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BULGARIAN FINANCIAL LAW AND THE EUROPEAN LEGAL AND FINANCIAL SYSTEM

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Abstract

The present article aims to provide an overview of financial law as an independent branch of the legal system of the Republic of Bulgaria from a both historical and functional point of view, in the context of its traditions and current trends, which reflect the financial and legal system of the EU. The EU membership of Bulgaria holds numerous challenges and requires the mobilisation of the intellectual and physical potential of all stakeholders involved. Financial law is one of the most dynamic fields of legislation and case-law. The financial legal doctrine addresses the new challenges, building on constitutional, financial and administrative legal traditions and practices in the field of administrative justice in Bulgaria following the Tarnovo Constitution.

Key words: Public Finance; Financial Law; EU

JEL Classification: H61, K20

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1. Introduction

The purpose of the article is to present Bulgarian Financial Law **in the context of the legal and financial system of the European Union** from a historical, comparative and functional point of view. The timeliness of the topic is determined by the changes in public relations and the new legislation adopted by the Republic of Bulgaria with view of its EU membership. The review takes into account the specifics of the subject and the method of legal regulation of financial law arising from membership of the Republic of Bulgaria in the European Union and its legal and institutional system.

The generally recognised financial legal doctrine and research in the field serve as pillars of the present review. The theory of financial legal relations (FLR) developed by Professor Milcho Kostov in his work entitled Financial Legal Relations (Kostov 1979) serves as basis for the analysis and the elaboration of a concept for modern financial legal relations and the participation of the state¹.

Diagram 1 – Components of Financial Relations



¹ In a more practical point of view, the concept of financial legal relations and finances, mentioned above, was of crucial significance for overcoming the erroneous practice of national courts which assumed that the relations between managing authorities of operational programmes under European Structural and Investment Funds (ESIF) in Bulgarian and beneficiaries are relations between equals.

2. Historical background

In his essay History of Old-Bulgarian Law S. Bobchev states that: “The first questions to be asked when one commences the study of any science are: what is it that this science teaches us, why is it being studied and how. In other words, the first task is to provide an explanation as to the subject, task and method” [Bobchev 1910: 1-4]. With regards to the history of Bulgarian financial law, Professor A. Angelov. Notes in its textbook in financial law in 1967 that: “Bourgeois law outlines as a special discipline not financial, but tax law. In the country, prior to 9 September 1944, the University used to exclusively teach tax law, and the very foreword to the textbook on the subject, authored by Petko Stoyanov [Stoyanov 1994], does not mention the existence of financial law.[...] Tax law is only a portion of the aggregate legal discipline of financial law“ [Angelov 1967: 56-57].

In its examination of public finance, financial systems and financial law, Professor V. Dimitrov stresses that radical changes in the political and economic organisation of society after 1989 require a critical analysis and assessment of the concepts on the content and scope of the financial system and of financial legal regulation respectively (financial law) [Dimitrov 1989]. Researches from academia in Central and Eastern Europe have also attempted to rationalize the place of financial law in contemporary realities. „Financial law is the most dynamically developing area of legal orders in all the states throughout the world“ [Mrkývka 2015: 18].

Nowadays financial law is regarded as an independent legal branch within the legal system of the Republic of Bulgaria with its own subject and method of legal regulation (imperative/authoritative) and is studied as an independent legal discipline in faculties of law. Tax law has indisputably developed since 1967 and there is a large volume of valuable literature on the topic, both in Bulgarian [Stoyanov 1994: 19. For more on the general topic of taxes see: Angelov 1970: 258; Kostov 1976; Stoyanov 1933; Stoyanov 2018; Kutshev 2002; Kutshev 1997: 284; Penov 2011: 224; Penov 2008: 41-48; Penov 2010: 31-37; Dimitrova 2010: 182; Dimitrova 2011: 287; Dimitrova 2012: 186; Petakov 1996; Ivanova 2010; Minkova 2012; Cenova 2012; Karanikolov 1995; Penov 1996; Penov 1996; Penov 1999; Penov 2008; Slavtscheva, Stefanov 2012], and, as of recently, in English [Goleminova, Malherbe 2018]. Despite this, based on common financial legal doctrine, tax law remains a subsector of financial law within the **legal system of the Republic of Bulgaria, as Professor Angelov astutely notes. Tax law is studied as an independent legal discipline.**

