

FINANCIAL LAW AND FINANCIAL SCIENCE IN RUSSIAN FEDERATION AND CZECH REPUBLIC (COMPARATIVE RESEARCH)**

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The subject of the article is the processes of development of financial law and financial science in Russia and the Czech Republic.

The purpose of the study is to establish common and different in the development of the financial and legal doctrine of both countries and to identify current trends in the formation of both branches of public law.

The methodology. Comparative legal, historical and analytical scientific methods were used. The main results, scope of application. Formation of financial-legal theory in both countries took place under the circumstances of political changes. In relation to the Czechoslovak Republic, the attention is focused on the period from the formation of the Czechoslovak Republic in 1918 to the formation of the Czech Republic in 1993, and the main emphasis is

made on the period of the 21st century. Periodization of financial law and financial science, and also the system of financial law considers the teaching of financial law and financial science at the Faculty of Law, Charles University. The study also characterizes the process of development of financial law and financial science in pre-revolutionary Russia, highlights the Soviet period of development of financial law, focuses on the problems of development of modern financial law. Periodization of financial law, as well as the system of financial law, are presented from the perspective of teaching of the subject of financial law at the faculties of law. The authors suppose that the modern system of financial law and financial science has retained the original division into two parts, general and specific. All sub-branches of the special part of financial law may be divided into three main blocks: (1) sub-branches of the fiscal part of financial law; (2) sub-branches of the non-fiscal part of financial law; (3) common sub-branches of the non-fiscal part of financial law.

Conclusions. The hypothesis about the unity of the principles of financial law and financial science, and public finance as the main category, as well as about the independence of this branch of public law was confirmed during the study. Due to the growing volume of legal regulation in both countries, the historical division of the financial law system is not enough, there is an extensive fragmentation of division in the financial law system. We are observing the emergence of new sub-branches, which are likely to tend to the formation of new branches.

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1. Financial law and financial science

1.1. Financial law and financial science in Czech Republic

Over a period of several decades the financial law and financial science hold the firm place in the development of public law. Public law is characterized by the use of mandatory (peremptory) legal norms and the supreme position of a state body that can make decisions on the subjective rights and rights of other legal entities (but only *secundum et intra legem*) [1, p.116 et seq.]. The financial law and financial science, together with their regulatory mechanisms, create organizational and legal preconditions for the operation of economics, and fulfill other functions and support the ability to transform the economics into modern, functional and dynamically developing system as well. Here the financial law is a public law branch, and a scientific and pedagogical discipline, which takes its firm place in the faculties of law in the Czech Republic. There is no doubt today that the financial law in the Czech Republic is an independent branch of law, and an important component of the Czech legal system [2], [3], [4]. At the same time, the traditional and recognized field of juridical science, which is reflected in the pedagogical practice. Financial law, as an independent subject, is taught within the framework of all the syllabi at the master's degree at four faculties of law in the state Czech universities. At the present time there is an independent department of financial law and financial science at the Faculty of Law, Charles University [5], [6].

Czech financial law and financial science have a sustained development over a long time, and especially dynamically nowadays [7], [8]. Defining the financial law, in the first instance, it is necessary to refer to the definition of the main financial and legal institute, namely the institute of financial law. Financial law and financial science as separate branch of law (i.e. body of rules of financial law) regulate specifically the finances and the rights and the obligations related to them. Thus, the finances

are the primary subject of the financial law regulations. The category of finances has undergone significant development. The first term "finance" is etymologically educated from the Latin word *finis* (the end), meaning in a figurative sense the word "termination of obligations", mainly it was the payment to the monarch, and later to the state. The finances have always reflected the relations with the state economics [9, p.9].

The finances are often defined as a complex of financial relations associated with the creation, distribution and use of money or their part [10, p. 8]. If they are the subject of financial law, such financial relations become the part of financial law, and the rights and obligations contained in these legal relationships are legally enforceable. However, in addition to the rights and obligations that constitute the content of financial legal relations, financial law also regulates the rights and obligations that exist outside financial relations (outside of finance), which, however, are directly or indirectly related to finances.

Financial law is currently perceived in most countries of Central Europe as an independent branch of law, it is becoming an increasingly important part of law, even considering interdisciplinary interaction in other legal and non-legal spheres (for example, in economic, political and social) [11, p. 31]. The volume of legal regulations governing financial relations (finances), as well as rights, obligations and facts related to finance, is growing. Similarly, financial law is defined in professional publications. In connection with similar social and legal changes in the Czech Republic and Slovakia after the dissolution of the common state, the concept of financial law should also be mentioned [12], [13], [14], [15],[16]. In Bratislavan textbook on financial law, financial law is defined as "an independent branch of law, its subject is a special circle of property relations, which are expressed in money and arise when funds are concentrated in state and other public financial funds, as well as in the process of their redistribution and use" [17, p.14].

