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Artículos

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Estructura institucional del derecho de finanzas públicas

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Abstract:

The article deals with actual problems of the institutionalization of the modern Russian financial law as a branch of law. The problems of the modern concept of the subject of the financial law of the Russian Federation and the construction of financial law on institutional and pandemic systems are investigated. Approaches for the allocation in the financial law system of such entities as fiscal law and the issue law, and the right of monetary circulation, the rights of public revenues are presented. In conclusion, the author's presentation to the system of the financial law of Russia is given.

Keywords: Institutionalization, Law, Pandemic, Russian.

Resumen:

El artículo trata problemas reales de la institucionalización de la ley financiera rusa moderna como una rama de la ley. Se investigan los problemas del concepto moderno del tema del derecho financiero de la Federación de Rusia y la construcción del derecho financiero sobre los sistemas institucionales y pandémicos. Se presentan enfoques para la asignación en el sistema de derecho financiero de entidades tales como la ley fiscal y la ley de emisión, y el derecho de circulación monetaria, los derechos de los ingresos públicos. En conclusión, se presenta el autor al sistema de derecho financiero de Rusia.

Palabras clave: Derecho, Institucionalización, Pandemia, Rusia.

1.INTRODUCTION

The problem of the definition of the system of financial law as a branch of the law has been remaining the subject of extensive scientific debate in contemporary literature (Scharfstein: 2018, pp.1463-1512). First of all, this is due to developing the legal framework and generally accepted scientific review of earlier approaches. The problem of financial legal system is closely linked with the problem of the definition of the object of financial law as a whole today.

We have previously focused on the history of the scientific debates on the system of the Russian financiallaw (Tsindeliani: 2015, pp. 58-83). If we consider the Soviet period of development of the scientific conceptions of the system of financial law, it should be noted a variety of approaches to structural elements of the branch of law, that leads to the following conclusions:

- There were no uniform criteria for selection institutions and sub-sectors in the structure of the branch oflaw;
- It was rejected the presence in the structure of the sub-sectors of the law, and instead of them justifiedthe existence of the partitions, in order to prevent the extraction of the sub-sectors from the financial law;There were conflicting conclusions about the inclusion or exclusion of certain institutions in the system of financial law;

- Most scientists linked the existence of financial - legal institutions with the presence of the relevant financial - economic institutions. They denied the possibility of the existence of financial - legal institutions without the existence of a similar financial-economic institute.

Despite the fact that many of the expressed opinions were controversial, it is impossible not to recognize the importance of the scientific debate held on the subject and the system of financial law. In fact, thanks to this debate, financial law has received a serious scientific foundation that allows now the branch of law to develop.

Changes in the political and economic system of the State could not touch the basic categories of financial law, and, in particular, the object and the financial law system. The transformation of pre-existing elements of the financial system, the emergence of new elements of the financial system has largely influenced the present stage of development of financial law. In general, there are two directions in the modern financial and legal literature, considering the development of financial law, and giving the definition of the objective of regulation and institutionalization of the field of law. The first direction can be described as traditional, in which the tendency of the modernization of the existing rich theoretical heritage of the Soviet financial and legal science. The second direction can be described as revolutionary since it actually declines to a complete revision of traditional approaches of consideration of the fundamental categories of financial law. Attempts to consider the financial law in the new political and economic environment have led to a highly original tendency in the financial law theory.

GA Tosunjan and AY Vikulin (2003) have hypothesized the formation of a new profiling branch of law,which has as a subject both public and private (corporate) finances. Noting the association of public and corporate finances in the same branch, are based on the fact that the relations arising about finances have always marked public character. The new financial law, as was identified by these authors, the emergence of a new profiling branch of law, has its own specific system, namely the budget law, tax law, banking law, insurance law, currency law, investment law, securities law, the law on protection of competition on the market financial services, legislation on securities market legislation on financial control and auditing, legislation on laundering of proceeds of crime (Tosunjan et al.: 2003). In turn, NM Kazantsev proposed a new concept of financial law, which is intended to be interpreted as the right, i.e. the right to perform legal actions with respect to or through finances and financial evaluations, under certain jurisdictional protection of the State or other subject of financial jurisdiction. The author considers the financial law, not only as a public but also as an individual law. He defines the substantive law as part of the financial powers of the acquisition of real assets of national heritage in a certain amount of their value. Of great interest is the opinion of this author on thefinancial system of law. In his opinion, the financial structure of the rights cannot be reduced to a tree -type. The system of financial law is a network structure, in which a lot of different hierarchical subsystems can be fleshed out (Annía, Villalobos, Romero, Ramírez & Ramos: 2018; Shestak et al.: 2019, pp. 547–554).

