

Place of currency law in the system of law

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Abstract. Abstract: The article is devoted to the issues of currency law. Law aspects of currency law are not studied properly almost in all countries of the world. The author defines the place, object and method of regulation of currency law thinks about independence of currency law as a branch of legislature. The author arrives at conclusion that norms of currency regulation are of complex – public law and in the same time private law - character. Investigation of specific character of currency relations also points out to their complex character. The author proposes thesis that combination of different in nature norms of law regulating currency relations form currency law which in conditions of development of market relations is of complex character and must be set apart as independent branch of law.

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Introduction

Nowadays, in the system of law there are several opinions regarding the definition of currency law (hereinafter - CL).

Historically, CL was always considered as a part of financial law (hereinafter - FL). Some scholars in the field of FL included relationships regulated by the rules of CL into relations of financial activities of the state. Those scientists are K.S. Belsky [1, pages 14-17], and others. Furthermore, some authors, like N.M. Artemov, O.N. Gorbunov, I.G. Denisov, A.A. Zhdanov, A.N. Kozyrin, V.T. Kovalev, M.L., Kogan, N.A., Kufakova, N.T., Himicheva, who wrote the Russian textbook "Financial Law", stated that the currency legislation was an institution of a special part of FL:

"As the financial activity is an activity that is based on money and monetary circulation, then there is an institution in the system of financial law - money and monetary circulation, and the currency law" [2, page 33].

In a number of dissertation researches in the field of CL conducted by Russian lawyers in the recent years, the currency legislation was also considered as a part of the financial legislation.

Regarding to the traditional determination of the place of CL in the legal system authors would like to note that even the perfect system of law might not meet time requirements, which could detect its conventionality and relativity and, therefore, force changes and adaptations to social relations. Especially, large changes in system of law undergo when the development of public relations occurs in breadth and when new and previously not existing relationships are established. Moreover, the economy in terms of scientific and technological progress

makes ever greater demands to the legislation, requiring an adequate legal regulation of existing realities, changing and emerging social relations. In current conditions this leads to an increase in the proportion of so-called complex legal acts, which contain rules of different branches of law and regulate a variety of complex relationships developed in a particular sector of the economy.

Kazakhstani professor A. Khudyakov scrupulously researched problems of FL and his opinion about determining the place of CL in system of law might be essential. For example, the scholar attempted to systematize a special part of FL and diligently searched for an answer to the next question. What is the object of the FL: finances in general or only the public finances? According to his view, the object was only the public finances [3, page 55]. Khudyakov concluded that "the system of special part of FL was determined by the financial system of the state. Namely, the number of legal institutions and their types were exactly the same as the number and types of economic institutions. Legal institutions, which did not match the economic ones, could not exist. In this case, the fund of money was considered as material expression of the economic institute and, therefore, as of legal one. Consequently, the following pattern was built: "if there is a money fund, then there is the financial and economic institution and if there is the economic institution, then there is a legal institution" [3, pages 108-109]. Thus, the special part of the FL included only those groups of legal norms, which regulated social relations connected with the public finances.

In contrast to some Russian scientists, professor Khudyakov had an opinion that "institution "Currency regulation" refers to the institution of

"Legal basis of the monetary system ", referring to the general part of financial law" [3, page 106].

Authors of this work believe that Khudyakov's opinion about the place of such institution "Currency regulation" in the system of FL might be the correct one. Indeed, the main purpose currency regulation possibly was to set the order for circulation of currency values in the Republic of Kazakhstan [4, Art. 4]. Public relations related to the establishment of procedures were related to organizational financial relations, subjects of which, on the one hand were the state represented by his agent, and on the other - individuals and legal entities engaged in currency transactions. As a consequence, public relations arising in the process of currency regulation were the object of financial law.

According to Khudyakov, the set of rules governing the formation of the monetary system of the country and ensuring its normal functioning were considered as the institution. It was called "Legal basis of the monetary system" and was included into the general part of FL [3, pages 156-157].