The problematics of financial law is so complex

that its study, understanding, and assessment cannot do without clarifying some of the main issues. This is, first of all, the interpretation of those economic categories that form the basis of the problematics, without those economic categories financial law and financial science would lose their justification. These categories include the concept of finance and related financial and monetary relationships. In the literature, the term "finance" from the etymological point of view is explained in different ways, for example, from the Latin term "finis" [18, p. 7].

Financial law and finance science are not only scientific, but also important pedagogical disciplines. Law in the objective sense is a set of existing legal norms as generally binding rules of conduct established or recognized by the state (or by the international community of states). Legal norms are characterized by formal certainty, they can be found in the official, recognized by the state (or states) sources of law [19, p. 15 et seq.]. The law thus defined is an objective law. Objective law gives an answer to the question *quid iuris*, i.e. what is applied in this case as a law, what legal norm is applied in this case. Thus, an objective law provides an answer to the question of what is in a given situation according to the law or against the law in general. The subject of financial science, including financial law, began to be taught at the Faculty of Law in Prague from the second half of the 18th century. In the textbook from 1765 by Professor Joseph von Sonnenfels, the subject of financial science and financial law is defined as follows: "*Financial sciences show you how you can profitably increase and use government revenues*" [20, p.23]. Financial sciences and financial law were combined into one examination subject entitled "Financial Sciences with a special focus on the Austrian Financial Law" in the third so-called State Examination of State Studies in 1893 by order of December 24, 1893. The exam was taken in the same form after the formation of independent Czechoslovakia and existed in the same form till 1949. Only the title of the subject was changed to read: "Financial science with a special focus on the Czechoslovak financial legislation."

In economic, and especially in financial and monetary policy, after the formation of

Czechoslovakia, three opinions were clearly defended, which were represented by excellent and strong personalities, and these approaches were clearly reflected in the management of public finances. The main focus in the first half of the 1920s was the approach of Dr. A. Rashin [21, p. 637-639], who was a strong supporter of the neoliberal school. Dr. A. Rashin demanded not only a balance of state revenues and expenditures, but also the observance of the minimum range between budget revenues and expenditures. From the second half of the 1920s, the approach of Professor K. English [22, p. 576-582] was formed, it was based on English's own original theological economic theory because K. English went dip into the practice of public finance. Also, there was a trend of Czech Keynesians, represented primarily by J. Mak and J. Nebesar. According to this approach, the state budget should be - contrary to liberal views - one of the most important mechanisms for launching production, making up for the lack of private investment.

Let us note that these theoretical approaches came into conflict with the real economic situation, which provided a very tight space for their full application. The two main representatives of the financial policy of the so-called First Republic were Dr. A. Rashin (as Minister of Finance) and prof. K. English (as Minister of Finance, and then Governor of the National Bank of Czechoslovakia), were prominent Czechoslovak lawyers, economists, politicians and representatives of financial science, and were adamant in budgetary policy. In practice, both made a significant contribution to the implementation of the state's economic policy. Dr. A. Rashin as the Minister of Finance defended the Czechoslovak currency against the (hyper) inflationary fate of the currencies of some neighboring states during the creation of the republic. In 1919, the so-called financial reform of Rashin was carried out, which consisted in sticking official stamps on banknotes [23, p. 53-60] and taking inventory of property in order to establish a one-time property rate. Later Professor K. English partially implemented his theoretical considerations as Minister of Finance in the tax reform. The so-called English's tax reform of 1927 [24, p. 124] was a fundamental modernization of the tax system [25]

from a financial and scientific point of view.

Other changes in the development of Czechoslovakia after 1949 also fully affected public finances, both systemically and materially, since public finances, as already mentioned, are the backbone of the implementation of public policy in any situation. In the early 1950s, a monetary reform was carried out (Law No. 41/1953 Coll., On Monetary Reform), and a system of new taxes [26, p.124 et seq.] was introduced, which was adjusted in the late 1950s and early 1960s, but essentially remained its main features before the adoption of the new tax system on January 1, 1993. In 1968 Czechoslovakia was turned into a federation, which in fact meant only the division of powers between the Federal Assembly and the National Council (Czech and Slovak), but from the point of view of the system of financial law, it did not bring much new.