Legal regulation of financial law, as a form of objective law, covers four major groups of legal relations:

Diagram 2 – Financial Relations

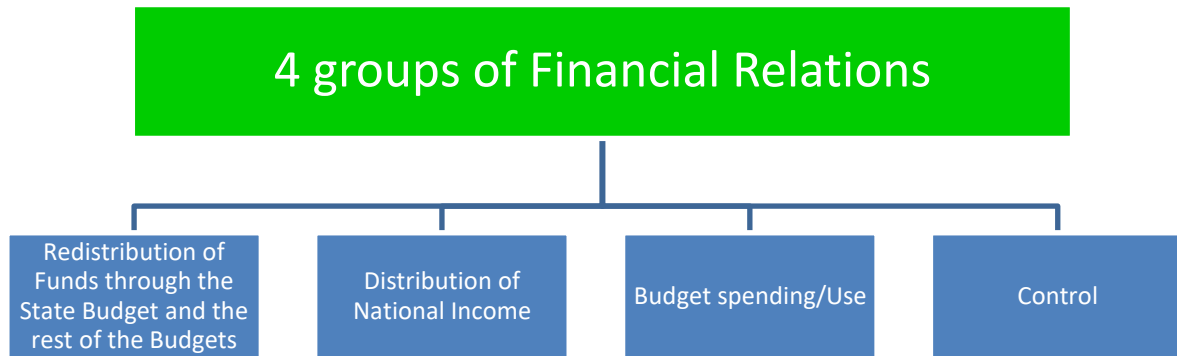
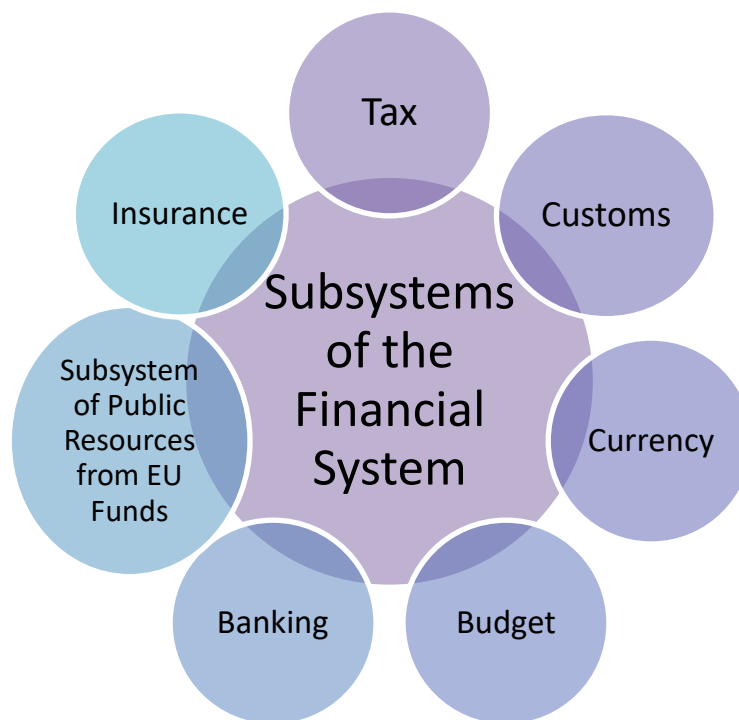


