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## The Importance of Financial Law in the Public Law System

Mariana-Alina Ștefănoaia<sup>1</sup>

**Abstract:** In order to carry out the activities of the European communities and, therefore, to achieve the objectives provided by the treaties, they have needed certain financial resources since their establishment. The situation is currently valid within the European Union. These resources must cover the expenses necessary from an administrative point of view, identifying the funds necessary for the functioning of community institutions and bodies, especially the funds necessary to support the so-called operational expenses, which correspond to the realization of the policies provided by the treaties (Lefter, 2003, p. 237). Currently, the European construction is no longer possible without its own financial framework, namely adequate financial resources, and the process of establishing this framework had an inconstant evolution. The EU had to find and establish financial resources for the implementation and development of community policies. The controversies regarding fiscal and budgetary issues were not absent from this field either and concerned a varied range of aspects: the EC's own financial resources, the budgetary imbalance, even the rivalries between the community institutions (respectively the European Commission, the European Parliament and the Council of Ministers). Therefore, the overwhelming importance of the patrimony to support the entire activity of the collective subject of law is highlighted.

**Keywords:** financial; heritage; construction; income; expenses

### 1. Introduction

The relationships in which people enter are constituted in the system, namely, in what the philosophical literature calls the global social system. The material and spiritual existence of man, the social life itself, can only be conceived in the context of an infinite and uninterrupted series of relationships of a varied nature, depending on the planes and aspects of life in which they are included. Seen in their unity and diversity, the relationships that people enter into ensure both the content and the links between the structures (components) of a whole with its own physiognomy - the unitary system of social life of a historical stage - a system that is made up of subsystems such as: relationships between man and nature, production relations, relations based on family, community, socio-professional category relations, etc., or connection with these relations and, finally, the institutional system (Bojincă, 2000, p. 22).

In turn, these subsystems, according to systemic theory, are considered systems in relation to their own components. The relational framework takes place on different levels. The relationships that people enter into intervene and can take place according to rules with appropriate content.

The most important rules in these fields are in accordance with the general and fundamental interests of the state, which is why they are taken over by law and, of course, analyzed by the science of law and

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<sup>1</sup> Legal adviser, member of the Methodological and Professional Guidance Commission of the Suceava College of Legal Advisers and member of the Methodological and Professional Guidance Commission of the "Romanian Order of Legal Advisers" Federation, Romania, Address: 27 Mihai Viteazul Street, Suceava, Romania, Tel.: 0741.214.631, Corresponding author: stefanoaia.mariana@yahoo.com.

are transformed into legal norms by adding the punitive element. This element constitutes the defining and distinctive feature by which the rules of law differ and individualize compared to the rules in other fields.

Like law, science in general extracts from all the components of the social - global system, for a deeper analysis, in order to reach certain conclusions, ideas, concepts, categories, principles. Thus considered, science is a system with specified subsystems, namely: the subsystem of natural sciences, the subsystem of sciences about society and under the system of sciences about thinking.

Each of these subsystems can be considered as a system in relation to their own components. Thus, the social sciences subsystem can be considered a system in relation to its components: nomothetic sciences, historical sciences, legal sciences together with those related to the normative aspects of human action and the epistemological research of science. Legal sciences, subsystems of social sciences, can be considered a system in relation to its components: historical legal sciences, branch sciences, auxiliary sciences and the general theory of law.

The organization of legal sciences in a system built on the components specified above is supported by the following arguments:

- law itself is a complex system made up of a set of legal norms that intervene in all areas of economic-social, political and other life;
- the science of law analyzes the legal norms in these various fields in close connection with the social relations that govern them;
- the complexity of the social-legal phenomenon obliges research in multiple and varied fields, but also with regard to the valuing of the correlated sides of this phenomenon;
- the system organization of legal sciences is also required due to the need to study law from a historical perspective, as well as for the need to clarify the perspective of legal regulations (Bojincă, 2000, pp. 23-24).

