



DOCTRINE AS A SOURCE OF FINANCIAL LAW

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Abstract

The article is devoted to the study of the problem of sources of financial law in the Russian Federation and the place in their system of legal doctrine. The authors substantiate the relevance and significance of the research topic. The analytical review of the positions of Russian and foreign legal scholars made it possible to conclude that the doctrine is recognized by both the academic and the public community as one of the sources of modern law. It concludes that the modern system of financial law is represented by sub-branches of budgetary, tax law, as well as the institution of monetary circulation, the legal reality in which is updated and conceptualized by scientists. The result of this is the identification of patterns and forecasting the future of financial law. Today, the active use of the historical and legal method in the study of financial law and financial legislation is not so much not disputed, but is also positioned as an actual tool for the crystallization of new theories, models and concepts, including those related to aspects of the position of the doctrine in the system of sources of financial law. The authors come to the conclusion that the significance of financial law and its sources, in particular, the legal doctrine (official and unofficial) play a significant role in the development of financial legal relations, since without them the effective development of a certain state and international relations is impossible.

Keywords: law, budget, financial law, sources of law, doctrine of financial law, economics, law, theories, teachings.

1. INTRODUCTION

The rapid development of financial law in Russia in the last decade of the XX century. became a significant political and legal event, the need for fundamental research of which exists to this day. In an unprecedentedly short period of time, practically from scratch, extensive financial legislation was created, codified for the first time in national history. On its basis, a stable hierarchy of sources of financial law was formulated, and based on it, a large-scale system of public authorities was built, and a jurisdictional mechanism was also formed^{1,2}. In turn, under the influence of external and internal socio-political factors that transform the legal reality, the principles, forms and methods of legal regulation in the field of finance were changed and supplemented, and the active development of financial law, in particular, as a branch of scientific knowledge, became a logical consequence of this³. So, both in domestic jurisprudence in general, and in financial and legal science, in particular, a normative contract and judicial precedent began to be updated as a source of financial law. And with the integration of the Russian Federation into the world economy (namely, into the financial space), the norms of international law began to be implemented into the legal matter, and this process continues to this day. These prerequisites are fundamental in the formation and development of the phenomenon of sources of financial law in Russia in the late XX - early

¹Satushieva L, Isakov A, Maremkulova R, Tekueva M, Zalikhanova L. Some Peculiarities of Administrative Penalties System and The Order of Their Imposition in Russia. J Organ Behav Res. 2021;6(2):100-8.

² Phan NH. Cultural Values and Corporate Tax Avoidance: An Empirical Evidence from Vietnam. J Organ Behav Res. 2021;6(2):18-30.

³ Makhdoom TR, Shaikh MA, Baloch MN. Traditional Leadership Styles Influencing Employee Work Behaviors in Islamic Banks of Sindh, Pakistan. J Organ Behav Res. 2021;6(1):46-58.



XXI centuries, and their study, both from a conceptual and institutional point of view, is extremely important.

At the same time, despite the fact that studies of the source base of financial law in Russia were initiated long before that, today, at the beginning of the second decade of the 21st century, it is still impossible to speak with confidence about the existence of a stable research base, characterized by complexity and comprehensiveness. This, in our opinion, leaves a certain imprint on the quality of regulation of financial legal relations in the country. So, by now, the position that modern financial legislation is imperfect, there are significant gaps and conflicts in it, the elimination of which is becoming one of the main tasks of not only the scientific, but also the law enforcement community, remains relevant ⁴. Therefore, one of the primary tasks of the academic community should be the centralization of knowledge about the sources of financial law, taking into account social, political, economic and other realities and trends, in order to conduct an in-depth analysis of this institution, one of the results of which should be a conclusion about its current state, possibilities optimization and (or) transformation to improve the efficiency of law enforcement procedures. It seems that one should start in conceptually vague positions, the discussion regarding the position in the system of sources of financial law of which is the strongest, especially in an industry context ⁵.