Diagram 3 – Subsystems of the financial system



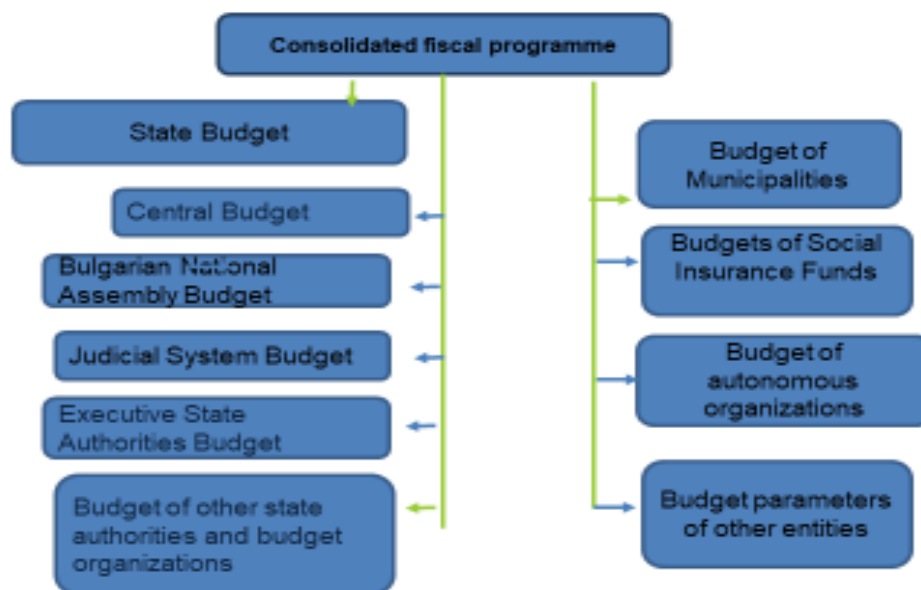
The method of legal regulation in financial law, which is **authoritative** in nature, has its specifics.

Theoretical concepts, such as '**financial system**', '**public finances**', '**control**', '**financial control**', '**supervision**', '**audit**', '**financial administrations**' are given a new meaning, based on positive law and practice.

Scope of the 'financial system' concept: the financial system covers not only public finances, but also the banking and non-banking subsystems of the financial system.

In general, ‘**public finance**’ is a system for the provision and financing of public goods and services, reallocation and transfer of income and accumulation of resources by budgetary organisations by means of revenue, aid and donations, realisation of financial assets and debt assumption” (Article 3 of the Public Finance Act). The economic basis for the achievement of common European objectives is the EU budget, which sets the overall revenue and expenditure of the Union for the year.

Diagram 4 – Consolidated Fiscal Programme



‘**Control**’ is the fourth component of financial law regulation, encompassing the concepts of ‘financial control’, ‘supervision’ and ‘audit’. Control is an element of the concept of governance. Financial activity is the activity of state bodies [Dyeremendzhyiev, Kostov, Khrusanov 2010] in the field of finance and financial systems, more recently as part of the financial system of the EU and its public finances. For the most part these are bodies of the executive power (specialised financial administration) but also of state authority (National Assembly), local government (Municipal Councils), independent state authorities exercising ‘supervision’ (Bulgarian National Bank (BNB) and the Financial Supervision Commission (FSC)) and ‘audit’ (Audit office, a collective body) tasks and functioning within the financial system in accordance with the Constitution of the Republic of Bulgaria and EU Law. Within the meaning of § 1, item 1 of the Supplementary Provision of the Administrative Procedure Code, an: “*Administrative authority*” shall be any authority appertaining to the system of the executive branch of government, as well as any holder of administrative powers empowered in pursuance of a law.”

FSC and BNB are independent bodies and holders of administrative powers empowered in pursuance of a law. These are independent state bodies, the power of which arises from the Constitution and the special laws regulating their activities. Both supervisory bodies are collective bodies and issue individual administrative acts which may be appealed before the Supreme Administrative Court.

