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Constitutional and Legal Regulation of Financial Relations and Procedures in Russia

Abstract: This article is devoted to the constitutional regulation of financial relations in Russia. The purpose of the study is to analyse the current state of the constitutional regulation of national economic relations and financial procedures existing in the state, as well as to evaluate twenty-five years of experience in implementing Russian constitutional provisions in practice.

The authors have described the basic constitutional provisions on finance, classified the sources of Russian financial law, reviewed the constitutional and legal status of the authorities involved in financial relations, and analysed the constitutional obligation to pay taxes and fees. They have also specified its main characteristics and examined two norms enshrined in the relevant constitutional article: paying taxes and fees provided only by law, and prohibiting retroactive legislation that worsens the taxpayer's position, taking into account the practice and legal positions of the Constitutional Court of the Russian Federation.

When writing the article, the following scientific methods were used: analysis and synthesis, deduction, method of concrete sociological research, systemic, structural-functional, hermeneutic, synergetic, comparative legal and other methods.

Keywords: Constitution of the Russian Federation, law, financial relations, Central Bank, Russian Audit Chamber, tax liability

1. Introduction

The Constitution of the Russian Federation (the Constitution)¹, adopted by a nationwide vote on 12 December 1993, played a huge role in regulating national financial law and at the same time determined the direction of the state's financial policy. After 25 years of application of constitutional principles, it is difficult to overestimate their role in this area. This article is devoted to the constitutional regulation of financial relations in Russia. The purpose of the study is to analyse the current state of constitutional regulation of national economic relations and financial procedures existing in the state, as well as to evaluate twenty-five years of experience in implementing Russian constitutional provisions in practice.

When writing the article, the following scientific methods were used: analysis and synthesis, deduction, method of concrete sociological research, systemic, structural-functional, hermeneutic, synergetic, comparative legal and other methods.

The article analyses the scientific and practical publications of authors specializing in this subject. In addition, the theoretical works of Russian scientists who have studied the classical issues of regulating the rights and duties of citizens were also used. The following authors should be named, including the judges of the Constitutional Court of Russia: N. Bondar, N. Varlamova, Je. Vaskova, G. Gadzhiev, M. Gevorkyan, N. Grachev, A. Demina, S. Jaarbekova, Je. Kozlova, V. Kruss, O. Kutafin, Je. Lukasheva, G. Maltsev, S. Nekrasov, V. Nersesyants, S. Pepeliaev, M. Piters, I. Plotnikova, V. Postyshev, B. Strashun, N. Sokolova, T. Syrunina, R. Khizrich, T. Khramova.

2. Constitutional Regulation of Financial Relations

2.1. Basic Constitutional Financial Regulations

The Constitution places special emphasis on public finances. There is no specific constitutional chapter in Russia regulating economic and financial relations. However, there are numerous constitutional provisions devoted to this area. The articles governing public finances, in general, can be divided into the following groups:

- principles that predetermine the specifics of financial legislation (Articles 8, 15, 34, 35, 39, 41, 53, 55, 57, 71, 72, 74, 75, 83, 101, 102, 103, 104, 105, 106, 107, 108, 110, 114, 124, 130, 132, 133);
- provisions on public taxes and fees (Articles 57, 71, 72, 132);
- provisions on the state budget (Articles 71, 72, 132);

1 The Constitution of the Russian Federation of 1993, Collected Acts of the Russian Federation, 4 August 2014, No. 31, art. 4398.

- provisions that govern the legal status of the National Central Bank and monetary policy (Articles 71, 75, 83, 103);
- provisions on local finance (Articles 130, 132).

The Constitution also contains provisions regulating other economic relations and closely related to them: the procedure for adopting laws, including the budget law, the activities of the judiciary, the activities of the Russian Audit Chamber, the Central Bank, etc.

