

PUBLIC INTEREST IN RUSSIAN FINANCIAL LAW AND MODERN LEGAL SCIENCE

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Abstract

The article is devoted to one of the fundamental issues in legal science and theory of financial law in particular. In the context of globalization and expansion of legal regulation the issue of safeguarding public interest is becoming more and more urgent. The choice of adequate directions, goals, and mechanisms of legal impact on social and economic relations is determined by public interests. The Authors give thorough consideration to the concept of the public interest in the Russian legal doctrine, the aspects of its development in modern legal science, as well as the necessity to safeguard it in public expenditure. Preserving public interest is substantiated as the basic principle of public administration and legal regulation of finance. According to the Authors, this kind of approach facilitates successful achievement of the strategic goals of the country and optimization of public finances administration.

Keywords

Public interest; legal science; financial law theory; statutory regulation; legal regulation of finances

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1 Introduction

Modern life keeps offering new challenges to individuals, to the society and the state. Social development makes it clear that it is not such achievements of the civilization as freedom or market or property or public order as such that we value, but some positive, humane achievements and consequences of social, political, economic and other kinds of character that are attractive for the whole or, at least, for the vast majority of the society. There cannot be a goal of just building democracy or developing the market economy without any further definitions and specifications, because the idea of them is too different in different areas of the world, and they are implemented in various forms and versions. In this article, the Authors single out and suggest sharing opinions on two main issues – the place and role of “public interest” in the legal doctrine and legal regulation of finance and ways to optimize the administration of public expenditure. To our mind moving along the market-led way combined with democracy implies that safeguarding public interest is the fundamental principle of legal regulation of finance.

2 On Significance of Public Interest for National and State Economy, its Role in Expenditure and Revenue of Russia

E.N. Berendts was able to give a clear explanation of the essence of the concept of the public interest in his fundamental work “Russian Financial Law” (Berendts, 2014: 14-15). The well-known Russian legal scholar wrote: “Present-day state economy is run not for the sake of narrow, ephemeral, selfish goals of the persons that manage it, but for the sake of goals of higher level, for the interests of the whole people united as a state, as a moral, spiritual being that consists not only of the people living in a particular year or a period of time in the territory of the given country and under the given government; as a link connecting the past and coming generations by one origin, common historical past, language, culture, and the awareness of this commonness”. The given goal of protection of the public interest in the economic activity of the state and its expenditure of public finances sounds modern and relevant not only for today’s model of economic development of a particular country but of the world.

As we know, the decisions of the state power are legitimized by the rules of law in the form of legal regulation. The basis of the economic activity of the state is formed by the rules of financial law, and it is them that provide for the state management via the budget, i.e. the main public monetary fund. It is important to observe the principle of safeguarding the public interest in the course of its spending. One should note here that the significance of the given principle has also been pointed out in the

theory and practice of Russian legal financial science. Famous Russian statesman M.M Speransky suggested “establishing the principle of rational expenditure of state funds and correlating expenditure with receipts as one of the key rules of budget administration in 1810 in his Financial Plan, which in fact was a project of dramatic financial reforms in the area of currency circulation, credit and budget”. In the introduction to his Financial Plan, M.M. Speransky noted that any state whose expenses keep growing annually while its gains keep decreasing is bound to go into debts. Even the most useful activities that are carried out in debt or require an extraordinary effort and distress for finances will harm the state considerably. The only exception is war. The general principles in the first part of Financial Plan are worth special attention and sound particularly modern. The general rule for state affairs is the following: all great endeavors require work, firmness, and patience. The key distress for finances is disproportion of expenditure and receipts. There are two ways to restore the proportionality: decrease the expenditure or increase the receipts. It is interesting to note here that in case of decreasing the expenditures it is suggested that all the necessary ones should be preserved, all the useful ones should be postponed, and all the unnecessary ones should be stopped (At the onset of financial law, 1998: 35-37).

Preserving public interest in the administration of public finances is an ancient postulate of philosophical nature. Being economical when dealing with one’s people’s means is an evangelical truth that is quite resonant with the idea of safeguarding the public interest in the financial and economic activity of the state and state management in general. In this respect we would like to emphasize the point that seems conceptual for the development of financial law, since it is its rules that ensure the legitimacy of the authorities’ actions: it is the necessity to define and enshrine legislatively the principle of safeguarding public interest in public finances administration, which will allow one to enhance the efficiency of legal and financial regulation.