On a more practical note, on 22 September 2018 the government outlined a roadmap of measures relating to the euro. This means changes in legislation and the national banking system, which is part of the financial system of the EU. Legal doctrine must, on its part, make sense of the changes and present them in a new manner in positive law, in the financial and banking system. Preparation for a new assessment of bank assets, this time initiated by the European Central Bank (ECB) will commence by October at the latest. The deadline for promulgation of results is July 2019. Given this time frame, review will most probably be based on sectoral data from 2018. The deadlines have been set out in the Action plan [Action Plan 2018] adopted by the government, which includes specific measures and performance time limits in response to Bulgaria's application for participation in the Exchange Rate Mechanism (ERM II) and the Banking Union. The document was prepared by the Ministry of Finance and details what is to be done as well as the responsible institutions for each of the six commitments [Letter 2018], which Bulgaria undertook before its European partners on 12 July of this year as a preliminary condition for the so-called Eurozone's "waiting room". The country has committed to introduce reforms to reinforce the financial sector, to improve the operation of institutions and to commence preparation for close cooperation with the ECB (the only way countries outside the Eurozone can participate in the Banking Union). A large part of the measures detailed in the plan are linked precisely with the establishment of close cooperation with the ECB. They envisage several changes in the legislative basis which need to be introduced by the end of this year and are related to the powers of the ECB. Following accession to the banking union, the decisions of the European regulator will be binding for the Bulgarian National Bank, which, in general, must observe all instructions, guidelines and measures targeted at those banks which are supervised by the ECB, as well as the general guidelines aimed at the remaining credit institutions. More specifically, with view of improving the insolvency procedure in Bulgaria, the government's plan proposes by April of 2019 to have in place an "efficient electronic data collection and promulgation system to serve insolvency and stabilisation procedures". A month later – a roadmap should be in place, listing the steps towards implementation of the recommendations on the insolvency framework and introduction of a system for reliable data collection and promulgation.

"There can be no control without independent audit and without control, authority cannot be exercised, nor can the mechanism of general government function properly" [Elikov 2016].

For the first time our valid legislation provided a legal definition of the concept of **‘financial control’** in § 1, item 11 of the Supplementary Provisions of the National Audit Office Act (NAOA): *“any form of control relating to the management of public resources and activities, which is exercised by virtue of special powers and procedures, including budget control, financial inspection control, tax control, customs control, etc.”* In other words, ‘financial control’ is control carried out in the field of public finance. **Financial control in the context of EU public finances** forms the basis of the **activities of our specialised financial administration**, which manages and controls public finances – both European and national: in the first place, this is the revenue administration: the National Revenue Agency, the Customs Agency, local municipal revenue administrations (which manage and control the collection of national budgetary revenue and EU’s own revenue, as well as revenue designated for local budgets; **in the second place**, the institutions which manage and control the expenditure part of the national budget, respectively the EU budget (with an institutional framework of bodies being set up for the purpose, the establishment of which is set out in EU law: Managing Authorities (MA), Certifying Authorities (CA), Audit Authorities (AA), Paying Agencies (PA)), all authorising officers within the meaning of the Public Finance Act, aid administrators within the meaning of the State Aid Act; **in the third place**, the institutions which exercise control and audit the preceding activities – the Public Procurement Agency, the Ministry of Finance (State aid, budget, etc.), the EU Funds Audit Agency, the Protection of the Financial Interests of the European Union Directorate (AFCOS) with the Ministry of Interior, the State Financial Inspection Agency, etc. Below is an illustrative diagram of the components of specialised financial administration:

Diagram 5 – Financial administration



2.1. Fundamentals of financial systems

As a general principle, the organisation and functioning of the state cannot be regulated only through financial / tax rules. Constitutional law has the objective of regulating public relations which constitute the foundation of the public-economic system and the political organisation of society. Administrative law, on the other hand, regulates public relations arising in the process of governance in the area of taxation. All organisational forms of financial activities are developed on the basis of constitutional and administrative law and are subject to the principles set out therein, because in its content, method and manifestations, financial/tax activity is, in its largest part, a variety of executive and enforcement, managerial activity.