2. GENERAL OBJECTIVE

The purpose of this article is to clarify the place of the doctrine in the system of sources of financial law. To achieve this goal, an analytical review of the positions and comments of Russian and foreign authors was made regarding the concept, content and structure of the sources of financial law (mainly the budgetary, tax sub-sector and the institution of monetary circulation), and the role and place of legal doctrine among them. The results obtained by the authors can subsequently be used to further study the sources of financial law as an "open" system, mediating the inclusion of both the doctrine and other positions in it.

3. METHODOLOGY

To achieve this goal and objectives, the following research methods were used: general scientific (dialectical, analysis and synthesis of available literature data, comparisons and analogies, annotation, note-taking and abstracting of information obtained from modern scientific sources), special (systemic, comparative analysis, etc.) . The main sources of information were fundamental works, publications of Russian and foreign scientists and analysts devoted to the study of the system of sources of financial law in general, and the doctrine as its element; portals and other Internet resources, news and notes published in the media.

4. RESULTS

The sources of financial law are characterized by dynamism, which is associated with the constant need to enrich the means of legal regulation of the country's financial system, to ensure that financial and legal relations meet the needs of practice ⁶. In dynamics, there is always a movement that requires constant supplementation of sources of law with new elements. This feature is especially pronounced today, when the sources of financial law are actively developing and transforming. So, extrapolating the reasoning of A.N. Gorsheneva and B.V. Shchetinin regarding the fact that "the source of law is also the material conditions of the life of society" ⁷, it can be argued that for financial law, the law is not the only, but a

⁴Eremin SG (2023) Acts of "soft law" in the system of sources of financial law in Russia. conceptual basis. Moscow: Prospect 240 p.

⁵Blažek J. (ed.) (2015) System of Financial Law: Financial Markets: Conference Proceedings. 1st ed. Brno: Masaryk University, Faculty of Law. 305 p.; Carruthers BG (2020) Law, governance, and finance: introduction to the Theory and Society special issue. Theor Soc. Vol. 49.pp. 151–164; Ageev S. (2022) On the Subject and Place of International Banking Law in the System of International Financial Law. – Access mode: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4259935 (date of access: 04/25/2023)

⁶See for example: Chueva AS, Mokhovaya TA (2018) On the issue of the system of financial and legal regulation. Humanities, socio-economic and social sciences. no. 3.6 p.

⁷Gorshenev AN, Grigoryan LA, Safronov VM, Shchetinin BV (1971) The course of Soviet state law; under the editorship of: Gorshenev AN, Shchetinin BV Moscow: Higher School, 448 p.

priority legal source. However, as legal reality testifies, effective and adequate consolidation of existing legal relations in the internal form of law is possible only if the concept of multi-source law is introduced, therefore, the elemental composition of financial law sources is characterized by different sets of significant components.

So, for example, V.V. Laptev names among the important sources of law: regulatory legal acts of state bodies (they also include regulatory agreements); legal customs; judicial precedents; general principles of law⁸. Yu.K. Tolstoy, depending on the method of fixing and the existence of the rules of law, identifies such types of sources of financial law as: legal custom; judicial precedent; legal act; normative contract; general principles of law; legal ideology, or more precisely, legal consciousness; religious texts⁹. Of particular interest is the approach of V.B. Isakova et al.; they distinguish three key sources of law: normative legal act, authorized custom, and legal doctrine¹⁰. It should be noted that from the listed positions, it is around the legal doctrine that numerous discussions are still being conducted to this day¹¹.

The study of the academic source base allows us to conclude a relatively wide range of applications of the category "doctrine". From a conceptual point of view, it can be considered from several points of view of a pragmatic or philosophical approach. In the first sense, legal doctrine can be understood as "opinions expressed about the law by persons who study it (teachers, judges, lawyers, etc.)". Thus, it concerns the meaning that the source of law has, in other words, it is represented by the opinions of teachers or scientists, but having a meaning opposite to that of jurisprudence, custom or law. In the second sense, legal doctrine is understood as an opinion expressed on a particular issue. We add that the term "legal doctrine", used in the plural (legal doctrines), means, and in another sense, all theories, trends, schools related to the legal phenomenon¹². In turn, according to legal interpretations, the doctrine is presented as a "strategic planning document", "a system of views officially adopted in the state", "a system of views on the role and significance <...>, as well as principles that determine the mechanism of state regulation", "a set of official views on the goals, objectives, principles and main directions", "a system of views on the goal, principles, content and ways of implementing the unified state policy of Russia within the country and on the international arena on certain issues", including financial ones¹³. Thus, even in the modern legal field there is no clear meaningful construction of the category of legal doctrine, there are only "hooks" that allow one to speculate about the role of doctrine in lawmaking and law enforcement, as N.A. Kasterin¹⁴.