3 On Benefits of Safeguarding Public Interest in Financial Activity of State in Russian and Modern Legal Theory

Integration and globalization of public relations, market development and the development of new technologies in it, the emerging digital economy and the processes connected with it – all of it reinforces the role of financial law in general. In fact the instrument of regulation of finances, and public finances in particular, is financial law. One should note here that financial law both as a science and as a branch of law has always contained three elements: legal, political and economic. They are all inseparably interconnected and interdependent. Professor of the

Demidov legal lyceum I.T. Tarasov wrote about this characteristic of financial law in 1889: “The legal, political and economic elements of financial law are inseparable. The analysis of laws of economic phenomena and the analysis of legal norms that determine the sphere of state economy go hand in hand in it. This science does not only teach what is there and why it takes place, but also what is congruent with economic laws, with the meaning and goal of the state and with the ideas of truth and justice” (Tarasov, 1889: 6-7). It is this comprehensive approach and creative attitude of Russian legal scholars that allowed one to establish the idea of safeguarding public interest in public finances administration. The “common good” the achievement of which as a goal is at the basis of the realization of the given principle is “nothing but a combination necessary for the joint development of many private interests. All the society with all its institutions is the body of common good – in accordance with the way it is understood at this period of time and in this particular place” (Muromtsev, 1879: 186-201). The issue is not just theoretical, but practical, too. A spectacular example of this is VAT, one of the largest and best collected taxes in Russia in its interconnection with the development of the material and financial resources of subsidized subjects and local government. Referring this tax to the regulating revenues allows local small and medium businesses to develop. Allocating a percentage of the regulating revenue from a higher rank budget to a lower one gives considerable advantages to public administration. The VAT is formed in the sphere of services and trade that are provided everywhere, so allocation of the percentage of these proceeds can be made everywhere. Regional and local authorities receiving the percentage of money to the budget will be directly interested in extending the number of taxpayers via creating favorable conditions for the development of the small and medium business. And as we know, it is a stable platform for any economy and a middle social class of a harmonious society. This model of budget equilibrium has been repeatedly offered by well-known Russian scholars in the sphere of financial law (Gorbunova, 2017: 314-320). Observing the principle of safeguarding public interest in the process of legal regulation of finance and its legal enshrinement in particular, e.g. in the Budget Code, to our mind would facilitate the solution of the problem of budget balance, establishing budgetary equilibrium, which is not a new issue in the theory of financial law.

4 Public Interests in Russian Legal Doctrine and Public Finances

The following researchers worked on the issues of public interest in modern legal doctrine:

- Sergey Sergeyevich Alekseyev (1924-2013), a prominent Soviet and Russian legal scholar, Author of monographs “Philosophy of law: history and

modernity, issues, trends, prospects” (1999); “The ascent to law: search and solutions” (2001), “Selected works” (2003);

- Yury Aleksandrovich Tikhomirov, a prominent scientist, a legal scholar, Author of the monographic textbook “Law, forecasts and risks” (2017);
- Gennady Vasilyevich Maltsev (1935-2013), honored worker of science, corresponding member of the Russian Academy of Science, expert in the field of theory of state and law, Author of monographs “Social grounds of law” (2015), “Cultural trends in law” (2015), “Moral ground of law” (2015); researcher of the issues in the dynamics of legal consciousness, legal culture and legal traditions.

Based on the works named above, we take the liberty to note that public interest and the common good are philosophical and legal categories and are permanent landmarks in legal regulation, as they are aimed at positive results that are valuable and attractive for the whole or the vast majority of the society. Under the conditions of growing volume of legal regulation the given position is important for the legal and financial regulation and for the public finances expenditure in particular. State management in the form of legal regulation must be carried out observing the principle of safeguarding the public interest. Chairman of the Constitutional Court of the Russian Federation, V.D. Zorkin in his monograph “The Civilization of law and development in Russia” notes that regularity should look out for the public interest” (Zorkin, 2016: 196-198). It is unacceptable to adjust the attitude to law to the interest that is characteristic of the governor, the ruling circles, one particular stratum (Tikhomirov, 2017: 5). In terms of public spending, the given statement is particularly valuable, as “public spending is based on the necessity to realize public interest, the basis of which is the need for social integration. The given need is recognized by the state and ensured by law, and its satisfaction guarantees the existence and development of the corresponding social community” (Tikhomirov, 2008: 140-141).

