DOI 10.52468/2542-1514.2024.8(2).73-81

FINANCIAL LAW: SEARCHING ANSWERS TO CONTEMPORARY ECONOMIC CHALLENGES

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Article info
Received –
2023 July 27
Accepted –
2024 March 20
Available online –
2024 June 20

Keywords
Financial law, branch of law, integrative concept of law, economics, finance, income, expenses, budget, banks, credit

The subject. Scientists face a serious task related to the formation of a modern model of financial law that will ensure the financial sovereignty of the state.
The purpose. The author attempts to form a modern approach to understanding the nature of financial law that meets economic challenges.
Methodology. The use of general logical research methods, including analysis and synthesis, the formal legal method.
Main results. The updated legal model of financial relations, aimed at creating a full-fledged mechanism of financial and legal regulation, can be formed by activating the process of convergence of private and public law, the development of which is justified by the tasks of legal technology. The rejection of the sectoral model of law, formed in the 1930s, in favor of the integrative structure of law allows us to consider financial law as a system of regulatory complexes that legally mediate the financial and credit mechanism of the national economy. The unifying basis for the formation of regulatory complexes covered by financial law are such key aspects as: the independent object and purpose of legal regulation of the relevant group of financial relations; the range of subjects of legal relations arising in the sphere of functioning of the financial and credit mechanism of the state; management tools used by the state and means used by participants in civil turnover to protect the right to dispose of finances.
Conclusions. The legal instruments that ensure the achievement of the goals of the functioning of the financial and credit mechanism of the contemporary state are: principles of public administration; administrative procedures, as well as the construction of a financial obligation.

1. Introduction

Today, representatives of legal science face a serious task related to the formation of a modern model of financial law based on theories of understanding of law developed in the legal doctrine, capable of regulating the process of structural transformation of the economy and ensuring the strengthening of the financial sovereignty of the state.

The need to develop an updated legal model of financial relations is caused, first of all, by the growth of anti-Russian rhetoric, the emergence of new patterns, conditions and factors of the development of the financial system of the state.

In the context of the unprecedented sanctions regime against Russia, a huge number of amendments are being made to financial legislation. However, the analysis allows us to state that the creation of legal conditions for the development of modern financial architecture, as a rule, occurs through the adoption of legislative acts for specific economic needs and political decisions of the state. And in some cases, the provisions of financial law do not find their implementation in the sphere of functioning of the financial system, which, as rightly noted in the legal literature, turns the law into nothing [1], destroys it.

The increasing complexity of problems arising in the field of legal regulation of financial relations leads to an increased role of science in their study. However, the contradictory ideas of scientists formed in the financial and legal doctrine about the nature of financial law do not contribute to the development of legal tools that ensure the financial stability of the state.

Based on the analysis of financial legislation and the practice of its application, taking into account the developed theories of understanding law, this article attempts to determine the directions of development of an updated model of financial law that meets modern economic challenges.

2. The impact of the sectoral approach to the law on the development of the mechanism of financial and legal regulation

A serious influence on the development of

ISSN 2542-1514 (Print)

the modern financial and legal mechanism was exerted by the sectoral approach to law that developed in the 30s of the XX century [2], accompanied by the development of "... the positivist type of legal understanding proposed by A.Ya. Vyshinsky, which is based on the identification of law and the law" [3, p. 657]. As a result, the point of view on the sectoral independence of financial law has been actively developed in the legal literature. However, since some branches of law, including financial law, did not fit into the sectoral model of law, the legal doctrine was supplemented with provisions on complex integrative formations [4, p. 105], and one of the positions developed by scientists was the recognition of financial law as an integrated legal education
[5, p.81].

Today it becomes obvious that the commitment for several decades to the sectoral approach to law has led to separate legal regulation of certain elements of the financial mechanism of the state, which include monetary emission, budget, taxes, credit, financing, pricing, etc. This does not allow setting parameters for the balanced application of monetary, budgetary, fiscal, customs and tariff policy measures and, as a result, does not contribute to the creation of the necessary level of guarantees for the financial stability of the Russian Federation.

