

Anna Barikova¹

Presumptions on Discretion in Law Enforcement of Financial Legal Provisions

Actuality of the research. Legal presumptions refer to legal anomalies, *i.e.* atypical regulators of law, which are based on assumptions about the presence or absence of legal facts or compositions. In the area of financial law application, this category is fragmented. Therefore, the formulation of a comprehensive doctrinal generalization on this concept is relevant.

The purpose of the paper is to reveal the features of presumptions on discretion in law enforcement of financial legal provisions.

The research tasks cover defining the essence and types of the presumptions, possible ways to establish appropriate procedural limits for discretion in law enforcement of financial legal provisions.

The research methodology is the use of 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.

1. Introduction

In the European law, a term ‘presumption’ has been regarded as a legal mechanism whereby an uncertain fact is inferred from a certain fact.

¹ Ph.D. in Law, Academic Adviser, Supreme Court; Lecturer, National Academy of Internal Affairs, anna.barikova@gmail.com, <https://orcid.org/0000-0002-9707-0106>.

That mechanism is employed when the uncertain fact is by its nature very difficult to establish and follows from a fact that is easier to establish². Presumptions on discretion in law enforcement of financial legal provisions by their nature belong to the institution of procedural discretion. It is about their usage to achieve the goal and objectives of creating a full, comprehensive and impartial motivation of the legal position to strengthen the level of protection of human rights, freedoms and legitimate interests, including of the participants in the process. It is worth agreeing with S.A. Venegas about the unconditional belonging of this category to the procedural area³. Presumptions as judgments with a high degree of probability could activate a legitimate mechanism of judicial protection of public interests in the way of forming a basis for motivation.

The presumption in a broad sense should be considered as the categories of “believe, think, consider, anticipate”⁴. The probability of presumption is based on doubts as an “intellectual emotion” about the state of uncertainty given the lack of information to make the right and unambiguous decision⁵. N.S. Karanina emphasizes the essence of presumptions as a link in the practice of law enforcement, which requires a special function of legal regulation to determine the role and importance of other legal requirements, removing uncertainty⁶.

² Bot, A.G. (2015). Opinion of in C-605/13P Anbouba, ECLI:EU:C:2015:2, OJ, C 205/6, para. 50.

³ Venegas, S.A. (2007). Presunciones y ficciones en el impuesto sobre la renta de las personas físicas en Mexico [Prescriptions in fiction in the impulse about the rent of physical persons in Mexico]. Mexico: Universidad nacional autónoma de Mexico, p. 62. [in Spanish].

⁴ Dormidontov, G.F. (1895). Klassifikaciya yavlenij yuridicheskogo byta, odnosimyh k sluchayam primeneniya fikcij. Yuridicheskie fikcii i prezumpcii: ch. 1. [Classification of phenomena of legal life related to the use of fiction. Legal fictions and presumptions: part 1]. Kazan: Typolithography of the Imperial University, p. 23. [in Russian].

⁵ Petruhin, I.L. (1973). Prezumpcii i prejudicii v dokazyvanii [Presumptions and prejudices in proof]. In Teoriya dokazatelstv v sovetskom ugovnom processe [Theory of evidence in the Soviet criminal process]. Moscow: Yurid. lit., p. 356. [in Russian].

⁶ Karanina, N.S. (2006). Pravovye prezumpcii v teorii prava i rossijskom zakonodatelstve [Legal presumptions in the theory of law and Russian legislation], PhD thesis, Institute of State and Law of the Russian Academy of Sciences, Moscow, p. 6. [in Russian].

A term «presumption» has a Latin etymology (from «*praesumere*» as «to take or accept something») and means a probabilistic assumption⁷. The presumption originates in the law of the ancient world, even before borrowing from Roman law⁸. M. Bartoshek has formulated the definition of a presumption in Roman law as a legal assumption, according to which on the basis of the usual *ratio* of facts, it is possible on the basis of a specific fact to assert the existence of another unproven presumed fact⁹. Indeed, a large-scale and meaningful application of presumptions began in Roman law. At that time, presumptions acquired a new meaning and had the form of formulas, *i.e.* assumptions, winged expressions. For example: prior *tempore* – *potior jure* (first in time – stronger in law), *nemo debet bis puniri pro uno delicto* (no one can be punished twice for one offence)¹⁰.

In medieval law, lawyers conducted a meaningful reconstruction of the concept of “presumptio”. The law, both before and after the bourgeois revolutions, presupposed to cover «universal» values and social laws without taking into account the specific judicial practice of law enforcement. For example, it is a presumption of innocence. Large-scale and full-fledged formation of legal presumptions began in the XIX century. The Napoleonic Code of 1804 established the right of a judge to decide certain procedural issues at one’s own discretion. (*prévue morale*)¹¹. Presumptions were used to motivate the legal position.