Professor B. Spachil was an important theorist and teacher of that time. Professor B. Spachil was Professor of Financial Law and Financial Sciences at the Faculty of Law of Charles University in Prague, it is appropriate to mention his monograph "Theory of Financial Law in Czechoslovakia", published in 1970 [27, p. 176].

Other important personalities and representatives of financial science and financial law in Czechoslovakia are Professor M. Bakesh (in the Czech Republic) [28] and Professor A. Slovinsky and Professor J. Girashek (in the Slovak Republic) [29].

The Velvet Revolution had a great influence on the legal regulation of public relations, which entailed a change in social, economic and political conditions. After 1989, gradually all branches of law have undergone dramatic changes. The importance of these transformations is clearly illustrated by conceptual changes in the legal matter in the field of private law, as regulating the basic relations between people. This culminated in the 2012 civil law recodification [30, p. 63 et seq.]. The concept of the family law as an independent branch was abandoned by including it as part of the Civil Code [31, p. 317 et seq.]. Modifications in the organization of the foundations of family, property and social relations affected the economic sphere,

which was reflected in financial law and financial science. The scope of regulation has increased, became more diverse, and the subject of these sciences, accordingly, has undergone expansion. Conduction of significant amount of scientific research in this area, pedagogical and methodological work, enormously increased the social and practical interest in the financial and legal sphere. The development of financial science and financial law in the Czech Republic after 1989 gave a new impetus, found its reflection in new scientific approaches, in the teaching of the course of financial law, its structure and methodology. In 1993-2001, at the Faculty of Law of Charles University, the discipline of financial law and financial science again received the status of a state examination as a final attestation in the course of studying in the third final general education course. (Explanation: that is not a traditional state exam, which in the Russian Federation is taken at the end of the 5th year. In the Czech Republic, this is a type of a state exam, which, as a rule, is taken based on the materials of several semesters at the end of the third year, and after such an exam, students do not receive any title, since they continue their studies.)

In the beginning of the 21st century, in the financial and legal theory of the Czech Republic, there was a tendency to separation of certain areas of law out of the financial law. The stable direction of such a phenomenon, in our opinion, is associated with the growing scientific and practical significance of financial law, an increase in the volume of financial and legal norms, as well as the difficulties of law enforcement. In particular, this trend and direction in views can be noted in relation to tax law. The concept of tax law as an independent branch of law is a trend that Czech legal science had to face, and which in the future requires proper analysis and scientific understanding. It does not seem correct to assert that the concept of tax law as a separate branch of law is completely excluded without a thorough a priori study. However, we believe that it is necessary to conduct serious scientific discussions to unite the opinions of experts dealing with financial law and legal theory in the Czech Republic on the position of tax law as a subsector (sub-branch) of financial law or as a separate (independent) branch of law.

1.2. Financial law and financial science in Russia

Researching the financial law and the financial science from the standpoint of modern Russian scientific theory, we cannot similarly assert that financial law and financial science are a single public branch of law, a single scientific and pedagogical discipline. In the Russian scientific doctrine, the financial science and the financial law traditionally belonged to different spheres - economic and legal. Financial science had been developing within the framework of political economy, and had developed by the 19th century into the science of public finance. It is true that the studies of economists and lawyers proceeded in parallel, the economists studied economic processes and phenomena related to finance, primarily government revenues and expenditures, and the lawyers, respectively, social relations related to finance (monetary relations), and the legal norms governing them. There was no identification of financial science with financial law in the Russian scientific doctrine. Thus, the famous Russian jurist E.N. Berendts in his textbook "Russian Financial Law" (1914) distinguishes between the concepts of "science of financial law" and "financial law", while separating the concepts of "science of finance" (financial science) and "science of state economy". Defining financial law, he notes that the economy of the state is investigated within its framework. But not from the point of view of what is useful, expedient, but from the point of view of the legal. It is very interesting that E. N. Berendts presents the system of financial law as a science, with institutions, and a curriculum. For the first time the name "Financial Law" was mentioned by the professor of Moscow University F. B. Milhausen in the same-name course of the discipline, lithographed by students, and thus made public in 1865, 1866, 1868. Financial law, which is part of the modern legal Russian system of law, stands out among other industries as actively developing in connection with the change in the economic and political conditions of the country that occurred at the end of the 20th century. Today, no one doubts that the financial law in the Russian Federation is an independent branch of public law, an important part of the Russian legal system, and a generally