## **2. The Connection between Financial Law and Other Branches of Law**

The legal norms, no matter how special they may be in terms of content, are closely related to each other, making up a unitary whole. They form a coherent, logical ensemble, forming a system. As the works from the general theory of law reveal (Ceterchi & Craiovan, 1998, p. 105), “The law of a state does not appear to us as an arithmetic sum given by the totality of legal norms, but as a set of them organized, structured in a system based on certain principles, pursuing a certain finality” (Bălan, 2004, p. 41).

In relation to the criteria of the object of legal regulation and the method of regulation, the branches of law are configured as the main components of the system. Traditionally, the branch of law is defined as a distinct set of legal norms, organically linked to each other, that regulate social relations that have the same object and use the same regulatory method. The branches of law are not isolated from each other, but are found in a close interdependence. Recognizing the existence of the two major divisions of law, the branch of financial law is part of public law, since, like the other branches of public law, it includes legal norms established for the purpose of satisfying general, public interests. In the division of public law, most authors include constitutional law, administrative law, financial law, criminal law, procedural law (criminal and civil), public international law, and in private law, civil law, commercial law, private international law.

The existence of a mixed law (labour law, social legislation) was also outlined. The connection between financial law and constitutional law is determined by the importance of the latter in any legal system. Constitutional law includes all the legal norms that establish the fundamental principles of state organization, of the social-economic structure, as well as the fundamental rights and duties of citizens (Bălan, 2004, p. 41).

Constitutional law establishes the general principles in the matter of the public finance system, the public national budget, taxes and fees, the control of the Court of Accounts, giving expression to the connection between this branch of law and financial law. Administrative law includes the main legal norms that regulate social relations in the field of public administration, norms regarding the organization of administrative structures, the relations between them or towards third parties, as well as the ways of exercising competence.

The relationship between financial law and fiscal law can be defined as a part-whole relationship. Fiscal law is only a part of financial law, with the clarification that it is the most important part, which is also the reason why, traditionally, fiscal law is studied separately. Fiscal law deals with issues related to public revenues represented by taxes in the relationship directly with their payers in the process of “[...] declaration, establishment, verification and collection of taxes [...] due to the general consolidated budget”. Public revenues represent only one chapter of financial law, a chapter which, however, has at the center of its regulation not only taxes, but also social contributions, contributions to special extra-budgetary funds, state loans, state income from the capitalization of owned properties, income from capital. As can be seen, fiscal law has as its regulatory object only a small part of a chapter of financial law. The importance of fiscal law is, however, supported by the economic aspects and social implications of collecting taxes and fees from individuals and commercial companies, in an attempt to find an economically balanced, efficient system that also ensures social equity.

### **3. Principles of Financial Law**

The general principles of financial law, representing the guiding ideas underlying the general financial activity of the state, are:

**a. Legality** is a principle having an express constitutional consecration in art. 137: “The formation, administration, use and control of the financial resources of the state, of administrative-territorial units and of public institutions are regulated by law”. The text of the fundamental law stipulates the obligation to regulate by law all aspects that concern the public money, an extremely important principle that excludes the possibility of the primary regulation of some fundamental institutions for the progress of society through normative acts of the executive. As it follows from the economy of the constitutional texts, public money forms the regulatory object of ordinary law, which opens up the possibility of primary regulation through ordinances and emergency ordinances. This aspect is apparently uncritical given the fact that ordinances are issued on the basis of a government enabling law that establishes clear limits of competence in regulation, and subsequently the adoptions are subject to Parliament's approval. However, in legislative practice, it is often found that the primary regulation, through the government ordinance, of some taxes or charges due to different public budgets, ordinances which are later rejected by the Parliament. The non-retroactive nature of the law rejecting an ordinance, however, transforms the legal relations born under the rule of that ordinance into definitive legal relations, whose legal source is a regulation of an executive body in a field reserved for the law as a legal act of Parliament. In view of this situation, often encountered in financial practice, the possibility of passing the legal regulations from the field of public finances into the scope of the organic law should be analyzed, by law ferenda.