⁷ Abramovich, A.Ya., Afanaseva, G.A., Barsanov, G.P., *et al.* (1985). *Slovar inostrannyh slov* [Dictionary of foreign words]. Moscow: Russkijazyk, p. 396. [in Russian]; Suprun, T.M. (2013). *Pravovi prezumptsii ta sumizhni poniattia*. *Biuleten Ministerstva yustytzii Ukrainy* [Legal presumptions and related concepts. Bulletin of the Ministry of Justice of Ukraine], no. 2, p. 126. [in Ukrainian].

⁸ Chernilovskij, Z.M. (1984). *Prezumpcii i fikcii v istorii prava*. *Sovetskoe gosudarstvo i pravo* [Presumptions and fictions in the history of law. Soviet state and law], no. 1, pp. 98–105. [in Russian].

⁹ Bartoshek, M. (1989). *Rimskoe pravo: (ponyatiya, terminy, opredeleniya)* [Roman law: (concepts, terms, definitions)]. Moscow: Yurid. lit., p. 448. [in Russian].

¹⁰ Suprun, T.M. (2013). *Pravovi prezumptsii ta sumizhni poniattia*. *Biuleten Ministerstva yustytzii Ukrainy* [Legal presumptions and related concepts. Bulletin of the Ministry of Justice of Ukraine], no. 2, p. 126. [in Ukrainian].

¹¹ *Ibid.*, p. 127.

In the latest doctrine, a common approach is to understand presumptions as axioms, but with probabilistic information on the original, life-proven information or proven by indisputable empirical tests¹². V.K. Babaev defines the presumption as a fixed in the rules of law assumption of the presence or absence of legal facts, based on the relationship between them and the facts confirmed by previous experience¹³.

Presumptions on discretion in law enforcement of financial legal provisions include both classical, in particular, innocence, equality of rights, avoidance of double liability, and specifically institutional. Thus, subclause 4.1.4 of clause 4.1 of the Article 4 of the Tax Code of Ukraine specifically enshrines the institutional presumption of legality of taxpayer decisions in accordance with the principle *in dubio pro tributario*, i.e. interpretation with more favourable consequences for the taxpayer¹⁴ (paragraph 56.21 of the Article 56 of this Code).

Applying this presumption as a preliminary fact, the Supreme Court, for example, in its resolution of 17 February 2021 in the case no. 580/3469/19¹⁵ has stated that the period within which a person might apply to the court after the pre-trial appeal procedure of the fiscal authority's request for payment of a contribution is three months from the date of receipt of the decision of the body on revenues and fees of the highest level, adopted as a result of consideration of the complaint.

¹² Shakheldov, F.G. (2005). Prezumpcii, aksiomy i gipotezy v prave. Teoriya i praktika obshestvennogo razvitiya [Presumptions, axioms and hypotheses in law. Theory and practice of social development], no. 3, p. 54. [in Russian].

¹³ Babaev, V.K. (2000). Prezumpcii v rossijskom prave i yuridicheskoy praktike. Problemy yuridicheskoy tehniki [Presumptions in Russian law and legal practice. Problems of legal technique]. pp. 323–330. [in Russian].

¹⁴ Tax Code of Ukraine: Law of Ukraine of 2 December 2010 no. 2755-VI. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo. [in Ukrainian].

¹⁵ Resolution of the Supreme Court of 17 February 2021 in the case no. 580/3469/19, Retrieved from: <https://reyestr.court.gov.ua/Review/95240811>. [in Ukrainian].

2. The essence of legal presumptions

There is still no well-established definition of a legal presumption on discretion in law enforcement of financial legal provisions. Most scholars support the approach that such a presumption is a procedural rule with probative value that makes it possible to evaluate the evidence¹⁶. Theorists and proceduralists refer to legally regulated concepts in formulating this definition. Thus, a person has the right to draw own conclusions about the presumption, although in public relations often refers to the covert application of presumptions. The law establishes the mandatory importance, accuracy and consistency of the relevant presumptions¹⁷. The academic opinion of common law countries is also focused on the possibility of assumptions given the specific circumstances, except that there is no transfer of the entire burden of proof¹⁸.

As a general rule, the interpretation of the essence of legal presumptions is carried out through the logical legal dimension. According to the logical approach, presumptions are considered as universal philosophical and logical categories that contain conditional probabilistic judgments, generalizations of inductive nature¹⁹. According to the legal approach, these are practically proven generalizations of a high degree of probability, taking into account the exceptions to the rules defined by

¹⁶ Movellan, S.A. (2007). La prueba por presunciones. Particular referenda a su aplicacion judicial en supuestos de responsabilidad [The test by presumptions. Particular reference to its judicial application in cases of liability]. Granada: Comares | editorial, p. 49. [in Spanish].