It is important to take into account that the formation of legal concepts did not happen all at once; it is the result of a long process of debate, legislative decisions, constant proposals for improvement. In the context of the modern scientific revolution and in the context of the rule of law, in which the status of law takes on new meanings, reflections on law should integrate the experience and acquisitions of science to a greater extent, as the science of scientific knowledge, which is the subject of epistemology, in which law is studied as the activity of a specific knowledge. The idea of investigating the activity of cognition of law through law itself can, first of all, provide means for the progress of the science of law, for improving knowledge about this phenomenon. An integrated approach without boundaries to the phenomenon of legal knowledge has corresponding epistemological grounds. Scientific knowledge about a legal phenomenon developed in close connection with socio-historical practice, constantly expanded and deepened, was of a

⁸Laptev VV (2010) Entrepreneurial (economic) law and the real sector of the economy. Moscow: Infotropic Media. 81 p.; Lisitsyn-Svetlanov AG (2011) The role of law in the modernization of the Russian economy. Moscow: IGP RAN. 202 p.

⁹See for example: Tolstoy Yu.K. (2009) It is important to ensure the uniformity of judicial practice. law. no. 11, pp. 9-17

¹⁰Isakov VB, Belkovich R.Yu., Arzamasov Yu.G., Azmi DM (2023) Theory of state and law; scientific Ed.: Isakov VB Moscow: NORM. 656p.

¹¹ KHUC AT, DO LH, NGO XT. Determinants Influencing the Intention to Cause the Moral Hazard of Vietnam Commercial Banks' Staff. *J Organ Behav Res.* 2022;7(1):125-37.

¹² Shahmars, A. K., & Valiev, S. (2022). Criminal Liability of Bribery Crime in Criminal Laws of Iran, Russia, And the Republic of Azerbaijan. *J Organ Behav Res.* 2022;7(1):86-95.

¹³Madaev EO (2015) Place and role of legal doctrine in the legal system of the Russian Federation. Bulletin of B.S.U. no. 2-2. pp. 193-197.

¹⁴Kasterin NA (2022) The role of legal doctrine in the legislative process and judicial practice // Ural Journal of Legal Research. no. 3 (20). pp. 18-29.



critical and reflexive nature, and had specific goals. Legal institutions are the result of the crystallization of legal thinking and are based on principles, theories, currents, on genuine legal systems. Law cannot be created without knowledge of specific theories and principles, since they explain evolution over time, the need for constant adaptation to social realities and the search for the most appropriate solutions. In this regard, it seems reasonable to supplement branch legal structures with such theories and principles. So, at present, the need to study the legal nature of the doctrine has become more obvious, since to this day its essence has not been disclosed, the place and role in the system of sources of law (international and Russian), including financial ones, have not been indicated.

It should start with the fact that for the first time the system of financial law was considered in Russia as part of the science of financial law by V. A. Lebedev¹⁵. The general concept of the system of financial law was mainly developed in the Soviet period as the development of the branch and science of financial law by such scientists as M. A. Gurvich, E. A. Rovinsky and S. D. Tsipkin. Research in this area were recently carried out by S. V. Zapolsky, I. A. Tsindeliani and G. G. Pilikin. In addition, it should be added that the study by M.V. Karaseva, which was devoted to financial and legal relations and the study by E.D. Sokolova, concerning the financial activities of the state, were also very important for the formation of the concept of the system of financial law. The system of sources of financial law expresses these subsystems and is formulated (built) in accordance with the state structure, in compliance with the legal hierarchy in the regulation of social relations that arise in the financial activities of the state.