A review of the views of leading experts of financial law allows us to do a whole number of conclusionson the subject of the problem and the system of financial law at the present stage.The concept that underlies the definition of the object of financial law through the financial activity of public law entities in the field of the formation, distribution, and use of funds, now cannot reveal the full potential of financial law (Ramos: 2007; Martínez, Ramos y Annía: 2019; Havrylyuk: 2015, p. 130; Metzger: 2015, p. 129; Riccioni et al.: 2018, pp. 186-194). It is inherited from the Soviet past and does not allow in new economic relations to see that the financial law in a market economy acquires other qualities and properties. New features of financial law lie in the fact that out of control of public finances, it has become a regulator of the relations existing in parallel with the public and related private finances.

It should recognize that in a market economy, relations connected with the finances of the State are diverse in nature (Awrey et al.: 2013, p. 191; Carruthers: 2013, pp. 386-400; Urdaneta & Villalobos: 2016; Villallobos & Ganga: 2016; Hernández, Villalobos, Morales & Moreno: 2016). It is almost impossible to see

net financial relations. Accordingly, the subject of financial law currently covered not only "pure" financial relationships. In fact, we should recognize that relationships in the financial sphere are complex (Goodhart et al.: 2013; Villallobos & Ganga, 2016; Villalobos & Ganga, 2018; Villalobos, Guerrero & Romero, 2019). The financial - legal regulation involves complex social relations covering almost full range of both public and private finances.

Preservation of the concept of financial activity of the State and municipalities in the theory of financiallaw cannot explain how these or other institutions, currently being considered as the financial and legal, in general, maybe in the system of financial law (Waldo: 2017; Ramírez, Chacón & El Kadi: 2018; Lay, Ramírez& Villalobos: 2019; Rincón, Sukier, Contreras & Ramírez: 2019). The current state of the legal theory that is also burdened with the Soviet past, relating to branch specialization, cannot overcome their rigidity (Barkan et al.: 2015). Unfortunately, traditional approaches to determination of the branch of law through the subject and method of regulation now do not explain many of the phenomena of legal reality. Modern financial law, with its deep roots in the Soviet era of development of the law, does not explain many of the phenomena actually existing legal reality.

The fear of the transformation of the financial law in a comprehensive branch is farfetched because theplace in the legal system is determined by social need, which is based on the fact that there should not be a priority of public law entities in the financial sector. Private entities in the financial sector should also get decent tools of interaction and realization of their interests in the field of finances. Modern financial law is burdened by the priority of public interests under cover of the common good for all, which in itself is good, but the reality is that the interest of public legal entities becomes absolute. The situation in the budget and tax spheres of the State is clear evidence of this fact.

2. METHODS

This article descriptively analyzes the financial system of the Russian Federation. The analysis touches upon the finance law and legal entities under the finance law.

3. RESULTS AND DISCUSSION

The discussion arose around the proposal for the formation in the financial system of law of emission law is of great interest. There is no consensus among scientists about how to identify in the system financial law a set of rules governing the monetary relations. There are suggestions in the literature that it is possible to allocate in the financial law system a separate subsector, named as the right of circulation of money, which isa set of legal norms regulating social relations that arise during the process of the movement of cash and non-cash (Towmasyan: 2009, p. 24). The authors motivate the very possibility of formation of such sub-sector by the presence of its subject and method of legal regulation, the adequacy of legal provisions allowing them to allocate a separate entity, their certain specifics, etc. it seems a rather simplistic approach to the issue of the formation of structure in the sub-sectors of financial law. It seems that this is quite a simplistic approach to the issue of the formation of sub-sectors in the structure of financial law. For example, the authors define the subject of this sub-sector as public relations arising during the process of cash flow. However, the process of cash flow is the subject of regulation by not only finance law, but also administrative and civil law. How to separate these rules of the appointed branches of law from regulating this process? Another example of relationships generated by this sub-sector - social relations arising about the establishment and execution of the process (order) handling in the territory of a particular State of cash and non-cash in national and foreign currency and regulated by the rules of law. However, the circulation in the territory of a particular State of cash and non-cash foreign currency is also in contact with the institute of currency regulation.