¹⁷ Sandevuar, P. (1994). Vvedenie v pravo [Introduction to Law]. Moscow: Intratek-R, p. 309. [in Russian].

¹⁸ Barcelo, J.J. (2009). Burden of Proof, Prima Facie Case and Presumption in WTO Dispute Settlement. *Cornell International Law Journal*, vol. 42, pp. 32, 34.

¹⁹ Babaev, V.K. (1974). Prezumpcii v sovetskom prave [Presumptions in Soviet law]: tutorial. Gorkij: Gorkij Higher School of the USSR Ministry of Internal Affairs, p. 13. [in Russian]; Karanina, N.S. (2006). *Pravovye prezumpcii v teorii prava i rossijskom zakonodatelstve* [Legal presumptions in the theory of law and Russian legislation], PhD thesis, Institute of State and Law of the Russian Academy of Sciences, Moscow, p. 59. [in Russian].

them, which are not covered by them²⁰, регламентовані в юридичних нормах²¹. That is, the presumptions on discretion in law enforcement of financial legal provisions are a quasi-normative regulator, which is based on the logical method of presumption. Compliance with the laws of logic allows to ensure the stability and accuracy of legal interpretation, taking into account the purpose of legal norms regulated by the legislator.

It makes no difference in the essential nature of the rule whether this effect is fixed absolutely or *prima facie*: it gives a legal definition. Such is the nature of all rules to determine the legal effect of facts as contrasted with their logical effect. To prescribe a certain legal equivalence of facts, is a very different thing from merely allowing that meaning to be given to them. A rule of presumption does not merely say such and such a thing is a permissible and usual inference from other facts, but it goes on to say that this significance shall always, in the absence of other circumstances, be imputed to them, sometimes passing first through the stage of saying that it ought to be imputed²².

Arguments are assigned a dialectical status in terms of three classes: the 'winning' or justified arguments, the 'losing' or overruled arguments, and the 'ties', *i.e.* the defensible arguments. The same statuses can also be defined for propositions: a proposition is justified if there exists a justified argument for it, and it is defensible if it is not justified but there exists a defensible argument for it. For determining their effect on the burden of proof we had to distinguish between the burden of production, the burden of persuasion and the tactical burden of proof. To summarize, the burden of persuasion is the burden to have a justified argument at the final stage, the tactical burden is the burden during dialogue to introduce new information that would make the decision maker decide in the parties' interest if the new stage were the final stage, and the burden of production is the burden at a given stage in the dialogue to produce an

²⁰ Babaev, V.K. (1974). *Prezumpcii v sovetskom prave* [Presumptions in Soviet law]: tutorial. Gorkij: Gorkij Higher School of the USSR Ministry of Internal Affairs. [in Russian].

²¹ Cukanov, N.N. (2001). *Pravovye prezumpcii v administrativnoj deyatelnosti milicii* [Legal presumptions in the administrative activities of the police], PhD thesis, Ministry of Internal Affairs of the Russian Federation. Omsk Academy, Omsk, p. 30. [in Russian].

²² James, B. (1889). *Thayer Presumptions and the Law of Evidence*. Harvard Law Review, vol. 3, no. 4, p. 149.

argument that will not be ruled internally invalid by the decision maker regardless of counterevidence²³.

Regarding the legal nature of presumptions, researchers follow two main approaches²⁴: 1) a presumption established in the hypothesis of a legal norm, which regulates both the grounds for the actual presumption and the conditions of applying the rule of law; 2) legal presumptions are not a means of legal regulation, do not contain regulations. At the same time, as indicated legal presumptions as a regulator of public behaviour highlight the assumptions about the presence or absence of legal facts based on observations of recurring similar phenomena, their rational relationship, which are conditionally accepted as true and act until proven otherwise, and they are not revoked by the authorized subject in a prescribed manner²⁵. In essence, presumptions on discretion in law enforcement of financial legal provisions are both current legal phenomena and legal regulations. The following categories are used in the area of legal relations.

3. The relationship between presumptions and principles of law

There is a connection between presumptions and principles of law. In particular, such presumptions-principles might be knowledge of the law, legal personality, *etc*²⁶. The significant functional role of presumptions as principles is related to their ability to show the nature (of branches) of law, to improve the content of legal regulations, to establish the «corner-

²³ Prakken, H., Sartor, G. (2008). More on Presumptions and Burdens of Proof, Proceedings of the 19th annual conference on legal knowledge and information systems (JURIX), pp. 178, 184.

²⁴ Gudz, D.S. (2005). Spivvidnoshennia pravovoi prezumptsii zi sporidnenymi pravovymi katehoriiami. Aktualni problemy derzhavy i prava [Correlation of legal presumption with related legal categories. Current issues of state and law], iss. 25, p. 113. [in Ukrainian].