The development of financial law is based on the principles and norms laid down, first of all, in the main law of the state - the Constitution (in those countries where they are adopted). In this regard, the position that this branch of law is the result of social development, as well as the legal system of the state, acquires logic. This can be proved, for example, by the fact that the capitalist system that exists in such countries as the USA, Japan, Germany, France, Great Britain, Italy, Canada, etc. presupposes the existence of different from the socialist systems in the field of organization of financial law. So, there is a fundamental difference in the method of formation of the state budget¹⁶. In capitalist countries, the budget is formed by taxes, while in socialist countries (China, Cuba, Vietnam, North Korea, India, Portugal, Nepal, Bangladesh, Guyana, Sri Lanka, etc.) it is formed by standard deductions, which can be considered a violation the principle of equality of the tax burden.

It should also take into account the financial system of the state, by which we mean a separate state, like Russia, which is the result of the peculiarities of the historical path of the state to achieve its level of social development, as well as social and political guidelines.

Inclusion in the subject of financial law of both budgetary and tax law usually does not cause any problems. Advocates of tax independence say tax laws should not burden taxpayers any more than is necessary to fund government activities. This conclusion unambiguously defines the inextricable link between budget and tax legislation. Consequently, they must be components of a single section (branch) of the legal system of the state. These two indicated sub-branches of financial law form the first section of the system of the special part of financial law, which can be called the provision of the state's own needs.

On the question of whether a legal doctrine should be considered a source of law, there is a wide range of opinions among legal scholars. So, A.A. Vasiliev gives the legal doctrine a predominant status in relation to other sources of law¹⁷, and A.I. Bychkov denies the importance of legal doctrine as an independent source of law¹⁸. It seems that such a diversity of opinions is predetermined not only by the versatility of the concept of "doctrine", but also by the fact that in legal science the question of defining the concept of "source of law" and, in particular, "source of financial law" is also the subject of scientific discussions.

With regard to the definition of the concept of "source of financial law" E.Yu. Grachev and G.P. Tolstopyatenko believe that the sources of financial law are legal acts of representative and executive bodies of state power (federal and subjects of the Federation) and local self-government, which contain

¹⁵Lebedev VA (2000) Financial law. Moscow: Status. \$460

¹⁶Pilikin GG (2017) Formation of financial law in Russia: monograph. Moscow: Contract, NITs INFRA-M. 352 p.

¹⁷Vasiliev AA (2012, 2013) Legal doctrine as a source of law. Public law research: electronic. magazine no. 2.pp. 38-75; no. 3.pp. 27-53.

¹⁸Bychkov AI (2016) Actual problems of litigation: a monograph. Moscow: Infotropic Media. \$480



the norms of financial law¹⁹. According to M.V. Karasev, among the sources of financial law, in addition to the regulatory legal acts of state authorities and local self-government, one should include a regulatory agreement and judicial precedent²⁰. Researchers such as A.O. Yakushev go even further, believing that the sources of financial law should be recognized as judicial and administrative practice, and legal doctrine, reflecting to a certain extent the point of view of taxpayers²¹.

The system of financial law is a very important object of study for the modern science of financial law. Understanding the system of financial law is closely related to understanding the subject matter of financial law.

In the post-Soviet period, attempts were repeatedly made to revise the foundations of financial law, and even attempts were made to revise the paradigm of financial law. The doctrine of financial law, developed in the works of E. A. Rovinsky, S. A. Tsyarkin, M. I. Piskotin, A. A. Zhdanov, and other Soviet lawyers, reflecting the views on the functions and role of financial and legal regulation in a planned socialist economy, demonstrates with the transition to market production relations, a discrepancy with real needs.

At present, in the financial and legal literature, financial and legal relations are considered as objectively existing.

Thus, one cannot deny the fact that the doctrine influences the formation of law, changes in current legislation, and law enforcement practice²². But, at the same time, it still seems that at present, the unofficial doctrine should not be attributed to the sources of financial law. First of all, because legal issues in Russian science are, as a rule, debatable; There are many different positions of scientists on almost all topical issues of financial law.