The very subject of the proposed sub-sector is defined by the mentioned author as specified publicrelations arising in the process (order) of cash flow. Furthermore, the method of the law of money circulation coincides with the method of the financial law - a method of government regulations, based on the imperative regulation of social relations (Hughe et al.: 2015, 361-372; Hacker et al.: 2018, pp. 645-696; Le Nguyen: 2018, pp. 47-58).

We believe that social relations in the process of functioning of the monetary system of the State define the subject of regulation of the monetary (emission) law.To-day, the monetary system of the State consists of the following interrelated and interdependentelements:

- The monetary unit of the State;
- Principles of the organization of the monetary system;
- Types and order of maintenance money;
- Emission mechanism;
- Money supply structure;
- Forecasting and planning of cash circulation;
- Monetary Regulation of economy;
- The order of determining of currency circulation;
- The order of cash discipline.

Accordingly, the public relations arising in the process of the operation of each of the above elements of the monetary system of the State, form the subject of monetary (emission) law. It is necessary to proceed from the fact that they are interrelated elements, which ensure the functioning of the monetary system of the State in the result of direct interaction. As a consequence, it is necessary to determine which rules of financial law form the structure of the monetary (emission) law (Shestak et al.: 2019, pp. 197–206). There is no consensus on the financial system of law in the modern financial and legal literature. Nevertheless, we believe that the financial rules of the system can be divided into four sub-sectors, namely the budget law, tax law, monetary (emission) law, financial - control law. Each of these sub-sectors incorporates a large group of financial - legal norms, which, in turn, are combined in the financial - legal institutions. In our opinion, the monetary (emission) law is formed by the following financial - legal institutions:

- Circulation of money;
- Currency regulation;
- Public banking law.

Almost publicly, the said financial-legal institutes cover of the functioning of the legal components of the elements of the State monetary system. It should be considered that the actual elements of the monetary system of the State are in the process of development and modernization. For example, the modern monetary system of the State is unthinkable without such institutions are actively developing electronic payment systems and electronic money. That in itself raises the question about the limits of the financial and legal regulation of relations in the field of electronic money. Money turnover, as the sphere of the financial - legal regulation is essential because, in its essence, not only the public finance sector but also the entire sphere of private finance depends on its effective functioning. The functioning of all elements of the financial system of the State is in direct dependence on the cash flows and mechanisms, both economic and legal, to ensure such a movement. The critical role of regulation of the monetary system of the State belongs to the standards of other financially-legal institute - public banking law. We agree with the fact that banking activity - a very complex phenomenon. However, for the State, the well-functioning banking system is a major priority, and it is caused, first of all, not only the interests of the State but also the interests of individuals. In fact, by far the most reliable investment people are investing in bank deposits. Providing property interests of individuals prompted the government to develop a system of deposit insurance in banks.

As a consequence, the State reinforces the public regulatory regime of banking activity that acquires avariety of forms. Given that the process of functioning of the monetary system today is unthinkable without the most important economic institutions - banks and non-bank credit organizations, public banking law is an institution to be included in the emission (monetary) law. So far, the problem of assigning emission law to the general or special part of the financial law system is debatable. The rules incorporated in sub-sector "emission (monetary) law" in the system of financial law governing relations in the process of functioning of the monetary system of the State, are links that provide implementation of standards such as sub-sectors and finance institutions as the budget law, tax law, financial control law, public credit, public debt, and others.

Thus, we believe that the monetary (emission) law has emerged in the system financial law as a sub- sector, which should be included in the general part of the financial law. The structure of it includes such financial and legal institutions as currency law, public banking law, monetary circulation.