Many constitutional norms that are not directly related to public finances, stipulating certain procedures, as well as regulating economic, social and cultural rights and freedoms of citizens² (including ways of protecting these rights), predetermine the future volume and structure of public finances. For example, the financing of courts from the federal budget (Art. 124), the right to protection against unemployment (Art. 37), the right to free education in public schools (Art. 43), the right to equal access to health care financed by public funds (Art. 41 – free of charge healthcare provided by the state or municipal budget, insurance contributions, other income), the right to benefits and pensions (Art. 39), the duty of every person to preserve nature and the environment, take care of natural resources, etc. (Art. 58). In the basic law, the list of economic, social and cultural rights and freedoms of citizens is widely defined, which should be reflected in the amount of public expenses on their provision and guarantee, which is one of the main duties of the state (Art. 2).

It must be admitted that the majority of financial relations in Russia are regulated, firstly, by constitutional norms, despite the absence of a specific chapter.

2.2. Sources of Russian Financial Law

In the Russian Federation, innovation was the direct effect of the Constitution (Art. 8, p.2).

According to Article 71 (paragraphs “ж” and “з”) of the Constitution, the federal authorities are in charge of financial, currency, credit, and customs regulations, the issue of money, the fundamentals of price policy; federal economic services, including federal banks; federal budget; federal taxes and fees. The joint jurisdiction of the Federation and the subjects of the Russian Federation is the establishment of general principles of taxation and fees in Russia.

Among the sources of Russian financial law, we can specify the following:

- the Constitution of the Russian Federation;
- ratified international treaties (Art. 15). These acts take precedence over laws. For example, one of such international treaties relating to public finance is the European Charter of Local Self-Government;

2 For more detail see: I. Alebastrova, Constitutional duties of a person and a citizen: the value and development trends, “Constitutional and municipal law”, 2016, issue 12, p. 25.

- laws that play a major role in the legal regulation of public financial relations. The main laws in this area are the law on the Central Bank, the law on the Audit Chamber of the Russian Federation, the law on banks and banking, on the budget, on the Budget Code, on the Tax Code, etc.;
- subordinate acts: decrees and executive orders of the President of the Russian Federation, RF Government regulations, regulatory legal acts of federal executive bodies (acts of Ministries), acts of the Central Bank;
- regulatory legal acts of the subjects of Russia;
- local regulatory legal acts.

It should be noted that the Russian Constitution of 1993 established a clear hierarchical system of sources of Russian financial law. At the same time, it is necessary to streamline the content of laws in this area at both the federal and regional levels.

2.3. Authorities Involved in Constitutional and Financial Relations

Several constitutional norms are devoted to the activities of the Central Bank (Articles 71, 75, 83, 103). The legal status of this body is regulated by the Federal Law of July 10, 2002 No. 86-FL "On the Central Bank of the Russian Federation (Bank of Russia)"³. Monetary issue in Russia is carried out exclusively by the Central Bank of the Russian Federation. The monetary unit in Russia is the ruble. The introduction and issuance of other money is not allowed. Protecting and ensuring the stability of the ruble is the main function of the Central Bank, it performs this function independently of other state bodies. The President of the Russian Federation submits to the State Duma a nominee for appointment to the post of Chairman of the Bank of Russia and raises the question of dismissing him from this post.

The Audit Chamber is the regulatory body which exercises financial control. It too is independent, as the Central Bank, since it does not belong to any of the branches of government. Separate provisions on it are enshrined in the Constitution, Articles 101-103, and a special law on its activities is adopted. The Chairman of the Accounts Chamber and half of its auditors (6 people) are appointed and dismissed by the State Duma (one of the two chambers of the Russian parliament), and the Deputy Chairman and the second half of its auditors (6 more people) are appointed and dismissed by the Federation Council (the other chamber of the Russian parliament).

It should be noted that constitutional control bodies play an important role in the official interpretation of the provisions of the basic laws of different states.

The Constitutional Court of the Russian Federation for its activities has developed numerous legal positions in the field of constitutional financial relations, commenting on the norms of the Constitution and sectoral legislation, which

3 Federal Law of 10 July 2002 N 86-FZ (as amended on 03.07.2016) "On the Central Bank of the Russian Federation (Bank of Russia)", Collected Acts of the Russian Federation, 15 July 2002 No. 28, art. 2790.

are sources of Russian financial law (Art. 125). Most appeals to this body concern economic and financial relations.

The activity of the Constitutional Court provides the Constitution with a leading role in regulating relations in the field of public finances and the further development of financial law.