5 Russian Legal Scholars and Statesmen, Researchers of Concept of Public Interest

Our attempt to reinforce the category of “public interest” in modern theory and practice of legal regulation of finances allows one to pay more attention to the research and application of the concept by Russian legal scientists and statesmen. The concept of “public interest” has been explored in Russian legal theory for the last 200 years. Famous Russian scholars who carried out research of the given philosophical and legal category are Mikhail Mikhailovich Speransky (1772-1839), an outstanding Russian reformer and Author of the famous “Plan of Finances”;

Sergey Andreyevich Muromtsev (1850-1910), Author of the research “Definition and general division of law”, professor of Moscow University; Eduard Nikolaevich Berendts (1860-1930), Russian lawyer, doctor of financial law, professor of Tartu University, Author of the first consistent description of the main institutes of financial law of the Russian empire – “Russian financial law”. The lectures read in the Imperial School of Justice; Lev Iosifovich Petrazhitsky (1867-1931), a prominent Russian and Polish legal scholar, Author of monograph “Introduction to the study of law and morality: emotional psychology”; Vladimir Nikolaevich Kokovtsev, a prominent statesman, Russian minister of finance of 1903-1914, Author of “From my past. Memories of 1911-1919” (1991); Sergey Yurievich Vitte (1849-1915), an outstanding Russian statesman, Author of the textbook for the royals “Compendium of lectures on the national and state economy” (2011), in which he gave thorough consideration to the key economic concepts, categories of economic theory, events and fact of economic policy, key problems of economy and finances of that historical period in Russia. At present we more and more often turn to our history, study the works of legal scholars of the past, economists and statesmen, which is for a reason. Today, when Russia is looking for the points of economic growth and developing the potential of the country, the experience of the past generations is more important than ever. Innovations in the sphere of administration of public finances do not always lead to a boost in the economic development. “There is no other sphere that is less amenable to innovation than financial administration, where all kinds of unsuccessful experiments would manifest their harmful impact as fast as in the sphere of finances. That is why there’s just one task for us – no matter how boring it might sound and how desirable it might be to replace it with something more lively and rewarding – there is a need to live within one’s means” (Kokovtsev, 1991: 425-430). Apologist of the policy of budgetary equilibrium, V.N. Kokovtsev believed that there is only one policy in financial affairs – the policy of budgetary equilibrium. Covering the expenses with ordinary income, it is this policy that is at the core of financial and overall economic well-being of the state. This policy is not advantageous and it is not accompanied by big promises or generous prophesy, but it reminds one of that inconspicuous work of stone mason who works under the ground and lays the foundation, choosing each stone painstakingly and being aware of the fact that the foundation must be broad and deep. He does it “being aware that only on this broad and deep foundation one can build a solid building of the financial and economic development of the country capable of taking Russia along the path of strengthening and prosperity” (Kokovtsev, 1991: 427). It is not by incident that we drew your attention to the views of Russian statesmen on the issues of legal administration of finances. It is our earnest conviction that all of this sounds very modern and relevant. To enhance legal regulation of finances one should try and develop everything valuable that had been done by our predecessors in legal theory and the science of financial law.

6 Conclusions

It is a well-known fact that legal regulation may not only facilitate the economic and social development of the state but hamper it, too. It is important to determine the basics, the principles of legal regulation. Based on the grounds mentioned above and on the historical traditions in the development of Russian legal doctrine we consider the principle of safeguarding the public interest in public finances administration to be fundamental for the legal regulation of finances. As our first conclusion, we may note that the principle of safeguarding public interest is fundamental for legal financial regulation and public finances administration. Based on the given principle the growth of state expenses is firstly covered by the growth of state receipts originating from the development of the productive power of the country and, secondly, from raising taxes.

We believe that the second important point here is that in the course of optimization and administration of public finances one should proceed from the public interest and obligatory observation of the principle of budgetary equilibrium and balance.

The third conclusion is that the concept of “public interest” is a philosophical and legal category, dating back to the concept of “interest” and the goal of reaching the “common good”.

All the questions raised in the article are caused by the necessity to enhance the system of public finances administration and their organization. As a rule, in the course of transformations, and mainly in the sphere of economy and finances, there are two extremes: excessive regulation of financial instruments and economic mechanisms that want more freedom, or absence of necessary legal support. As for the first case, one can proceed from the principle formulated by our predecessor, V.N. Kokovtsev: “One needs the freedom that allows you to do your duty, to work and be sure of the results of one’s work (...) When work penetrates each and everyone, from top to bottom, when everyone is sure that the results of their work belong to them (...), then there will be the order that is the basis of law” (Kokovtsev, 1991: 430). The research of the problems in the legal regulation of finances, including the development of the principle of safeguarding public interest proceeds from the key goal of the Russian state – building the society of well-educated and healthy people with a high level of material security and the state with the market economy and a social face. Since it is possible to realize only via finances, it is only fair to demand their comprehensive and integrated regulation. Economic and social processes cannot be uncontrollable, and they are regulated first and foremost with the help of the norms of financial law.

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