of proliferation of weapons of mass destruction. Personal financial sanctions that have recently been imposed on the leaders of the Russian Orthodox Church due to its support for the war against Ukraine are also related to this.

REFERENCES

- “Epifaniy: PTSU obhovoryuye stvorennaya «pensiynoho fondu» dlya svyashchen nosluzhyteliv.” 2021, <https://www.radiosvoboda.org/a/news-epifaniy-pensiyny-fond-sviashchennosluzhyteliv/31222257.html> [accessed: 22.09.2022].
- Bilash, Oleksandr V. 2014. “Osnovni modeli finansuvannya tserkov i relihiynykh orhanizatsiy u krayinakh Yevropeys'koho Soyuzu.” *Aktual'ni problemy derzhavy i prava*, 73:172-178.
- Bilash, Oleksandr, and Tetyana Karabin. 2020. “Taxation of religious organizations in Ukraine.” *Kościół i Prawo* 9 (22), no. 2: 65-81.
- Bochkov, Pavlo V. 2020. “Osoblyvosti uchasti pidpryyemstv relihiynykh orhanizatsiy u hospodars'kykh pravovidnosynakh”. *Yurydychnyy naukovyy elektronnyy zhurnal*, 4:78-80.
- Bochkov, Pavlo V. 2022. “Do pytannya derzhavnoho kontrolyu ta nahlyadu za hospodars'koyu diyal'nisty pidpryyemstv relihiynykh orhanizatsiy.” *Juris Europensis Scientia*, no. 1: 48-52.
- Bochkov, Pavlo V. 2022a. “Aktual'ni pytannya obliku ta opodatkovannya pidpryyemstv relihiynykh orhanizatsiy v konteksti ponyatiynoho aparatu.” *Naukovyy visnyk Uzhhorods'koho Natsional'noho Universytetu, Seriya «PRAVO»* 69:237-42.
- Gliebova, Nataliya, and Iryna Voloshan. 2011. *Oblik u neprybutkovykh orhanizatsiyakh*. Kharkiv: Vydavnytstvo KHNEU.
- Ivanchenkova, Larysa, Skliar Larysa, Tkachuk Halyna, and Tetyana Gnatyeva. 2022. “Transformatsiya systemy derzhavnoho finansovoho kontrolyu v umovakh rynkovykh peretvoren'.” *Visnyk Khmel'nyts'koho natsional'noho universytetu. Seriya: Ekonomichni nauky*, 3:120-125.
- Korchahina, Vita. 2021. “Ekonomichna bezpeka ta oblikova polityka pidpryyemstva: tochky dotyku.” In *Suchasni problemy obliku, analizu, audytu y opodatkovannya sub'yektiv hospodars'koyi diyal'nosti: teoretychni, praktychni ta osvityans'ki aspekty*, 74-77. Dnipro: NMetAU.
- Savchuk, Svitlana, Demyanyuk, Antonina, and Zoryana Lobodina. 2017. *Prohramno-tsil'ovyy metod byudzhetuvannya*. Ternopil': TNEU.
- Shytyi, Stanislav I. 2016. “Okremi pytannya opodatkovannya relihiynykh orhanizatsiy v zakonodavstvi Ukrayiny i Yevropeys'koho soyuzu.” *Naukovyy chasopys NPU imeni M.P. Drahomanova. Seriya 18: Ekonomika i pravo* 31:117-122.
- Tkachuk, Iryna Ya. 2019. “Teoretychni ta pravovi osnovy dokhodiv instytutiv hromadyans'koho suspil'stva v Ukrayini”. *Visnyk Universytetu bankivs'koyi spravy*, no. 2-3 (35-36):3-11.
- Vysochan, Ol'ha O. 2018. “Osoblyvosti obliku v relihiynykh orhanizatsiyakh.” *Naukovyy visnyk Khersons'koho derzhavnoho universytetu. Seriya Ekonomichni nauky* 29, no. 2:153-57.
- Zolotukhin, Oleg. 2009. “Osnovy bukhhalters'koho obliku relihiynykh orhanizatsiy.” *Visnyk podatkovoyi sluzhby Ukrayiny*, 21(545):30-37.

State financial control over costs of religious organisations in Ukraine

Summary

The article is devoted to the study of issues of state financial control over the activities of religious organizations in Ukraine through the disclosure of the goals to which such control is directed and the state's intervention in the activities of religious organisations. The analysis was carried out in several directions, which are tools of state influence. First of all, it is a legally defined obligation to keep accounting records by a religious organisation and the requirement to submit financial statements as one of the components of state financial control. Secondly, it is a control over the targeted use of funds that religious organisations can and do receive during the implementation of budget programs. Thirdly, it is the state financial control over the activities of economic entities, which are formed by religious organisations (publishing, printing, production, restoration and construction, agricultural and other enterprises). In each of the cases, the subject of the control activity, control activity procedures and goals that must be achieved as a result of the control procedures carried out by the state bodies differ.

Keywords: financial control, religious organisations, financial reporting, financial control bodies, audit.

Państwowa kontrola finansowa nad kosztami organizacji religijnych na Ukrainie

Streszczenie

Artykuł poświęcony jest badaniu problematyki państwowej kontroli finansowej nad działalnością organizacji religijnych na Ukrainie poprzez ujawnienie celów tej kontroli i ingerencji państwa w działalność organizacji religijnych. Analizie poddano kilka obszarów, które są instrumentami wpływu państwa. Po pierwsze, jest to prawnie określony obowiązek prowadzenia rachunkowości ze strony organizacji religijnej i wymóg składania sprawozdań finansowych jako jeden z elementów kontroli finansowej państwa. Po drugie, jest to kontrola nad celowym wykorzystaniem środków, jakie mogą otrzymać i otrzymują organizacje religijne w trakcie realizacji programów budżetowych. Po trzecie, jest to państwowa kontrola finansowa nad działalnością podmiotów gospodarczych utworzonych przez organizacje religijne (przedsiębiorstwa wydawnicze, poligraficzne, produkcyjne, remontowo-budowlane, rolnicze i inne). W każdym przypadku różny jest przedmiot czynności kontrolnych, procedury czynności kontrolnych oraz cele, które mają być osiągnięte w wyniku prowadzonych przez organy państwa procedur kontrolnych.

Słowa kluczowe: kontrola finansowa, organizacje religijne, sprawozdawczość finansowa, organy kontroli finansowej, inspekcja.

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