3. Constitutional Duty to Pay Taxes and Fees

3.1. Basic Provisions on Tax Liability

In modern democratic states, when fixing certain provisions in the text of the main law, the priority is given to individual freedoms. According to Article 2 of the Constitution, a person, his/her rights and freedoms are the highest value in our state. At the same time, the obligations of the Constitution were not systematically regulated, being for the most part “dispersed” in the text of its second chapter, titled “Rights and freedoms of man and citizen”. It can be concluded about the predominance of private interests over public. But this provision cannot be considered absolutely correct, since any obligation, including the payment of taxes and fees⁴ – is, above all, a measure of the proper behaviour of people to respect the rights and freedoms of others. Accordingly, we are already talking about public interests, which should be an integral part of public interests. It seems correct to talk about the totality of the rights and obligations of citizens, as a system of their mutual respect and a balance of interests of all members of society, as well as private and public.

The Constitution provides for the obligation of every citizen, foreigner, non-citizens to pay legally established taxes and fees. The duty to pay taxes provides budget revenues and thus guarantees free services to the population from the state.

In world practice, duties are classified as well as rights – on civil (personal), political, economic, social, cultural (according to the UN International Covenants of 1966 on civil and political rights, as well as economic, social and cultural) and others. The obligation to pay taxes is economic, but the implementation of other categories of human rights, above all social, depends on its implementation.

Socialist constitutions usually did not specify among the main duties of citizens the obligation to pay taxes, although Article 56 of the current Chinese Constitution provides for this. In Soviet researches, it has often been emphasized that, unlike the “capitalist” states, in the socialist countries taxes are mainly taken not from citizens, but from enterprises and that there are no indirect taxes. For example, Article 33 of the North Korean Constitution provides: “The state completely eliminates the tax

4 For more details see, for example: I. Alebastrova, Constitutional... *op. cit.*, p. 22-25; S. Nekrasov, Constitutional duties of a man and a citizen, Constitutional law of the Russian Federation: lecture notes, Moscow 2009.

system, which is the legacy of the old society.” A totalitarian state can do without direct taxes, withdrawing surplus value directly from the income of enterprises.

Article 57 of the Constitution contains two rules – the rules providing, firstly, the obligation of everyone to pay legally established taxes and fees; secondly, laws that establish new taxes or worsen the provisions of taxpayers are not retroactive⁵.

3.2 Payment of Taxes and Fees Prescribed by Law

The first important feature of this economic obligation is the payment of taxes and fees provided for by law, respectively, other legal acts cannot fix them. A similar rule is in most constitutions of other states. As an example, one can cite the legal position of the Constitutional Court of the Russian Federation set forth in its ruling of 4 April 1996 on the case of checking the constitutionality of a number of normative acts of the city of Moscow and other subjects of the Russian Federation governing the registration of citizens arriving for permanent residence in these regions⁶.

Taxes levied not on the basis of the law, respectively, cannot be considered “legally established”. The court clarified that this provision is important both in assessing the constitutionality of a law, including the law of a constituent entity of the Russian Federation establishing a specific tax, and in assessing the constitutionality of the authority of a state authority to establish a tax. In the case under review, the Head of the Moscow Region, contrary to this requirement, established a fee for settlement in the region by his orders. The Russian Constitution excludes the possibility of establishing taxes and fees by executive bodies. Having established a fee for settlement in the Moscow region, the Head of the region went beyond his authority and, in violation of Article 57 of the Constitution, intervened in the sphere of activity of the legislator.

In addition, the tax obligation is always a kind of restriction of the right of citizens’ private property (Art. 35). This right does not belong to the category of absolute rights that cannot be limited (Part 3, Art. 56). Human rights and freedoms may be restricted exclusively by federal law and only to the extent that is necessary in public interests: in order to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, ensure the defense of the country and the security of the state (Part 3, Art. 55).

According to this position of the Constitutional Court of Russia, when regulating taxation, the subjects of the Russian Federation should be fully guided by the requirements of Article 18 of the Constitution that the rights and freedoms of a person and citizen determine the meaning, content and application of laws.