²⁵ Liashenko, R.D. (2011). Prezumptsii u pravi: pytannia teorii ta praktyky [Presumptions in the law: issues of theory and practice], PhD thesis, M.P. Drahomanov National Pedagogical University, Kyiv, pp. 7, 13. [in Ukrainian].

²⁶ Babaev, V.K. (1974). Prezumpcii v sovetskom prave [Presumptions in Soviet law]: tutorial. Gorkij: Gorkij Higher School of the USSR Ministry of Internal Affairs, pp. 328–329. [in Russian].

stones» of the interpretation of legal norms²⁷. These categories outline general rules of conduct for resolving a specific situation of uncertainty, the general procedure for regulation, taking into account the permissible special exceptions, in particular, for law enforcement agencies, rebuttal procedures, etc.

For example, in the case law of the Supreme Court of Spain, a presumption is understood as the intellectual evidence of a judge, an aid that a judge has the right to use at one's own discretion. You need to choose the most appropriate approach that coincides with the rest of the evidence in the case. If the judge does not use this means of proof to substantiate the decision to make, there is no violation of the law. A presumption based on illogical and unlikely conclusions has no right to exist²⁸.

The relationship between presumptions and principles of law determines the key features of presumptions in the application of financial law. The doctrine identifies the following features of legal presumptions:

- legal nature: are enshrined in law, as they are inherently imperative; show the usual order of relations between objects and phenomena in the area of legal regulation regarding certain groups of legal relations related to the situation of uncertainty; are implemented with the help of legal norms that provide for the results of their action (confirmation of the presumed fact or refutation of the legal presumption)²⁹;
- factual orientation: they are a way to establish the legal facts; provide a legal fact established on the basis of another phenomenon; the presumed fact described in the hypothesis is a legal fact that is to be proved³⁰.

²⁷ Davydova, M.L. (2009). *Yuridicheskaya tehnik: problemy teorii i metodologii* [Legal technique: problems of theory and methodology]: monograph. Volgograd: Volgograd State University Publishing House, p. 250. [in Russian].

²⁸ Mendoza, J.D. (2005). *La prueba en el proceso civil* [The proof in civil proceedings]. *Justicia y derecho*, vol. 5, pp. 49–67. [in Spanish].

²⁹ Sukhanova, D.S. (2010). *Mizhnarodno-pravovi ta natsionalno-pravovi prezumpcii u sferi prav i svobod liudyny ta hromadianyna: porivnialno-pravovyi aspekt* [International legal and national legal presumptions in the area of human and civil rights and freedoms: comparative legal aspect], PhD thesis synopsis, International Humanitarian University. Odesa. [in Ukrainian].

³⁰ Kalinovskij, K.B. (2006). *Otgranichenie pravovyh prezumpcij ot obosnovaniya*

- security action: it is an important guarantee of human rights and freedoms at the national level and subject to the country's entry into the European legal space³¹.
- general focus on the entire area of law enforcement regarding the recognition of a fact legally valid until proven otherwise when presenting evidence of unreliability of this fact: in the presence (establishment) of one of the facts, the connection of which is presumed, a conclusion is made about the existence of another fact presumption³².

For example, the European Court of Human Rights, in its judgment of 10 February 1995 in *Alenet de Ribemont v. France*³³, has stated that the scope of the presumption of innocence is wide: it is binding not only on the trial court but also on all other state.

4. Formation of presumptions

Presumptions on discretion in law enforcement of financial legal provisions are formed in relation to a particular legal fact or group of facts or compositions that correspond with a particular law enforcement situation, which is due to the origin, content and purpose of these facts or compositions, the relationship between them. This process points to the hypothetical nature of the presumptions about the facts that have legal significance for the case, and not about all legal facts or compositions in general. As explained by D.S. Gudz, all legal versions are a kind of

yuridicheskikh norm [Distinguishing legal presumptions from substantiation of legal norms], Proceedings of the international scientific-practical conference, pp. 60–61. [in Russian].

³¹ Sukhanova, D.S. (2010). Mizhnarodno-pravovi ta natsionalno-pravovi prezumptsii u sferi prav i svobod liudyny ta hromadianyna: porivnialno-pravovyi aspekt [International legal and national legal presumptions in the area of human and civil rights and freedoms: comparative legal aspect], PhD thesis synopsis, International Humanitarian University, Odesa, p. 4. [in Ukrainian].

³² Petruhin, I.L. (1973). Prezumpcii i prejudicii v dokazyvanii [Presumptions and prejudices in proof]. In *Teoriya dokazatelstv v sovetskom ugovnom processe* [Evidence theory in Soviet criminal procedure]. Moscow: Yurid. lit., p. 344. [in Russian].