Following the sectoral model of law does not make it possible to form a unified conceptual framework and a foundation for systematizing legislation that regulates the financial sector, and also leads to unreasonable conclusions and questionable, from the point of view of legality and validity, decisions of law enforcement agencies. The application of this direction in law has led to an increase in the number of administrative procedures in the acts of financial legislation[6], leveling the binding nature of financial legal relations, as well as to the complication of the mechanism of financial and legal regulation, expressed in the emergence of parallel legal institutions in the field of fiscal taxation, control and supervisory activities and the use of coercive measures for financial offenses. Thus, to date, coercive measures are applied for violation of the legislation of the Russian Federation on taxes and fees, which are fixed simultaneously in five sectoral laws, among which are: 1) the Tax Code of the Russian Federation, fixing the composition of tax offenses; 2) the Administrative Code of the Russian Federation, establishing administrative liability for violations of the legislation of the Russian Federation on taxes and fees; 3) the Criminal Code of the Russian Federation, fixing the composition of criminal offenses in the tax sphere; 4) The Civil Code of the Russian Federation, which establishes a mechanism for compensation for damage, actively used in collecting arrears owed by an organization from an official of this organization; 5) Federal Law No. 127-FZ dated October 26, 2002 "On Insolvency (Bankruptcy)", applied in terms of bringing to subsidiary liability persons controlling the taxpayer.

Parallel legal regulation can be traced in the field of implementation of the mechanism of fiscal taxation. This is evidenced by the parallel tax system formed in the state bypassing the Tax Code of the Russian Federation, and the number of fiscal payments not regulated by the Tax Code of the Russian Federation reaches several dozen. In addition, a parallel array of regulatory legal acts has been formed in the field of determining the elements of the legal composition of property taxes established by the Tax Code of the Russian Federation. The above is manifested in the fact that the provisions on challenging the results of determining the cadastral value of real estate objects, which is the tax base, are fixed not only in the Tax Code of the Russian Federation, but also in Federal Law No. 237-FZ dated 07/03/2016 "On State Cadastral Valuation", in the Code of Administrative Procedure of the Russian Federation dated 03/03/2015 No. 21-FZ, which leads to to the violation of the principle of formal certainty of financial and legal norms.

The development of an industry-specific approach to law gave rise to a scientific discussion on the distinction between private and public finance, and the identification of the subject of financial law[7].Moreover, a point of view has been formed in legal science, according to which financial law is identified with the institution of private law, the content of which is the norms of civil (business) law[8]. It is unlikely that such conclusions can be

ISSN 2658-4050 (Online)

important for the development of legal science in the right way for the legal provision of financial relations. And the inconsistency of the long-term discussion on the distinction between private and public finance lies in the fact that its participants are not confused by the fact that the legal regime of budgetary funds, in addition to the BC of the Russian Federation, is established by Articles 214 and 215 of the Civil Code of the Russian Federation.

Approaches to the legal regulation of financial relations, focused on the sectoral model of law, do not allow the formation of a legal regime of the financial and credit mechanism of the state corresponding to economic realities. Obviously, the consolidation of legal institutions in the Civil Code of the Russian Federation that are directly related to the functioning of the monetary system (we are talking, first of all, about leasing and credit) does not mean that they have a private legal nature and their application should not be synchronized with the principles and objectives of monetary, budgetary and fiscal policy. The mechanism of bank lending fixed by the Civil Code of the Russian Federation is nothing more than the issuance of credit money mediated by the banking system, the procedure for which should be coupled with the instruments of the monetary policy implemented by the Central Bank of the Russian Federation, which indicates the public-legal nature of credit obligations, the terms of which are detailed within the framework of a bank loan agreement. In this case, the construction of the loan agreement acts only as a technical and legal method of influencing financial relations in the field of issuing credit money, the regulator of which is the Bank of Russia. It is not by chance that, in the context of a sharp increase in inflation in 2014-2015, the concept of satisfying borrowers' demands to banks to terminate loan obligations in connection with the Bank of Russia's failure to fulfill its obligations to ensure the stability of the ruble exchange rate began to form in judicial practice[9]. However, this approach has not been developed in the future, refusing to satisfy such claims of borrowers, stated on the same grounds, the courts, rejecting the public law component of credit relations, resolved disputes exclusively in accordance with the provisions of the Civil Code of the Russian Federation on the grounds for termination of obligations at the request of one of the parties[1].

The application of an industry-specific approach does not contribute to the creation of appropriate legal support for financial services. For example, leasing legal relations form a complex legal structure and break up into a financial obligation (loan, loan - debt financial obligation) and a property civil obligation (purchase, sale, lease)[2]. In other words, leasing is a special form of lending, since it provides an asset on terms of urgency, payment and repayment[3]. The public law component of leasing allows us to state that the legislation on financial leasing (leasing) should be coupled with legislation ensuring the legal regulation of credit obligations, including the provisions of Federal Law No. 353-FZ dated 12/21/2013 "On Consumer Credit (Loan)".