5 For more details see: E.L. Alekhina, Constitutional duty to pay legally established taxes: history and contemporaneity, “Human Rights Lawyer” 2015, issue 1, p. 45-52; S.A. Zotov, Constitutional obligation to pay taxes – the determinant of the legal status of the taxpayer, “Leningrad legal journal” 2012, issue 1.

6 Collected Acts of the Russian Federation, 1996, No. 16, art. 1909.

Constitutional principles such as the principle of equality (Part 1, Art. 19) and the principle proportionate to constitutionally significant goals of restricting rights and freedoms (Part 3, Art. 55) should be taken into account in the laws of the subjects of the Russian Federation that establish taxes and fees.

In this regard, the provision of Part 3, Art. 55 of the Constitution is fully applied to the laws of the Russian Federation subjects on taxes and fees, which provides that the rights and freedoms of an individual and citizen can be limited only by federal law and only to the extent in which it corresponds to certain constitutionally significant goals, i.e. proportionately and proportionally to them. According to the Constitutional Court, taxation, paralyzing the implementation by citizens of their constitutional rights, should be recognized as disproportionate.

Introducing their own taxes and fees, the subjects of the Federation should take into account that in accordance with Part 3, Art. 75 of the Constitution, the system of taxes levied on the federal budget and the general principles of taxation in Russia are established only by federal law. In addition, it follows from the provision that the subjects of the Russian Federation are not entitled to determine tax exemptions arbitrarily, in violation of the principles enshrined in the federal Constitution and laws. According to the Constitutional Court, setting taxes and fees in the absence of any restrictions would contradict the goals of the welfare state declared in Article 7 of the Constitution of the Russian Federation, the policy of which should be aimed at creating conditions ensuring a decent life and free development of a person. The inadmissibility of the establishment of arbitrary tax exemptions by the laws of the constituent entities of the Russian Federation also follows from the principle of a single financial, including tax, policy, enshrined in Art. 114 (paragraph b part 1) of the Constitution.

The Constitutional Court of the Russian Federation clarified in its ruling of 17 March 2009 No. 5-II⁷, that within the meaning of Art. 57 of the Constitution, the duty of everyone covered by it to pay legally established taxes and fees corresponds to the right of everyone not to be forced to pay taxes and fees, not meeting the specified criteria. Meanwhile, there are often situations when the tax authorities, using their right to conduct a re-tax audit, charge the same taxes, the accrual of which is recognized as illegal by the courts. Accordingly, in the overwhelming majority of cases, the highest judicial instances recognize this practice of tax specialists as illegal⁸, since a judicial act adopted in a dispute between a tax authority acting on behalf of the state and a taxpayer cannot be rejected by any other tax authority, including the parent body.

7 Rossiyskaya Gazeta (lit. Russian Newspaper), 1 April 2009, no. 4879.

8 For more information see: A. Denisov, Supreme Arbitration Court of the Russian Federation on the inadmissibility of repeated on-site inspections, Tax News of the Republic of Tatarstan, May 2011, no. 9, available at <http://www.uneks.ru/content.php?oid=1737> (access: 6.03.2019).

Within the meaning of Art. 57 of the Constitution, when considering a dispute between a taxpayer and a tax authority, including regarding the amount of tax payments, the criterion of a statutory tax – with reference to specific legal relations – involves the resolution of this dispute not only in accordance with establishing a tax law, but also in legal procedures. If the taxpayer is obligated to make tax payments based on an administrative decision taken contrary to the current judicial act, such payments cannot be considered legal. Forced seizure of property in the form of sums of tax and other payments, carried out in an inappropriate procedure, also violates the judicial guarantees for the protection of the right to property, enshrined in Articles 8 and 35 of the Constitution. As a result, there is a disproportionate to the constitutionally significant goals enshrined in Art. 55 (part 3) of the Constitution, the restriction of these rights.

3.3. Time Action Legislation Worsening the Position of the Taxpayer

In accordance with the second rule, stipulated by Article 57 of the Constitution, the laws establishing new taxes or worsening the position of taxpayers (for example, increasing tax rates) do not have retroactive force. This provision is also common to many of the basic laws of foreign countries.