³³ ECHR: Case of *Alenet de Ribemont v. France*, Judgment of 10 February 1995, Retrieved from: <http://hudoc.echr.coe.int/eng?i=001-57914>.

hypothesis. At the same time, legal presumptions are to be enshrined in law and remain in force for a long time during the existence of the legal system and after the adoption of another type of law. The emergence of presumptions does not depend on the violation of legal requirements. The presumption as an axiomatic category is accepted as true without proof, is relative but reliable³⁴.

The hypothetical nature of the presumption on discretion in law enforcement of financial legal provisions is due to the fact that these legal categories are a consistent form of development of reasonable refuted probabilistic judgments, assumptions made to clarify the characteristics and causes of the circumstances. Such presumptions are fairly well-established, have a generalizing inductive nature of formation and are tested in the practice of law enforcement in relation to specific legal facts or compositions to achieve the goal of legal regulation.

For example, in the resolution of the Supreme Court of 25 April 2018 in the case no. 815/3989/17³⁵, it has been stated that the decision to return overpaid customs duties by the courts of previous instances was not taken, and therefore there is no reason to believe that the courts of previous instances interfere in discretionary powers of the tax authority. The arguments of the cassation appeal do not refute the commission of procedural violations by the customs authority and the defendant's failure to comply with the established procedure for returning funds to taxpayers. In these circumstances and taking into account the above, the panel of judges concluded that since the customs did not fulfil the procedural obligations regarding the algorithm of actions imposed on it by the above procedures, such inaction of the customs authority would be illegal.

³⁴ Gudz, D.S. (2005). Spivvidnoshennia pravovoi prezumptsii zi sporidnenymy pravovymy katehoriiamy. Aktualni problemy derzhavy i prava [Correlation of legal presumption with related legal categories. Current issues of state and law], iss. 25, pp. 110, 111. [in Ukrainian].

³⁵ Resolution of the Supreme Court of 25 April 2018 in the case no. 815/3989/17, Retrieved from: <https://reyestr.court.gov.ua/Review/73700740>. [in Ukrainian].

5. Rebuttal of presumptions

Presumptions as approximate generalizations are based on empirical conclusions when repeated in a specific sequence of phenomena³⁶. Presumptions are ordinarily divided into the rebuttable and the irrebuttable. The irrebuttable presumption is only the assertion in a more technical guise, while the rebuttable presumption need not be fictional in our sense. The determination in the case of rebuttable presumptions must be based upon the showing which the law regards as sufficient to rebut, for if those grounds are artificially narrow, the presumption continues to operate fictionally, by ascribing significant legal consequences for false assertions of fact. Thus, where the only possible rebuttal of the presumption of legitimacy goes to the absence of any opportunity for conjugal intercourse (as when the husband is at sea throughout the relevant period) the presumption has retained its fictional quality³⁷.

With regard to discretion in law enforcement of financial legal provisions, it could also be argued that there are both legally defined irrefutable presumptions (innocence, «all doubts in favour of the taxpayer») and rebuttable in a particular case, which does not terminate its effect as a whole. That is, rebuttal of legal presumptions is not a rebuttal of the general truth of the judgment underlying such a presumption of an objective assessment of a plausible issue of the relevant legal fact or composition.

If the presumption is rebuttable³⁸, then the following ways of refuting the presumed fact could be distinguished: to indicate any fact which

³⁶ Zozul, I.V. (2013). *Pravovi prezumptsii v sumizhnomu terminolohichnomu riadi: porivnialno-pravova kharakterystyka (administratyvno-pravovyi aspekt)*. *Visnyk Zaporizkoho natsionalnoho universytetu. Yurydychni nauky [Legal presumptions in adjacent terminology: comparative legal characteristics (administrative legal aspect). Bulletin of Zaporozhye National University. Legal humanities]*, no. 1(1), p. 125. [in Ukrainian].

³⁷ Moglen, E. (1991). *Legal Fictions and Common Law Legal Theory: Some Historical Reflections*. *Tel-Aviv University Studies in Law*, no. 10, pp. 33–52.

³⁸ Kardanec, A.V. (2002). *Prejudiciya v rossijskom prave. Problemy teorii i praktiki [Prejudice in the Russian law. Problems of theory and practice]*, PhD thesis, Nizhnij Novgorod Academy, Nizhnij Novgorod, p. 36. [in Russian].

might be doubtful about the existence of a presumption; provide a sufficient number of facts which could refute a plausible fact; show strong evidence of the absence of a probable fact³⁹. This is the “bursting bubble” theory of the transfer of the burden of proof: when the opponent of the presumption provides evidence which contradicts the existence of the presumed fact, the “bubble” of the presumption bursts and the presumption disappears⁴⁰. The main emphasis is on the presumed fact in the subject of proof and the division of responsibilities for proof.