Partnership financing in the form of installments, leasing, and equity financing, which by its nature is a special form of monetary emission carried out by non-credit financial organizations, does not fit into the industry model of law and requires the removal of legal barriers.

3. Financial law in the context of the formation of an integrative model of the structure of law

The complication of the links of the financial system, the development of the financial market, the emergence of new economic entities, which include state corporations, operators of digital platforms that ensure the functioning of the financial system, has led to numerous studies that justify the need to form new sub-sectors and legal institutions covered by the financial law system, and "... providing

[1] The ruling of the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation dated 09/13/2016 No. 18-KG 16-102; The appeal ruling of the Perm Regional Court dated July 6, 2016 in case No. 33-7338.

[2] Special opinion of Judge Neshataeva T.N. on the Advisory Opinion of the Court of the Eurasian Economic Union dated 07/10/2020 No. CE-2-1/2-20-BC

[3] Explanatory Note to the draft Federal Law No. 586986-7 "On Amendments to Certain Legislative Acts of the Russian Federation in Terms of Regulating the Activities of special Leasing Entities."

ISSN 2542-1514 (Print)

relatively complete regulation within its area of public relations" [4, p.105].

In order to ensure a unified regime of legal regulation of financial relations arising in the field of formation, distribution and use of public funds, legal institutions such as fiscal law (the law of public revenues of the state) are singled out [10], the law of public expenditure [11], legal institutions of deoffshorization [12], the Institute of treasury allocation of budget funds, the Institute of Treasury payments, the institute of non-state finance burdened with a public function [13], etc.

However, the allocation of institutions within a specific branch of law means the use of legal instruments of the relevant branch, which are clearly insufficient to form a full-fledged mechanism for legal regulation of property and control and organizational relations arising in the sphere of functioning of the financial system of the state. It is obvious that the approach based on the analysis of legal phenomena and categories within independent branches of law is ineffective[14], since it significantly reduces the regulatory potential of law. Therefore, the development of effective legal means of influencing financial relations should be based on the activation of the process of bridging the gap between branches of law, on the convergence of theories of understanding law.

Today, due to the expansion of the boundaries of the space of financial legislation associated with the expansion of the subject of financial and legal regulation [15, p.143], there is a tendency in the legal doctrine to develop "... a comprehensive analysis of the legal functioning of social and economic phenomena" [16, p.198]. In particular, an interdisciplinary approach is used in the study of financial and legal institutions [17], regulatory complexes of public and private law are studied [18].

The development of legal regulation of relations that constitute the subject of financial law requires the formation of integrative complex formations that ensure the convergence of approaches to legal understanding, "... allowing to go beyond the artificially created framework of regulatory possibilities outlined by normative legal acts [19, p. 168].

But why is there a need right now to form an updated model of legal regulation of finance based on the restoration of the unity of all sides of law dissected by analysis, which in particular manifests itself in strengthening the process of interpenetration of private and public law? The indicated approach in legal regulation is not new. Thus, the theory of synthetic law was formed at the turn of the XIX-XX centuries[20], and there has never been a strict watershed between private and public law, as evidenced by the numerous references contained in financial laws to acts of civil legislation.

The analysis allows us to identify a number of circumstances contributing to the development of an approach aimed at bridging the gap between branches of law. Firstly, it's all about the digital transformation of public administration and individual sectors of the economy. The introduction of information systems into the mechanism of financial control and fiscal administration leads to a reduction in administrative procedures, as a result of which there is a need to use alternative legal instruments to influence the field of relevant relations. In the field of financial and legal regulation, this appears in the expansion of the reception of universal legal structures in financial legislation. Secondly, bridging the gap between branches of law is justified by the tasks of legal technology. The cross-cutting (universal) legal constructions underlying the technical mechanism of law make it possible to ensure quantitative and qualitative simplification of law [21, p. 21], i.e. to increase the effectiveness of the mechanism of financial and legal regulation. Thirdly, a deviation from the sectoral model of law in favor of an integrative structure of law will make it possible to give financial instruments traditionally classified as so-called "private finance" public legal significance [22], and thereby prevent the process of legalization of proceeds from crime.