In the definition of 8 April 2003 No. 159-O⁹, the Constitutional Court indicated that, in the sense of Art. 57 of the Constitution, in relation to acts of legislation on taxes and fees, the requirement of a lawfully established tax and fee does not only relate to the form, procedure of adoption and content of such act, but also to the order of its introduction into force. This constitutional provision requires the legislator to determine a reasonable time limit, upon expiration of which there is an obligation for everyone to pay legally established taxes and fees, so that the constitutional and legal regime of stable economic conditions is not violated, which can be derived from Articles 8 (part 1) and 34 (part 1) of the Constitution¹⁰.

The Constitution deals exclusively with the additional burden on the taxpayer; it is not forbidden to give retroactive force to laws that improve the position of the taxpayer. At the same time, the nature of such a law favourable for the subjects of taxation should be clear to both taxpayers and government agencies that collect taxes (Resolutions of the Constitutional Court of the Russian Federation of 8 October 1997 No. 13-P, of 24 October 1996 No. 17-P).

The current version of Article 5 of the Tax Code of the Russian Federation of 31 July 1998 No. 146-FZ¹¹ determines the procedure for the validity of acts of legislation on taxes and fees in time. Thus, federal laws establishing new taxes and/or fees, as

9 Law Bulletin of the Constitutional Court of the Russian Federation, 2003, No. 5.

10 For more information see: A. Demin, The effect of legislation on taxes and fees through time, Taxes and business. January 22, 2004, issue 3 (246), available at <http://www.nalvest.com/nv-articles/detail.php?ID=27457> (access: 6.03.2019).

11 Collected Acts of the Russian Federation, 8 August 1998, No. 31, art. 3824.

well as similar legislative acts of constituent entities of the Russian Federation and regulatory legal acts of representative bodies of municipal formations introducing taxes, come into force not earlier than January 1st of the year following the year of their adoption, but not earlier than one month from the date of their official publication.

As noted in the ruling of the Constitutional Court (8 October 1997 No. 13-П¹²), the constitutional norm on the prohibition to give retroactive acts to tax legislation is intended to ensure stability in tax relations, and to give confidence to taxpayers in the stability of their legal and economic situation.

The Constitutional Court ruling (28 November 2017 No. 34-П¹³) focused on the fact that the decision of the Supreme Court containing the interpretation of the rule of law, which results in a deterioration of the taxpayer's position, in good faith, i.e. without any abuses (the creation of various forms of tax evasion and/or their illegal reduction, etc.) acting within the framework of the interpretation of the relevant regulations established at the time of such a change¹⁴.

4. Conclusions

In conclusion, we should note the importance of regulated economic relations for any state. Despite the fact that the consolidation of economic and financial foundations in the Russian Constitution does not have a separate chapter, however, they affect the content of most of the norms of the main legal act of Russia, which is designed to stabilize them. The document under study is the latest-generation constitution; therefore, the practice of its application is still developing. One of the main directions of state policy is the modernization of the economy. It is necessary to recognize that the welfare of the whole state, as well as all of its citizens, depends on the state of the national economy.

12 Collected Acts of the Russian Federation, 1997, No. 42, art. 4901.

13 Collected Acts of the Russian Federation, 4 December 2017, No. 49, art. 7532.

14 For more information see: S. Dzhaarbekov, An Important definition of the Constitutional court on taxes, *Taxslov: Taxes. Accounting. Right*, 5 December 2017, available at <http://taxslov.ru/st/st84.htm> (access: 6.03.2019); S. Pepelyaev, On the failure of the statutory acts on taxes retroactive, "Tax Bulletin" 1998, issue 6, available at <http://www.nalvest.com/nv-articles/detail.php?ID=21537> (access: 6.03.2019); Je. Vaskova, T.M. Khramova, The ratio of public and private interests in the resolution of disputes of an economic nature: a comparative legal study of the experience of judicial law-making of the Russian Federation and the United States, "Arbitration disputes" 2013, issue 2, p. 115 – 154; T. Syrunina, Constitutional guarantees of property rights in the event of withdrawal of property for public needs: an economic analysis (using the example of the US judicial practice), "Comparative constitutional review" 2009, issue 5(72), p. 25-38.

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