Here we should note that in most countries currency law is performed mainly through market mechanisms. The USA legislature, for example, does not include the norms restricting possession or turnover of foreign currency. A number of acts currency regulatory acts define the rules of carrying currency through the customs house, the others regulate the flows of big sums in foreign currency to prevent financing of terrorists, other acts establish the rules of e-trade of currency tools (swops, futures, options) on FOREX market.

In India possession and turnover of foreign currency at the territory of the country is controlled by small in volume Rules of possession and circulation of foreign currencies established by Reserve Bank of India. [5].

Such currency law does not allow to talk about existence of independent branch of currency law in these 2 countries. In China, on the contrary, there are a lot of very strict limitations for possession of foreign currency, its circulation , use in transactions with foreign agent, and rigorous currency supervision performed by Central Bank and Currency control Agency [6 p.252]. Such regulation has its distinct target – keeping of stability of national currency in order to support competitiveness of Chinese goods in framework of WTO [7, p.36]. It must be mentioned that Chinese scientists also wrote a lot of works in the sphere of currency regulation. [8]. Availability of regulatory acts which regulate currency relations in full, systems of bodies for general and specialized regulation of currency relations, mentioned in the legislature of principles and targets and elaborated by theory doctrines allows

to argue the independence of currency law, in particular, in China.

However, currency regulation - was a part of the complex of currency relations. Monetary law regulated relations arising in the field of currency circulation: the relations developing on the ownership, use and disposal of foreign currency and valuables. It might be logical to consider this group of currency relations as an object of Civil Law (hereinafter - CivL). Indeed, in the field of currency circulation the currency (currency values) acted as a commodity, therefore, as an object of commodity-money relations. These relations were the object of CivL. Consequently, the relations arising in the field of currency circulation, might act as the object of Civil Law.

It should be noted that each deal with currency values was a set of relations, which, on the one hand, were civil legal and, on the other, were monetary. According to Article 127 of the Civil Code of the Republic of Kazakhstan (hereinafter - CC), regulation of foreign exchange transactions was in the area of currency legislation [9]. Therefore, the use of the civil legislation in this area was subsidiary - only in those cases which are not otherwise regulated by the currency legislation (according to Article 1 of CC, the civil law to such relations do not apply, unless otherwise provided by law). Some provisions of CC contained certain features of the transactions about currency values. For example, the general rules of sale and purchase (part 2 of Art. 406 of CC) applied with consideration of provisions of other Acts (firstly, of Act "On Currency Regulation and Currency Control").

Thus, there were two large groups of currency relations: relations arising in the sphere of currency regulation and control; the relations arising in the field of currency circulation. They were governed by different branches of law - financial and civil. This situation allowed authors of this work to express an opinion that the currency legislation as a comprehensive formation possibly matured into a complex branch of law.

While conducting research, it might be possible to apply other criteria to determine a branch of law, if it was not possible after identifying an independent group of public relationships. In particular it may be necessary to establish whether the rules could interact with rules from other branches of law.

In the regulation of public relations in a single legislative act were often placed rules relating to the various branches of the law in order to improve the legal regulation. These rules were interrelated and had a common goal. In the construction of the individual branches of the law the legal norms could

be used in different sets and different combinations, therefore, the system of law did not fully coincide with the legislation. But in the system of law there were groups of branches, mainly coinciding with the same branches of law.

Currency legislation of the Republic of Kazakhstan was a set of rules embodied in the relevant Codes of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan, in the normative acts of the President, the Government, the National Bank of the Republic of Kazakhstan and other government agencies. Those complex of rules regulated relations: 1) arising in government regulation area, arising during the process of currency regulation and currency control and the application of sanctions for violations; 2) arising in the field of currency circulation, which possession, use and disposition of foreign currency and valuables. Also, one should keep in mind international treaties and agreements ratified by the Republic of Kazakhstan, which regulate relations connected with the participation of Kazakhstan in the international monetary and financial institutions and relationships that declare the rights and duties of the subjects of international monetary relations. The rules of such international legal acts could also be the part of the national currency legislation.

It should be noted that, despite the complex nature of the currency legislation in the legal regulation of monetary relations the principles and methods used by FL were usually applied. Currency control was one of the elements of the monetary policy implemented by the Government in cooperation with the National Bank of the Republic of Kazakhstan. Several authors drew attention to the fact that the main objectives of currency legislation was to ensure economic and financial stability of the state, to prevent the illegal export of capital abroad, the strengthening of the national currency.