recognized area of legal science. Financial law, as well as an independent academic discipline, is taught within the framework of the general compulsory basis of training at all law faculties of state higher educational establishments, where there are independent departments of financial law (Moscow State University, Voronezh State University, O. E. Kutafin Law Academy etc.). It should be noted that the issue of understanding the place of financial law as an autonomous and independent branch in the system of Soviet law has been controversial for a long time. In Soviet science, this issue was almost resolved in the late 60s - early 70s. In the course of the discussion, which began in the late 40s - early 50s, three trends developed, as in the Czech Republic. The famous scientist R. O. Khalfina, in 1952, for the first time formulated the statute on the independence of financial law by separating it from state and administrative law [32, p.194-195] This position was shared by other famous scientists B. N. Ivanov [33, p. 40-41], M. I. Piskotin [34, p.49], S. D. Tsyppkin [35, p. 14-15], and they were supported by M. V. Karaseva, E. D. Sokolova. Another position stated that financial law did not stand out from any other branch of law, but initially arose independently as an independent branch of law along with administrative and state law. This point of view was supported by famous scientists S. I. Vilnyansky [36, p.107], M. A. Gurvich [37, p.36], E. A. Rovinsky [38, p.64], N. I. Khimicheva [39, p.8-10], A. I. Khudyakov [40, p.11-14]. O. N. Gorbunova, E. Yu. Gracheva are also their proponents. The discussion in this part ended in 1976 with the well-grounded conclusion of V. V. Bescherevnykh stated that financial law did not stand out from other branches of law, but arose as an independent one along with and simultaneously with administrative and state law [41, p.30]. In modern conditions of development of financial and legal science, this point of view seems to us the most justified. In the Russian legal theory, there is also a position on the lack of independence of financial law. A number of scientists (V. K. Raikher, V. K. Andreev, I. S. Gurevich) considered financial law to be a complex branch of law, consisting of several branches (budget law, tax law, banking law, insurance law, legal organization of the savings business) This point of view in the course of the discussion faded into the background,

and, starting from the second half of the 70s of the last century, the opinion about financial law as an independent and independent branch of public law, scientific and academic discipline gradually strengthened. The very essence of financial law in the Russian legal doctrine is defined as follows - it is the ordering, stabilization and reproduction of public relations in the field of finance, financial activities of the state and municipalities, carried out in a normative form and protected by means of state coercion [42, p.11-14]. The development of financial law as an independent industry testifies to the repeated changes in the subject of financial law. In Soviet times, the subject of financial law was defined through relations associated with the financial activities of the state. After the adoption of the Constitution of the Russian Federation in 1993 and the establishment of local self-government and various forms of ownership, the subject of financial law was supplemented by relations related to local finances and financial activities of municipalities. The monopoly of the category of financial activity of the state and municipalities as part of the subject of financial law was suspended. The use by the state and local government of monetary funds of various forms of ownership, the involvement of private resources in its implementation gives rise to relations (rights and obligations) associated with public finances. The criterion for classifying public relations as the subject of financial law was the fulfillment of public tasks by finance. As a result of changes in public life, there are changes in the subject of financial law. Relations related to public finance, rights and obligations arising in the course of use in the activities of the state and municipalities, as well as their authorized entities, today it is reasonable to refer to the subject of financial law. Note that the processes of changing the subject of financial law are observed in both Russian and Czech legal doctrines, and are primarily associated with the corresponding changes in public life.

2. System (structure) of financial law and financial science.

In continuation of the above, the modern system of financial law and financial science is represented by a set of legal norms governing the relations arising in the process of creating,

distributing and using the money supply and its components. As Professor A. Gerlokh points out, a system of rights is a combination of legal norms that has the character of a system, and its division into parts [43]. Financial law primarily regulates those relations in which the state participates directly, and those that can be influenced indirectly, and as each branch of law forms an independent system, determined by the relationship of individual institutions.

2.1. System (structure) of financial law and financial science before 2018

Before 2018, financial law had a classical structure, based on legal positivism, like most branches of law, and it was divided into two parts - general and special. In the general part, the fundamental principles of the branch have been developed. The general part of financial law includes the problematics of financial activity and its organizational and legal forms, the subject and system of financial law, including extensive issues of the implementation of financial and legal norms. The general part also contains issues of financial and legal relations, their subjects and objects, the rights and obligations of their participants. The general part includes as well the sources of financial law, their constitutional foundations, issues of state supervision of financial activities and financial control, as well as the main financial and legal institutions.