The debatable nature of the issue of recognition or non-recognition of the legal doctrine as a source of law has led to the emergence of the so-called "compromise" concepts, according to which the legal doctrine, according to such researchers as: V.V. Nikishin, S.G. Pavlikov, A.A. Vasiliev, A.V. Kuzmin, M.Yu. Pashkevich, V. Orobinsky, should be considered "secondary"²³, "unofficial"²⁴, "auxiliary", "additional"²⁵, "atypical"²⁶, and even "exotic source of law"²⁷. However, such "compromise" concepts do not seem to bring clarity to the subject of scientific discussion, but only an attempt to bring the indicated issues out of the brackets of such a discussion.

Speaking about the development of the budget from a doctrinal point of view, it is important to note that it was influenced not only by Russian authors, but also by Western ones. In order to systematize the study of the problems of doctrinal sources of financial law, it seems appropriate to divide them into two groups: unofficial legal doctrine (general legal and sectoral legal doctrines, which, as a rule, are of a scientific nature); official political and legal doctrine (state doctrines, concepts, etc.).

Russian scientists have a very specific attitude towards unofficial doctrine as a source of law. Formally, unofficial legal doctrine (science) is not recognized as a source of national law. Nevertheless, some authors advocate the recognition of the doctrine as a self-sufficient source of law, arguing their position by the fact that it is science that formulates and develops the principles of law that form the basis for regulating certain relations in a situation of a gap in law, when it is impossible to apply the analogy of the law. In such a situation, it is the principles of law that are its sources. At the same time, it does not matter whether these

¹⁹Gracheva E.Yu., Boltinova OV (ed.) (2020) Financial law. 2nd ed. revised and additional Moscow: Prospect. 624p.

²⁰Karaseva MV (ed.) (2014) Financial Law of the Russian Federation. - 4th ed. revised and additional Moscow: KnoRus. 608p.

²¹Yakushev AO (2009) Sources of tax law: new approaches to the study. financial law. no. 2 pp. 34-37.

²²Rovinsky EA (2018) Main issues of the theory of Soviet financial law: monograph. 2nd ed., ster. Moscow: Norma: INFRA-M. 176 p.

²³Nikishin VV (2011) Doctrine and judicial precedent as sources of foreign environmental law. Russian judge. no. 4.pp. 30-32.

²⁴Pavlikov SG (2012) About the doctrine and prospects of its development as a source of law. Modern lawyer. no. 1.pp. 17-35.

²⁵Vasiliev AA (2007) Legal doctrine as a source of law: historical and theoretical issues: diss. abs. ...cand. of legal sciences: 12.00.01. Krasnoyarsk. 28p.

²⁶Kuzmin A.V., Pashkevich M.Yu. (2008) Law-making will in the structure of ideal sources of law. History of state and law. no. 9.pp. 2-3.

²⁷Orobinsky V. (2014) Exotic sources of law. Ezh Lawyer. no. 41.pp. 1-4.



principles have received normative consolidation in the legislation (since then the sources of law will no longer be doctrinal principles, but the actual regulatory legal acts that consolidate them). In this case, it is worth agreeing with V.M. Syrykh, who notes that we are talking about the independent existence of doctrinal legal principles as sources of law, which inevitably manifest themselves in the system of social and legal relations, regardless of their awareness and consolidation in the current legislation²⁸. Supporters of recognizing the doctrine as at least an unofficial source of Russian law point out as another argument that practically all practicing lawyers refer to comments on certain federal codes and other normative acts. However, despite the countless disputes of scientists about whether²⁹ legal science is a source of law, practice gives a positive answer to this question.

We also note that it is impossible to deny the fact that the doctrine influences the formation of law, changes in current legislation, and law enforcement practice. At the same time, it still seems that at present, the unofficial doctrine should not be attributed to the sources of financial law, first of all, in connection with the fact that legal issues in Russian science are, as a rule, debatable; There are many different positions of scientists on almost all topical issues of financial law.

Further, as regards the official legal (political-legal) doctrine. Financial law combines legal, economic and political mechanisms of influence on social relations. Since financial law contains a significant political and legal component, it is quite reasonable to attribute conceptual and doctrinal documents approved by legal acts of state bodies to the sources of financial law. Legal acts of the President of Russia and the Government of Russia approve doctrines, strategies, concepts, foundations (main directions) of state policy in various spheres of public life. Despite the fact that most of these documents are not a system of legal norms, but only a set of official views on the goals, objectives, principles and main directions of state policy in various fields (for example, the Information Security Doctrine of the Russian Federation, approved by decree of the President of the Russian Federation of 05.12.2016 No. 646), these documents affect the financial activities of the state, financial relations.