For example, the Supreme Court in its resolution of 26 March 2020 in the case no. 825/1700/18⁴¹ has stated that the tax liability is unconditional and a priority. The taxpayer is legally responsible for non-fulfilment or improper fulfilment of the tax obligation. At the same time, in order to resolve the issue of the presence or absence of grounds for applying to the taxpayer liability for late payment of the agreed monetary obligation, it is necessary to establish the reasons for such omission and check whether the taxpayer has taken all actions to ensure proper and timely execution of tax liability.

6. Classification of presumptions

Legal presumptions on in law enforcement of financial legal provisions could be classified according to the way they are formed into legal and judicial. Under the approach of R.D. Liashenko, common law presumptions are legal, such as innocence, good faith, legality, knowledge of regulations, *etc*⁴². Instead, judicial presumptions are related to the institutionalization of a court decision as an individual act of law enforce-

³⁹ Boyle, C., MacCrimmon, M.-T., Martin, D. (1999). *The law of evidence: fact finding, fairness, and advocacy*. Toronto: Emond Montgomery, p. 374.

⁴⁰ Reshetnikova, I.V. (1999). *Dokazatelstvennoe pravo Anglii i SShA [Proof law of England and USA]*. Moscow: Gorodec, pp. 131–132. [in Russian].

⁴¹ Resolution of the Supreme Court of 26 March 2020 in the case no. 825/1700/18, Retrieved from: <https://reyestr.court.gov.ua/Review/88431170>. [in Ukrainian].

⁴² Liashenko, R.D. (2011). *Prezumptsii u pravi: pytannia teorii ta praktyky [Presumptions in the law: issues of theory and practice]*, PhD thesis, M.P. Drahomanov National Pedagogical University, Kyiv, p. 130. [in Ukrainian].

ment after it enters into force⁴³. The existence of judicial presumptions is conditioned by the constitutional and legal norms of the Article 129–1 of the Constitution of Ukraine⁴⁴. As a result, the tasks and functions of the judiciary are implemented, in particular, taking into account the legal presumptions in the consideration and resolution of administrative cases.

In the functional-pragmatic dimension, the following presumptions could be distinguished⁴⁵:

- type of behaviour, in particular, stereotypes in typical circumstances;
- perception of information as true or not, particularly, with the help of special devices, as well as incorrect perception given the mental state of the person, including affect;
- reliability and veracity of information, taking into account the level of integrity of reputation, moral qualities, as well as the degree of completeness, detail and logical consistency of data or in comparison with insufficiently detailed indicators; inaccuracy of information due to incompleteness and logical contradiction of evidentiary information in accordance with the laws of logic, in relation to other information obtained during the usual visual or special expert examination of objects and phenomena of the environment.

7. Conclusions

Presumptions on discretion in law enforcement of financial legal provisions are applied due to logical methods of induction or modelling, when the probability of a phenomenon is not high enough. These legal catego-

⁴³ Liashenko, R.D., Vlasiuk, M.V. (2013). *Prezumptsiiia zakonnosti sudovoho rishennia. Visnyk Zaporizkoho natsionalnoho universytetu* [Presumption of lawfulness of a court decision. Zaporizhzhia National University Bulletin], no. 3, p. 22. [in Ukrainian].

⁴⁴ The Constitution of Ukraine: Law of Ukraine of 28 June 1996 no. 254к/96-BP. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo. [in Ukrainian].

⁴⁵ Fedotov, A.V. (2002). *Ispolzovanie ocenochnyh prezumpcij v processe dokazyvaniya. Zhurnal rossijskogo prava* [The use of estimated presumptions in the process of evidence. Journal of Russian law], no. 5, pp. 88–90. [in Russian].

ries contain a rational connection of primary legal facts or compositions, as well as a presumed fact for which, taking into account the experience of the subject of law enforcement, a probabilistic assumption is formed on the basis of primary categories.