The main principles which serve as the basis for our current financial system are laid down in the Constitution of the Republic of Bulgaria [Drumieva 2018; Kirov 2015; Blizniatshkiy 1997; Blizniatshkiy 2017] and are the result of Bulgarian constitutional traditions [Stoilov 2018; Sibi 2018; Toptshinska 2016; Groysman 2017; Vltshv 1997]. The main values of the EU, transposed from the constitutional traditions of member states, are the pillars of modern EU, as set out in its primary law. The role of the **Bulgarian Constitutional Court for their reinforcement and protection** is significant. Neither the Council of Europe, nor the EU can impose their decisions over national constitutions. The Bulgarian Constitutional Court fulfilled its functions for the first time with its decision under Constitutional Case No 3 of 2018 – i.e. its functions of guardian of the Bulgarian Constitution and defender of its supremacy. The Constitution establishes that the **Republic of Bulgaria is a legal state (Article 4)**². The principle of Rule of Law which has spurred on so much debate, has been consistently introduced in our legislation and is reflected in the **principle of legality**, set out in the two codices regulating the activities of administrative bodies and the financial administration – the Tax and Social Security Procedure Code (TSSPC) and the Administrative Procedure Code (APC).

2.2. The right to good administration

In the first place, a general principle is that Member States are liable for infringements of European Union law. The ruling under the Francovich [Ross 1993; Craig 1993] case created a remedy in damages for breach of EU law. This was conceived as an EU remedy in its own right, and not simply as an option which a particular Member State might or might not choose to embrace [Craig 2016: 293]. Bulgaria has accumulated experience and practice in the field of **state liability in cases of infringement of EU law**. In Bulgaria the procedural rules of action with the closest effect are those set out in the State Liability for Damages Act (SLDA). With view of the contradictory practice in terms of applicable procedures and

² On the topic of Rule of Law and the legal state, see: Belov 2018.

courts competent to review claims for damages caused by the state due to infringement of EU law, an Interpretative case No 2/2015 of the General Meeting of Judges from the Civil and Commercial Divisions and the General Meeting of Judges from 1st and 2nd Division of the Supreme Administrative Court was initiated upon request of the Chairman of the Supreme Bar Council for the adoption of a Joint Interpretative decision on the following issues: 1. Which is the competent court to review claims based on Article 4, §3 TEU, which seek to enforce state liability for infringement of EU law? 2. Which is the applicable procedural rule of action for review of claims based on Article 4, §3 TEU? The proceedings under the above interpretative case were stayed by means of Decision dated 09.03.2017 until delivery of the decision of the ECJ under items 1 and 2 of case C-571/2016.

In the second place, Article 41 of the Charter of Fundamental Rights of the European Union introduces the **Right to good administration**. I share the opinion of **Advocate General Bobek** delivered on 7 September 2017 (**Case C 298/16**). Something more, this basic right to good administration must be applicable to the administrations of a Member State not only when they are implementing EU law (in cases of VAT for example), but when they are implementing national law as well.

In addition, this basic right is in line and applicable within the context of the rule of law³ as the backbone of any modern constitutional democracy. The European Commission has presented its concept on how to tie access to all funds (not only those under the cohesion policy) to the rule of law in the Draft Multiannual Financial Framework in May 2018 [Proposal 2018].

Last, but not least, nowadays, in order to carry out financial activities, the financial administration requires statutory acts, financial plans and individual financial acts, including **administrative contracts**. The administrative contract finally achieved legal recognition both in the APC and in the EU Structural and Investment Funds Management Act only a year ago [Goleminova 2015: 239-243; Goleminova 2017: 276].

3. Conclusion

Financial Law has a lot of challenges nowadays due to the complicated correlations and relations with the EU Law, the financial system and public finances of the EU. Currently, it is one of the most influential and reputable branches of law in Bulgaria, both in the academic circles and practice. To conclude, academia representatives and legal practitioners from Central and Eastern European countries dealing with financial law must continue to exchange ideas and best practices, because of our common past and the future.

³ See more about the Rule of Law at: Belov 2018.

“The EU itself may collapse or lose members: but the motivating force of interdependence as a stimulus to co-operation is not going away” [Weatherill 2016: 415].

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