The idea of separation of fiscal law or law of public revenues in the system of financial law seems no lesscontroversial. According to Vasyanina EL (2016), forming a single legal sphere, the treasury is covered by the fiscal law, whose place in the system of financial law is destined to exercise the activities of the State management of financial resources and public revenues. Formation of public law of State revenue is connected with the legal technique of systematization of normative legal acts establishing fiscal levy (collection). It will create a single legal framework of fiscal activity of the State. These authors believe that fiscal law has its own system. Assuming the pandects structure of law it is possible to identify a General Part of the fiscal law, including general provisions applicable during the fiscal system regulation, and special parts, covering individual parts of treasury. The general part of the fiscal law should contain provisions on profitable financial obligations relations, principles of regulation that are emerging in the area of formation of the public purse, the general conditions for the establishment of fiscal levying, the mechanism of their administration, the provisions on the monitoring of the performance by the debtor obligations on forming public purse, as well as the institute protecting the rights of participants of the fiscal relations.

Special Part of fiscal law is intended to cover certain types of fiscal levying, institute of fiscal tort law, under which establishes the legal regime of financial obligations arising from the wrongdoings. According to Vasyanina's concept the fiscal law (the law of public revenues) covers a wide scope of specific financial institutions which require subsequent classification and their subsequent systematization, such as: 1) taxes;2) fiscal charges; 3) parafiskalitets; 4) insurance premiums; 5) measures, having the character of punishment(fines, confiscation, seizure of other compulsory withdrawals); 6) fiscal payments, which are measures of tariff regulation (for example, customs duty, recycling); 7) actions which are protective measures of non-tariff regulation (countervailing, anti-dumping duties); 8) natural resource payments; 9) "hidden" fiscal levy; etc. (Vasyanina: 2016, pp. 10-17).

It seems that this concept is artificial and lacks a regulatory framework, not taking into account the basic structural elements of the financial law forming the framework of its system - the budget and tax law. At the same time, the concept of a financial liability laid into the basis of the theory of fiscal law has not a legal regulatory framework. Accordingly, we can now only talk about some theoretical structureIn turn, N.V. Vasilyeva singles out in the system of financial law a new sub-sector - public revenues,defining as the totality of financial and legal rules governing public relations arising in the process of accumulation of public funds (Vasilyeva: 2017).

At the same time, the following institutions are included in this sub-sector: the tax law; legal regulation of other mandatory budget revenues; legal regulation of voluntary budget revenues; legal regulation of voluntary budget revenues; legal regulation of decentralized public revenues. At the same time, the sub-sector of public incomes is divided into a general and special part. However, it is difficult to agree with this approach. Our previously published monograph detailed the evolution of the scientific design of the financial law system as a branch of law (Tsindeliani: 2011). The above arguments on the inclusion of the tax law as an institution have no legislative reinforcement. Moreover, it is in contradiction with the constitutional provisions on

the isolation of regulation of relations in the field of taxes and fees. Moreover, the author does not justify how to control relations in the field of taxation can be included in this sub-sector, since the mechanism for monitoring compulsory payments to budgets, in addition to taxes and fees, as well as insurance premiums, has a different implementation mechanism.

4. CONCLUSION

A traditional approach to the structural elements of the system of financial law as a branch of law is reproduced in the vast majority of financial and legal studies. There are also represented the emergence of new institutions and sub-sectors of financial law, proposals to remove the traditional institutions of the financial system of law, justification for the transformation of institutions and sub-sectors in the new independent branch of law, or a new complex area of law. However, the development of criteria for the systematization of financial and legal provisions in the respective structural elements of financial law has not received significant theoretical development. The elemental composition of both General and Special Parts of financial law remain without significant theoretical development and coverage in most textbooks on financial law. What institutions and sub-sectors are universal for the financial law and form a General Part and which the institutions form the Special Part, and what are the criteria to the present in the light receive occasional interpretation? In our opinion, all of the Special Part of financial law consists of a large number of inter-sectoral institutions. In fact, it can be argued that public relations in the field of public and private finances are subject to regulation by branches of public and private law. As a consequence, the inevitability of the formation of inter-sectoral entities, including in the area of financial regulation.

BIODATA

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