

DOI: <https://doi.org/10.17816/RJLS635961>

Current State and Emerging Trends in Financing Law Development

M.V. Karaseva

Voronezh State University, Voronezh, Russia

ABSTRACT

The current state of financial law is primarily defined by its subject matter. In contemporary conditions, the subject of financial law has evolved significantly, driven by the active development of its structure and, most notably, the emergence of new financial and legal institutions within decentralized finance. These institutions include state and municipal unitary enterprises, state and municipal institutions, state corporations, and public law companies. The growth of decentralized finance has been a prominent trend in the modern era, with considerable potential for further expansion. Financial and legal regulations, in general, serve to safeguard the public interests of the state and municipalities. However, it is important to acknowledge that, with the expansion of decentralized finance, the subject of financial law, considered the most fundamental indicator of the current state of this legal branch, should be understood not only in terms of the financial activities of the state and municipalities but also concerning the financial activities of entities, including non-state actors, that are tasked with executing public functions.

Keywords: subject of financial law; decentralized finance; legal institutions; financial activity.

To cite this article

Karaseva MV. Current State and Emerging Trends in Financing Law Development. *Russian journal of legal studies*. 2024;11(3):7–14. DOI: <https://doi.org/10.17816/RJLS635961>

Received: 12.08.2024

Accepted: 12.09.2024

Published: 30.09.2024

УДК 34.349

DOI: <https://doi.org/10.17816/RJLS635961>

Современное состояние и тенденции развития науки финансового права

М.В. Карасева

Воронежский государственный университет, Воронеж, Россия

АННОТАЦИЯ

Современное состояние науки и отрасли финансового права характеризует, прежде всего, его предмет. В нынешних условиях предмет финансового права значительно изменился в связи с активным развитием структуры финансового права и особенно вследствие появления новых финансово-правовых институтов децентрализованных финансов. В их числе институты государственных и муниципальных унитарных предприятий, государственных и муниципальных учреждений, госкорпораций, публично-правовых компаний. Развитие финансово-правовой структуры децентрализованных финансов представляет в современных условиях заметную тенденцию, которая имеет потенциал дальнейшего расширения. Финансово-правовое регулирование в целом обеспечивает публичные интересы государства и муниципальных образований. Однако важно учитывать, что в связи с расширением финансово-правовой структуры децентрализованных финансов предмет финансового права как самый принципиальный показатель современного состояния отрасли права должен описываться сегодня не только через финансовую деятельность государства и муниципальных образований, но и через финансовую деятельность субъектов, в том числе негосударственных, но обремененных осуществлением публичной функции.

Ключевые слова: предмет финансового права; децентрализованные финансы; правовые институты; финансовая деятельность.

Как цитировать

Карасева М.В. Современное состояние и тенденции развития науки финансового права // Российский журнал правовых исследований. 2024. Т. 11. № 3. С. 7–14. DOI: <https://doi.org/10.17816/RJLS635961>

Financial law is a constantly evolving branch of law. As a result, the norms of this branch of law are therefore distinguished by their highest mobility when compared with those other branches of law. Against this background, it is logical to discuss newly emerging changes or already established trends in the development of this branch of law at each distinct period.

The current state of financial law is characterized by significant changes in this subject matter, as recognized in the literature. However, these changes have arisen from fundamentally new and emerging trends in the development of financial law.

Overall, the main trend in the development of financial law as a branch is the growing sector of financial and legal regulation of decentralized finances. Thus, in Soviet times, the science of financial law identified only one financial and legal institute of decentralized finances, namely, the institute of finances of state enterprises (associations) and branches of the national economy,¹ as documented in the 1978 textbook *Soviet Financial Law*. This Institute of Financial law remains scientifically relevant today. In a new context, state and municipal unitary enterprises continue to exist, and their finances are regulated by the Federal Law “On State and Municipal Unitary Enterprises” of November 14, 2002, unlike in Soviet times.²

In Soviet times, the institute of finance for state-owned enterprises (associations) and national economy branches demonstrated the expansion of financial law, defined as “financial activity of the state.” This expansion included centralized finance institutions and, for the first time, included the legal institute of decentralized finance. Since 1978, the paradigm of financial and legal regulation began shifting to better align with the state’s financial system, which included both centralized and decentralized finance [1].