The special part of financial law and consists of many laws and regulations and appears to be elaborated from the perspective of positive law. Although the opinions on the classification may be different, especially from a terminological point of view, depending on the relationship of the content of individual rules, we can divide a special part of financial law into:

1. Legal regulation of public budgets and state funds,
2. Legal regulation of taxes, fees, duties and other mandatory payments,
3. Legal regulation of the loan,
4. Legal regulation of currency, money turnover and payment system,
5. Currency regulation

6. Legal regulation of financial markets [44, p. 12-13].

Certain areas of the special part of financial law consist of both substantive and procedural rules. A relatively young part of financial law is the section of financial markets legislation or the law of financial markets. In addition to issues regulated by trade (commercial) or civil law, this includes legal regulation of capital and monetary transactions, public law regulation of entities operating in the financial market, as well as regulation of certain financial market instruments and transactions with them, including securities and financial, trademark and other derivatives.

2.2. The system (the structure) of financial law and financial science after 2018

The modern system of financial law and financial science has retained the original division into two parts, general and specific. At the same time, the special part is quite voluminous and consists of separate sub-branches (although the text uses the terms "budget law", "tax law", "currency law", etc. to denote individual sub-disciplines, this does not mean a special area of law, but only designation of sub-disciplines of financial law) [45, p. 76-77].

The latest monographic textbook of financial law by Professor Karfikova since 2018 has divided all sub-branches of the special part of financial law into three main blocks:

1. Sub-branches of the fiscal part of financial law.
2. Sub-branches of the non-fiscal part of financial law.
3. Common sub-branches of the non-fiscal part of financial law.

The first block includes budget law, tax law and subsidy law. Fiscal financial law and its sub-branches are related to the state budgets, their revenues and expenditures, that is, with the creation, distribution, redistribution and use of budgetary funds (money supply in these funds). Budget law deals with state budgets in general, tax law deals with the main revenues of public budgets, and subsidy law deals with the main expenditures of state budgets.

The non-fiscal part of financial law and its sub-

branches are not related to state budgets, but are directly related to money turnover, money flow, its creation, distribution, redistribution and use. The second block includes currency and monetary law, and the law of financial systems. Currency and monetary law deal with the issues of the money supply and its constituent elements (types of money). Currency law of foreign money supply and the law of financial markets have their own subject - the local financial market and the distribution of money supply in these markets.

Expanded non-fiscal subsectors of financial law include i) banking law that governs banks and other credit institutions, ii) insurance law that governs insurance and reinsurance companies, and iii) capital market law that governs investors, issuers and service providers related to investments in financial markets. What these subsectors have in common is that people and other regulated persons have a control on a significant part of the money supply [45, p. 77-78, 279 et seq.].

The modern system of Russian financial law has also retained the traditional division into two parts, General and Special. Within the branch of financial law, financial and legal norms are grouped into certain legal institutions. Institutions are interconnected and interdependent groups of legal norms regulating homogeneous social relations of a certain narrow area within the branch of law. The General part of financial law traditionally includes all the institutions that ensure the institutions of the Special part, the principles of financial law, methods of regulation, the composition of legislation, financial control and responsibility. A special part is made up of norms regulating budgetary relations, tax relations, the banking system, the monetary (payment) system, the currency system, relations between state and municipal purchases, investment relations, insurance relations, and parafiscal fees. Similarly, to the problems existing in the Czech financial and legal science, in the Russian doctrine there is a question of separating from financial law into an independent branch of tax law, banking law. In the course of scientific discussions, a well-founded position has not been formed today. Tax law, like banking law, are sub-branches of financial law, constituent parts of the science of financial law.

3. Conclusions

In general, we can conclude that in both doctrines the problem of the subject of financial law is always a topical issue, since the subject of financial law, like any branch of law, is constantly in development. This situation, in our opinion, is associated with the development of the legal system as a whole, changes in political and state power, and the deepening of scientific knowledge in this field. In the course of this study, a number of differences in the development of the Russian and Czech financial and legal doctrine were identified, provided that they belong to a single legal family. One of the essential features is the attribution in the Russian doctrine of financial law and financial science to different spheres - respectively, law and economics. In the Czech legal doctrine, as we have already found, the financial law and the financial science have occupied a firm place among the branches of public law for several decades, and are also a unified scientific and academic discipline.

Changes in the system of financial law indicate us the the development of financial law and financial science, which originates in a large number of legal norms governing the sphere of law. Today's rules try to casuistically regulate the actions of people. Thus, the degree of legal regulation is incomparable with the one in the past. Due to the growing volume of legal regulation, the historical division of the financial law system is not enough, there is an extensive fragmentation of division in the financial law system. We are observing the emergence of new sub-branches, which are likely to tend to the formation of new branches.

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