Fourth, property and control and organizational relations covered by the sphere of financial and legal regulation need a comprehensive legal impact. The legal instruments enshrined in the acts of financial legislation are clearly insufficient. For example, the legal regulation of relations arising in the field of money supply management cannot be ensured only through monetary policy instruments

enshrined in the Federal Law "On the Central Bank of the Russian Federation (Bank of Russia)". This is due to the fact that the Bank of Russia is not the only regulator of money issuance. The money supply is managed through a budgetary and legal mechanism, as well as through financial development institutions.

In addition to the above, the impact on monetary circulation is carried out through such an instrument as price. It is no coincidence that one of the key objectives of the monetary policy implemented by the Bank of Russia is to ensure price stability, and the legal regulation of price control is given special attention in the acts of tax, customs, antimonopoly and other branches of legislation.

The process of bridging the gap between its branches developing in law, manifested in the expansion of the reception of universal legal structures in financial legislation, requires the identification of key regulators of financial relations that ensure the achievement of the goals of the functioning of the financial and credit mechanism. In this regard, one of the main directions of financial and legal research should not consist in studying "... indicators by which it is customary to distinguish branches of law" [23, p. 7], and in the development of legal tools that contribute to the harmonization of public and private legal methods of regulation [24].

Since financial law has a two-pronged subject of legal regulation, covering both property related to the movement of funds and control and organizational relations, the legal means to ensure the achievement of the objectives of the functioning of the financial mechanism are: *principles of public administration; administrative procedures*, as well as the *construction of a financial obligation*.

The absence of these regulators and their inadequate legislative consolidation leads to the destabilization of the financial and credit mechanism. Violation of the functional approach to the legal regulation of economic development management developed in the theory of administrative law [25, p.5], manifested in the unjustified splitting of functions in the field of monetary mechanism management, led to the activation of the role of financial development institutions in the distribution of loans and budgetary funds between participants in civil turnover, which actually provoked the development of the process of transferring money to economy, bypassing the banking and budgetary systems [26]. The mixing of competencies has led to the emergence of alternative instruments, not provided for by the Tax Code of the Russian Federation, for the implementation by regulatory authorities of control and supervisory activities in the fiscal sphere. And the lack of specification of the conditions for the fulfillment of financial obligations in the financial law has caused numerous disputes in the field of taxation, budget financing, lending, etc. For example, problems in the functioning of the monetary system are caused by the fact that the elements of the loan obligation fixed in the Civil Code of the Russian Federation are not synchronized with the principles and instruments of monetary policy implemented by the Bank of Russia. The imperfection of the design of the tax obligation does not allow us to consider the tax as an effective regulator of monetary circulation, with the help of which the process of legalization of income received by the taxpayer is ensured. The superficial fixation in the BC of the Russian Federation of the conditions for the implementation of expenditure financial obligations entails numerous disputes over the provision (return) of subsidies, grants, etc.

4. Conclusions

The analysis made it possible to formulate a number of intermediate conclusions that may be important for the development of financial and legal science and financial legislation.

1. The modern model of financial law is being formed in the context of the intensification of the process of bridging the gap between branches of law, the development of which is justified by the tasks of legal technology. The cross-cutting legal structures underlying the technical mechanism of law make it possible to increase the effectiveness of legal regulation of the financial system of states.

2. The rejection of the sectoral approach to law formed in the 30s of the XX century in favor of an integrative model of the structure of law allows us to consider financial law as a system of regulatory

ISSN 2542-1514 (Print)

complexes legally mediating the financial and credit mechanism of the national economy.

The unifying basis for the formation of regulatory complexes covered by financial law are such key aspects as: the independent object and purpose of legal regulation of the relevant group of financial relations; the range of subjects of legal relations arising in the field of functioning of the financial and credit mechanism; management tools used by the state and means used by participants in civil turnover to protect the right to dispose of finances.

3. The development of an integrative model of the structure of law requires the identification of key regulators of financial relations that ensure the achievement of the goals of the functioning of the financial and credit mechanism.

Since financial law has a two-pronged subject of legal regulation, covering both property related to the movement of funds and control and organizational relations, the legal means to ensure the achievement of the goals of the functioning of the financial and credit mechanism of the state are: *principles of public administration*; *administrative procedures*, as well as the *construction of a financial obligation*.

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BIBLIOGRAPHIC DESCRIPTION

Vasyanina E.L. Financial law: searching answers to contemporary economic challenges. *Pravoprimenenie = Law Enforcement Review*, 2024, vol. 8, no. 2, pp. 73–81. DOI: 10.52468/2542-1514.2024.8(2).73-81. (In Russ.).

ISSN 2658-4050 (Online)