References

- Abramovich, A.Ya., Afanaseva, G.A., Barsanov, G.P., *et al.* (1985), *Slovar inostrannyh slov* [Dictionary of foreign words], Moscow: Russkij yazyk. [in Russian].
- Babaev, V.K. (1974), *Prezumpcii v sovetskom prave* [Presumptions in Soviet law]: tutorial. Gorkij: Gorkij Higher School of the USSR Ministry of Internal Affairs. [in Russian].
- Babaev, V.K. (2000), *Prezumpcii v rossijskom prave i yuridicheskoy praktike. Problemy yuridicheskoy tehniki* [Presumptions in Russian law and legal practice. Problems of legal technique], pp. 323–330. [in Russian].
- Barcelo, J.J. (2009), Burden of Proof, Prima Facie Case and Presumption in WTO Dispute Settlement. *Cornell International Law Journal*, vol. 42, pp. 23–43.
- Bartoshek, M. (1989), *Rimskoe pravo: (ponyatiya, terminy, opredeleniya)* [Roman law: (concepts, terms, definitions)], Moscow: Yurid. lit. [in Russian].
- Bot, A.G. (2015), Opinion of in C-605/13P *Anbouba*, ECLI:EU:C:2015:2, OJ, C 205/6, para. 50.
- Boyle, C., MacCrimmon, M.-T., Martin, D. (1999), *The law of evidence: fact finding, fairness, and advocacy*. Toronto: Emond Montgomery.
- Chernilovskij, Z.M. (1984), *Prezumpcii i fikcii v istorii prava. Sovetskoe gosudarstvo i pravo* [Presumptions and fictions in the history of law. Soviet state and law], no. 1, pp. 98–105. [in Russian].
- Cukanov, N.N. (2001), *Pravovye prezumpcii v administrativnoj deyatel'nosti milicii* [Legal presumptions in the administrative activities of the police], PhD thesis, Ministry of Internal Affairs of the Russian Federation. Omsk Academy, Omsk. [in Russian].
- Davydova, M.L. (2009), *Yuridicheskaya tehnika: problemy teorii i metodologii* [Legal technique: problems of theory and methodol-

- ogy]: monograph. Volgograd: Volgograd State University Publishing House. [in Russian].
- Dormidontov, G.F. (1895), *Klassifikaciya yavlenij yuridicheskogo byta, odnosimyh k sluchayam primeneniya fikcij. Yuridicheskie fikcii i prezumpcii: ch. 1.* [Classification of phenomena of legal life related to the use of fiction. Legal fictions and presumptions: part 1]. Kazan: Typolithography of the Imperial University. [in Russian].
- ECHR: *Case of Allenet de Ribemont v. France*, Judgment of 10 February 1995, Retrieved from: <http://hudoc.echr.coe.int/eng?i=001-57914>.
- Fedotov, A.V. (2002), *Ispolzovanie ocenochnyh prezumpcij v processe dokazyvaniya. Zhurnal rossijskogo prava* [The use of estimated presumptions in the process of evidence. Journal of Russian law], no. 5, pp. 87–96. [in Russian].
- Gudz, D.S. (2005), *Spivvidnoshennia pravovoi prezumptsii zi sporidnynymy pravovymy katehoriiami. Aktualni problemy derzhavy i prava* [Correlation of legal presumption with related legal categories. Current issues of state and law], iss. 25, pp. 109–113. [in Ukrainian].
- James, B. (1889), *Thayer Presumptions and the Law of Evidence*. Harvard Law Review, vol. 3, no. 4, pp. 141–166.
- Kalinovskij, K.B. (2006), *Otgranichenie pravovyh prezumpcij ot obosnovaniya yuridicheskikh norm* [Distinguishing legal presumptions from substantiation of legal norms], Proceedings of the international scientific-practical conference, pp. 60–62. [in Russian].
- Karanina, N.S. (2006), *Pravovye prezumpcii v teorii prava i rossijskom zakonodatelstve* [Legal presumptions in the theory of law and Russian legislation], PhD thesis, Institute of State and Law of the Russian Academy of Sciences, Moscow. [in Russian].
- Kardanec, A.V. (2002), *Prejudiciya v rossijskom prave. Problemy teorii i praktiki* [Prejudice in the Russian law. Problems of theory and practice], PhD thesis, Nizhnij Novgorod Academy, Nizhnij Novgorod. [in Russian].
- Liashenko, R.D. (2011), *Prezumptsii u pravi: pytannia teorii ta praktyky* [Presumptions in the law: issues of theory and practice], PhD thesis, M.P. Drahomanov National Pedagogical University, Kyiv. [in Ukrainian].
- Liashenko, R.D., Vlasiuk, M.V. (2013), *Prezumptsiia zakonnosti sudovoho*