**b. Financial planning** is a principle with express constitutional consecration. Financial planning is a principle of legal logic, it is not possible to manage the public finances of a state, outside of financial planning, since all state institutions are involved in the process of formation, administration and use of public money, which cannot operate otherwise than on the basis of precise tasks set for clear time intervals. The legal instrument that gives life to financial planning is the “National Public Budget”. The national public budget is approved, according to the constitution, in the year preceding the financial year in connection with which the planning is done. Financial planning is strict because financial planning takes the form of law through the annual budget law, it is flexible because the annual budget law can be amended during the financial year in the situation where significant changes are found in the process of formation and administration of state revenues, and it is predictable because at the base financial planning includes specialized reports on the economic and financial evolution of the country in the short and medium term, reports on the impact of certain financial policy measures on the national economy as a whole.

**c. Checking the legality of the use of public money.** The Constitution of Romania enshrined, at the level of principle, the need to verify the legality of the use of public money by the public institutions called to administer the national wealth. Thus, art. 140 shows that the way of formation, administration and use of the financial resources of the state and the public sector is carried out by the Court of Accounts, a body specialized in this type of control, which annually presents to the Parliament a report on the management accounts of the national public budget from the expired budget year, including the detected irregularities.

#### **4. The Financial Apparatus of the State**

In a broad sense, the notion of financial apparatus designates the totality of state bodies that contribute directly or that only facilitate the performance of the financial activity through which the state's financial policy is applied.

In a narrow sense, the financial apparatus designates the specialized bodies of the state with exclusive attributions in the financial field. Depending on the interpretations given to the content of the financial apparatus, two categories of state bodies can be distinguished:

- state bodies with general competences that also have important attributions in the field of public finances: The Parliament, the Presidency, the Government, ministries, local councils, etc.;
- state bodies with special competences, with exclusive attributions in the field of public finances: the Ministry of Economy, the Ministry of Public Finance, the Court of Accounts, the Financial Guard, the economic-financial control body of the Prime Minister. These are central specialized bodies of the state.

At the level of administrative-territorial units, the following specialized bodies operate: the general county directorates of public finances, which are subordinate to the public financial administrations at the level of municipalities, cities and communes, the county accounting chambers, the territorial sections of the Financial Guard. The state bodies that are part of the financial apparatus have as main attributions: the administration of public finances, the achievement and maintenance of the country's financial, monetary and currency balance, ensuring the efficiency of the national economy, organizing and tracking the collection of revenues and carrying out budget expenditures, organizing and exercising financial control (Saguna, p. 78).

## 5. Conclusions

Financial relations are carried out within a complex activity carried out by state bodies and economic agents called financial activity. The financial activity takes place within each level of the financial system, noting specific forms such as financial activity, banking activity, fiscal activity. The financial activity is carried out through acts and operations specific to each form (receipts and payments, budget financing, lending operations (Mărușțelu, 2005, p. 5).

The public finance system is presented as sets of documents and financial operations grouped in relation to their practical purpose: the establishment of the financial resources of public institutions and the use of these financial resources in order to fulfill the specific functions of these public institutions. Public finances are constituted for the functioning of central or local public administrations, which carry out distribution operations (Minea & Costăș, 2006, p. 15) or the production of non-commercial services, starting from the resources coming in most of them (directly or indirectly) from levies mandatory. There are such services: public medical services, public educational services, social services, administrative services: population records, road administration.

Public finances perform a distribution function (Șaguna, 2012, p. 13) through transfers of resources, made, by virtue of the law, in two ways: from natural persons, legal entities or other entities to public funds and from public funds to beneficiaries to them represented by natural persons, legal persons or other entities. The distribution function has its origin in the proportionality of fiscal obligations with incomes and in accessing public services in proportion to needs.

Therefore, in exercising their financial power, public authorities must comply with a series of rules: budgetary rules, which concern the budgetary procedure; accounting rules, relative to budget execution and asset management; fiscal rules related to the main public revenues: taxes, fees, contributions.

The socio-economic mechanism for establishing public finances is based on principles specific to the rule of law and implicitly a system of legal norms. Normative intervention in this field ensures: a framework for collecting public resources and a framework for using these resources. Due to the degree of specificity and technicality of the norms in the matter, the sets of legal norms have consolidated into branches of law.

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