The development of the financial law system shows that the financial and legal institute of finance for state-owned enterprises, emerging in the last third of the 20th century, opened a new segment of financial and legal regulation “decentralized finance.” This segment manifested itself in various ways in modern times and continues to develop actively. From 2004 onward, dissertations on financial and legal research of institutions emerged in financial and legal science [2–4]. By 2011, a doctoral dissertation had already provided a scientific analysis of state institutions [5]. It is noted that state institutions have public-oriented goals and objectives. They arrange their financial funds at the expense of budgetary funds and independent income sources, forming

an entire system of financial–legal relations in which state institutions act as subjects [5]. The intuitive scientific feeling that state and municipal institutions are not just subjects of financial law but should be viewed as a distinct financial–legal institution forces scientists to continue research in this area [6, 7]. In this regard, we observe the trend of development and understanding in the field of financial and legal science as it relates to state and municipal financial institutions.³

Moreover, under modern conditions, financial and legal science has recognized and defined the finance of state corporations’ financial and legal institutes. This recognition was supported by several scientific studies [8–10], and the current relevance of state corporations’ financial activities [11].

Finally, public not-for-profit organizations are highly active in public finance today. These include Roskadastr, Territory Development Fund, Unified Customer in the Sphere of Construction, and Military Construction Company. However, systematic financial and legal research on this group of finances in science remains lacking. Meanwhile, a trend toward considering the finances of public not-for-profit organizations as a financial and legal institution has already been outlined [12]. Thus, current developments in financial law indicate an expansion of this branch of law, particularly by understanding various decentralized finances as financial and legal institutions. It should also be noted that additional trends influence the structure of this branch of law, including the emergence of new institutions of financial law, such as the institute of compulsory audit in the general section of financial law and the institute of deoffshorization in the special section [13]. In addition, the institute of treasury payments is judiciously selected in budget law [14], and discussions are ongoing regarding the establishment of an institute of treasury services. A trend has also emerged supporting the formation of financial and legal institutes focused on the return and offset of fiscal payments [15].

However, when discussing the current state of financial law, it is important to focus on the financial and legal institutions of decentralized finance as they introduce a new approach to defining the subject matter of financial law. Thus, they define the present structure of this branch of law.

The question of the subject matter of financial law holds fundamental importance for characterizing this industry as it guides the orientation in law enforcement. This is particularly evident in judicial activity, where the court, in considering a case, must identify the legal domain from

¹ Soviet Financial Law, edited by L.K. Voronov, N.I. Chemichevoy. Moscow, 1978, pp. 177–214.

² Federal Law “On State and Municipal Unitary Enterprises” dated 11/14/2002 No. 161-FZ // ConsultantPlus legal reference system.

³ It should be noted that it is not difficult to prove the existence of a financial and legal institution if a subject has not only financial–legal personality for relations with the budget, but also for the disposal of financial funds available to him, ensuring the public interests of the state.

which the dispute arises and apply the relevant legal norms accordingly.

Current research tends to recognize that all relations within the subject of financial law pertain to public finance as they mediate public funds that protect the public interest of the state and municipalities. In summary, the *subject of financial law includes relations in the field of public finance that protect the public interests of the state and municipalities*.

However, note that the subject of financial law does not logically cover all relations within public finance but specifically those that serve the *state and municipal public interest* and not some other. This distinction is important because public interest in society extends beyond state and municipal interests to include confessional interests, which are funded by confessional financial resources, and the interests of various public associations (parties, popular fronts, etc.), which are also funded by these associations' monetary funds. However, the relations that constitute the subject of financial law are defined solely by the public interest of the state and municipalities.

This historically occurred due to objective reasons that led to the emergence of financial law as a legal phenomenon in the 19th century [16, 17].

Considering the existence of financial and legal institutions of decentralized finance, it can be argued that the relations constituting the subject of financial law mediate both centralized and decentralized public funds.

Centralized monetary funds include:

- state monetary funds,
- municipal funds.

Decentralized monetary funds include:

- that of state and municipal unitary enterprises,
- state and municipal institutions, and
- nonstate entities that perform public tasks assigned to them by law or decrees of the President of the Russian Federation that ensure the public interest of the state.

Centralized monetary funds of the state and municipalities are substantial and serve diverse public interests. These funds include the federal budget, budgets of the constituent entities of the Russian Federation, local budgets, and state extra-budgetary funds, such as the Social Fund, the Federal Compulsory Medical Insurance Fund, and territorial compulsory medical insurance funds.

Decentralized monetary funds include the financial resources of state and municipal unitary enterprises, institutions, and *nonstate enterprises whose subjects are burdened with the exercise of a public function*, which includes the finances of nonprofit organizations, particularly state corporations and public not-for-profit organizations. Notable examples are the finances of state corporations, such as Rosatom, "Roscosmos, and Deposit Insurance Agency," and

the finances of public not-for-profit organizations, such as Roskadastr, Territory Development Fund, Unified Customer in the Sphere of Construction, and Military Construction Company.

The movement of public finance, which mediates all aforementioned monetary funds, occurs through *public financial activities*, including the financial activities of (1) the state, (2) municipalities, (3) state and municipal unitary enterprises, state and municipal institutions, and other entities performing public tasks of the state using nonstate monetary funds.