- rishennia. Visnyk Zaporizkoho natsionalnoho universytetu [Presumption of lawfulness of a court decision. Zaporizhzhia National University Bulletin], no. 3, p. 19–24. [in Ukrainian].
- Mendoza, J.D. (2005), La prueba en el proceso civil [The proof in civil proceedings]. *Justicia y derecho*, vol. 5, pp. 49–67. [in Spanish].
- Moglen, E. (1991). Legal Fictions and Common Law Legal Theory: Some Historical Reflections. *Tel-Aviv University Studies in Law*, no. 10, pp. 33–52.
- Movellan, S.A. (2007), La prueba por presunciones. Particular referencia a su aplicacion judicial en supuestos de responsabilidad [The test by presumptions. Particular reference to its judicial application in cases of liability]. Granada: Comares | editorial. [in Spanish].
- Petruhin, I.L. (1973), Prezumpcii i preudicii v dokazyvanii [Presumptions and prejudices in proof]. In *Teoriya dokazatelstv v sovetskom ugovnom processe* [Theory of evidence in the Soviet criminal process]. Moscow: Yurid. lit. [in Russian].
- Petruhin, I.L. (1973), Prezumpcii i preudicii v dokazyvanii [Presumptions and prejudices in proof]. In *Teoriya dokazatelstv v sovetskom ugovnom processe* [Evidence theory in Soviet criminal procedure]. Moscow: Yurid. lit. [in Russian].
- Prakken, H., Sartor, G. (2008), More on Presumptions and Burdens of Proof, *Proceedings of the 19th annual conference on legal knowledge and information systems (JURIX)*, pp. 176–185.
- Reshetnikova, I.V. (1999), *Dokazatelstvennoe pravo Anglii i SShA* [Proof law of England and USA]. Moscow: Gorodec. [in Russian].
- Resolution of the Supreme Court of 25 April 2018 in case no. 815/3989/17, Retrieved from: <https://reyestr.court.gov.ua/Review/73700740>. [in Ukrainian].
- Resolution of the Supreme Court of 26 March 2020 in the case no. 825/1700/18, Retrieved from: <https://reyestr.court.gov.ua/Review/88431170>. [in Ukrainian].
- Resolution of the Supreme Court of 17 February 2021 in case no. 580/3469/19, Retrieved from: <https://reyestr.court.gov.ua/Review/95240811>. [in Ukrainian].
- Sandevuar, P. (1994), *Vvedenie v pravo* [Introduction to Law]. Moscow: Intratek-R. [in Russian].

- Sandevuar, P. (1994), *Vvedenie v pravo* [Introduction to Law]. Moscow: Intratek-R. [in Russian].
- Shahkeldov, F.G. (2005), *Prezumpcii, aksiomy i gipotezy v prave. Teoriya i praktika obshestvennogo razvitiya* [Presumptions, axioms and hypotheses in law. Theory and practice of social development], no. 3, pp. 54–56. [in Russian].
- Sukhanova, D.S. (2010), *Mizhnarodno-pravovi ta natsionalno-pravovi prezumptsii u sferi prav i svobod liudyny ta hromadianyna: porivnialno-pravovyi aspekt* [International legal and national legal presumptions in the area of human and civil rights and freedoms: comparative legal aspect], PhD thesis synopsis, International Humanitarian University. Odesa. [in Ukrainian].
- Suprun, T.M. (2013), *Pravovi prezumptsii ta sumizhni poniattia. Biuleten Ministerstva yustytzii Ukrainy* [Legal presumptions and related concepts. Bulletin of the Ministry of Justice of Ukraine], no. 2, pp. 125–132. [in Ukrainian].
- Tax Code of Ukraine: Law of Ukraine of 2 December 2010 no. 2755-VI. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo. [in Ukrainian].
- The Constitution of Ukraine: Law of Ukraine of 28 June 1996 no. 254к /96-BP. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo. [in Ukrainian].
- Venegas, S.A. (2007), *Presunciones y ficciones en el impuesto sobre la renta de las personas físicas en Mexico* [Prescriptions in fiction in the impulse about the rent of physical persons in Mexico]. Mexico: Universidad nacional autónoma de Mexico. [in Spanish].
- Zozul, I.V. (2013), *Pravovi prezumptsii v sumizhnomu terminolohichnomu riadi: porivnialno-pravova kharakterystyka (administrativno-pravovyi aspekt). Visnyk Zaporizkoho natsionalnogo universytetu. Yurydychni nauky* [Legal presumptions in adjacent terminology: comparative legal characteristics (administrative legal aspect). Bulletin of Zaporozhye National University. Legal humanities], no. 1(1), pp. 123–127. [in Ukrainian].

Summary

The author has outlined the essence of legal presumptions on discretion in law enforcement of financial legal provisions as both current legal phenomena and legal regulations. The relationship between presumptions and principles of law, as well as the classification of presumptions has been researched into. Presumptions on discretion in law enforcement of financial legal provisions are formed in relation to a particular legal fact or group of facts or compositions that correspond with a particular law enforcement situation, which is due to the origin, content and purpose of these facts or compositions, the relationship between them. With regard to discretion in law enforcement of financial legal provisions, it could also be argued that there are both legally defined irrefutable presumptions (innocence, “all doubts in favour of the taxpayer”) and rebuttable in a particular case, which does not terminate its effect as a whole. It has been concluded that presumptions on discretion in law enforcement of financial legal provisions are applied due to logical methods of induction or modelling, when the probability of a phenomenon is not high enough.

Keywords: legal framework, legal regulations, functions of law, legal interpretation, evaluation, atypical regulations