After recognition of the complex nature of the currency legislation the main interest was about the idea of formation of CL as the complexity was not its specific feature as many areas of legislation were complex (Land Law, Investment Law). Indeed, recently there were expressed some views on the allocation of CL as a separate branch. Among the supporters there were, for instance, the authors of the textbook "Russian Currency Law" - B.J. Dorofeyev, N.N. Zemcov, V.A. Pushin. They wrote thesis about the formation of an independent branch of law - CL. According to them, the currency legislation became strongly enough to stand apart from the other branches of the law and had its own objects, methods, principles, institutions and the specific attributes of the rules [10, page 17]. The scholars considered "public relations in the area of making currency

transactions, in the sphere of currency regulation and currency control and responsibility for foreign exchange violations" as an object of CL [10, page 17]. Chinese expert of currency regulation, Yang Bai considers that one of the signs of independence of legislature branch covering currency law is system character of its norms he also points out that in the system of financial law currency regulation is presented as separate integral system. [11, p.1]

Although there were new approaches in the theory of FL, which were based on a review of the independency of CL, traditional views about the place of CL in the system of law continued to exist. For example, N.M. Artemov stated that CL was an institution of FL. According to him, currency relations were directly related to the circulation of money, therefore, they were connected to a key element of the financial system. He considered CL with public (currency) relationships on accumulation, distribution, retention and use of currency of the country in the process of currency activity of the state, which should be under financial and legal regulation.

Further, he continued that in order to provide opportunities for the state to form, accumulate, distribute and use of currency and to apply currency regulation, in the country, the state's mandatory requirements should be adapted. At the same time most of the regulations came from the financial and credit entities of the state, created specifically for this activity. These organs are connected with others only through and because of the functional finance activity. Thus, the presence of a method of regulation common to the entire branch of FL was obvious. Consequently, commonality of the method might allow to conclude that CL, as the institution of FL, was a set of financial and legal rules regulating currency relations that arise in the process of formation, distribution, storage and usage of currency and monetary funds of the country "[12, page 36].

From all the above that has been presented, a few considerations can be made:

1. The object of legal regulation of the currency legislation is the totality of relations classified in two groups:

- Public relations in the field of executive and administrative activities of authorized state authorities and officials in the process of implementation of currency regulation and currency control, as well as the relationships arising from the application of enforcement measures by authorized agencies for violations of currency laws (regulated by the imperative method of legal regulation);

- Public relations arising in connection with the possession, use and disposal of currency and currency valuables, which are related to currency

circulation and constructed on the basis of equality of the parties (regulated by the dispositive method of legal regulation).

2. These two groups of currency relations arise and are implemented under the direct influence of such methods, which are designed to regulate these specific relationships. Their object is currency and currency values. The analysis of methods used by the currency legislation gives an indication of the fact that during the regulation of currency relations three types of regulatory standards are used: binding rules, prohibiting rules and authorizing rules. Therefore, the currency legislation has a specific method of influencing the participants of currency relationships. It is called monetary and legal control method, which combines imperative and dispositive forms.

3. After analyze of currency relations and currency legislation, it might be concluded that the currency relationships are governed by the constitutional, civil, financial, administrative, criminal and international (private and public) branches of law. Doubtless, the proportion of public relations in the composition of the currency relationship is significant. The latter relations in most cases emerge after direct commitment of currency transactions and currency activities by participants. Moreover, during the discussion about CL, the authors do not mean some sort of codified and, in this sense, an integrated system of legal norms. The idea is about legal norms regulating currency relations, which really exist, evolves and develops in accordance with the requirements posed by present time, originally systematized, and able to interact.

Stated above leads to the conclusion that the set of heterogeneous rules of law governing the relations of possession, use and disposal of currency and currency valuables, and the relations arising in the implementation of currency regulation and currency control, and the use of coercive measures for currency violations, form currency legislation, which in terms of market relations is complex and is formed as a separate branch of law.

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