Of particular interest in the context of the issues under consideration are cases where the federal legislator directly refers to the official doctrine as the basis (source) of the rule-making process. Thus, in accordance with paragraph 2 of Article 172 of the Budget Code of the Russian Federation, the drafting of budgets is based on doctrinal documents, namely: the provisions of the message of the President to the Federal Assembly of the Russian Federation, which determine the budget policy in Russia; main directions of budgetary and tax policy; the main directions of the customs and tariff policy of Russia. So, according to paragraph "e" of Art. 84 of the Constitution of Russia, the message of the President of Russia to the Federal Assembly of the Russian Federation is endowed with the status of a document that determines the state policy of Russia. Accordingly, in its legal essence, the message of the President of Russia can be considered a legal fact, on the basis of which financial legal relations arise, change or terminate. The foregoing testifies in favor of recognizing the official legal (political and legal) doctrine as a self-sufficient source of Russian law in general and financial law in particular. Thus, one should agree with the opinion of the authors who believe that official political and legal documents are an ideal source of budgetary law as a law-making (law-setting) will of the state, since these documents underlie law-making activities in the budgetary sphere and the budget process begins with them (articles 170 and 172 of the Budget Code)³⁰. The Bank of Russia also issues quite a few doctrinal acts, which, if we consider the official doctrine as an independent source of law, should also be classified as sources of financial law (for example, the Strategy for the Development of the National Payment System, the document "Main Directions of the Unified State Monetary Policy" published annually by the Bank of Russia³¹).

The study allows us to recognize the law enforcement usefulness of the official legal (political and legal) doctrine as a self-sufficient source of Russian law in general and financial law in particular. In this regard,

²⁸Syrykh VM (2004). Logical foundations of the general theory of law: monograph. In 2 volumes. Moscow: Yustitsinform. \$559

²⁹Babai AN (2010) Formation and development of the domestic concept of sources of law. History of state and law. no. 14, pp. 44-48.

³⁰Vasiliev AA (2007) Legal doctrine as a source of law: historical and theoretical issues.

³¹Eremin SG (2021) Modern system of sources of financial law in Russia. law and management. 21st century. no. 17(2). pp. 42-52

it seems appropriate to create a coherent and internally consistent theory of the sources of financial law, within which the institution of legal (political and legal) doctrine and its role in regulating financial relations would be studied in detail.

4. CONCLUSIONS

The foregoing allows us to make an objective conclusion that financial law and its sources play a significant role in the development of financial legal relations. In their absence, the effective development of a certain state and international relations is impossible. Financial law is controlled in accordance with the clauses and articles of the Russian Constitution, as well as other federal laws, norms, and acts.

At present, many modern authors note that the system of sources of financial law is a complex world, a multifaceted reality with its supporting structures, construction and logic, which differ from other spheres of being³². It should be said that this system cannot exist without the most important legal acts, for example, the Constitution of Russia, international treaties and international legal norms, federal constitutional laws, decrees of the President of Russia, orders of the Government of Russia, laws of the subjects of the Federation and other legal acts. As you can see, the totality of sources of financial law is a complex, multi-level, hierarchical and dynamic formation, characterized by diversity and species diversity of elements, which is not arbitrary or random.


Thus, the development of sources of financial law in Russia at the present stage is characterized by the presence of a three-level system: federal, regional and municipal levels, and the Constitution of Russia determines the hierarchical sequence and their interaction. The system of sources of financial law in Russia includes: the Constitution of Russia, international treaties and international legal norms, federal constitutional laws, federal laws, regulations issued by the President of Russia, the Government of Russia, laws of the constituent entities of the Federation, decisions of local governments.

As a result of the study, we can conclude that in order to systematize and logically complete the organization of the modern system of sources of financial law in Russia, it is necessary to adopt a single codified act regulating financial relations at various levels of the legal hierarchy, in which to clarify the "status" of the doctrine as a source of financial law.

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