Accordingly, this study highlights that the financial activities of the subjects of financial law involved in decentralized finance (e.g., state corporations, public not-for-profit organizations, and institutions) operate independently⁴ while ultimately ensuring the public interest of the state and municipalities.

Therefore, it is essential to consider, especially when defining the subject of financial law that the public interest of the state and municipalities, which guides all financial and legal regulation, is ensured both directly through the financial activities of state and municipalities (i.e., through public authorities) and indirectly, through the financial activities of various organizations (i.e., state corporations, state and municipal institutions, public not-for-profit organizations, and state and municipal unitary enterprises) specifically created to fulfill public tasks.

Through the *financial activities of the state*, financial resources are collected, distributed, and used through centralized state funds. These funds are the largest in volume and are essential for fulfilling all state tasks and functions. Simultaneously, public finances also support the *financial activities of municipalities*, facilitating the collection, distribution, and use of centralized municipal funds of monetary resources. In fact, the *financial activities of the state and municipalities lead to the development of most relations that constitute the subject of financial law, involving various public authorities in the process.*

In addition, under modern conditions, the collection, distribution, and use of financial resources for the public needs of the state and municipalities are traditionally managed by state and municipal unitary enterprises, and state and municipal institutions. The property of these entities, including financial resources, is owned by the state or municipality, and they are granted the right to manage the property's economic or operational activities. Accordingly, their financial activities directly ensure

⁴ In this regard, it is important to note that in all dissertations examining the legal regime of decentralized finances of institutions, state corporations, and state and municipal unitary enterprises, the scientific analysis focuses on their own financial activities, rather than on the financial activities of the state and municipalities.

the owner's public interests—the state or the municipality.

Nonstate actors tasked with fulfilling public functions in the interests of the state, such as state corporations and public not-for-profit organizations, engage in similar financial activities. This phenomenon largely arises from the state's growing practice of outsourcing the responsibility to nonstate actors and allocating appropriate financial resources through the law and decrees of the President of the Russian Federation. Given that the financial activities of these entities are directed toward serving the state's public interest, they should also be considered *public financial activities*.

The financial activities of the state and municipalities play a major role in the system of public finance relations.

Relationships within the financial activities of the state and municipalities, which form the subject of financial law, are classified by *functions of financial activity* into the following groups:

- a) relations concerning the mobilization of funds into the state and municipal monetary funds;
- b) relations involving the distribution of state financial resources;
- c) relations involving the use of financial resources by the state and municipalities;
- d) relations related to state and municipal financial control over resource allocation;
- e) relations concerning the issuance of currency.

The first group includes relations concerning the collection of taxes, fees to budgets, nontax revenues, and insurance premiums. The second group includes inter-budgetary relations, such as the allocation of subsidies, subventions, subsidies from the federal budget to the budgets of the subjects of the Federation, and from these to municipal budgets. The third group includes relations concerning state and municipal expenditures, including allocating funds to public not-for-profit organizations, among others. The fourth group includes relations focused on implementing budgetary and tax control, financial control over the use of funds from state extra-budgetary funds, finances of state unitary enterprises, finances of institutions, and finances of state corporations and public not-for-profit organizations. The fifth group includes all relations concerning the issue of currency.

The state, as a subject of financial law, directly conducts *financial activities through the legislative bodies of public authority*, as outlined in Articles 104 and 106 of the Constitution of the Russian Federation. These Articles set and collect taxes and fees and review and approve budgets and reports on their implementation. Thus, the state exercises its sovereign rights in finance through its legislative authorities.

The authorized bodies of the state that engage in financial activities include the executive bodies of public authority, which undertake financial activities as part of their general or special competence. Financial activities are *part of the competence* of the Government of the Russian Federation and the executive authorities of general competence at the level of the Russian Federation's subjects. Thus, the Russian Federation government develops the federal budget, while the executive authorities of the Russian Federation's subjects develop their respective budgets. Among the executive authorities with *special competence* engaged in financial activities are the Ministry of Finance of the Russian Federation and the Federal Tax Service under its jurisdiction, the Federal Treasury, and subordinate financial bodies of the Federation's subjects.

Municipalities undertake financial activities through their representative and executive bodies. The local budget is approved by the representative bodies and developed and executed by the executive bodies. Representative bodies also introduce local taxes (Article 132 of the Constitution of the Russian Federation). Local self-government bodies formed according to municipality charters receive interbudgetary transfers in various forms from the budgets of the Russian Federation's subjects (Article 100 of the Budget Code of the Russian Federation).

Regarding the relationship formed during public financial activities of state and municipal unitary enterprises and institutions, and nonstate actors tasked with implementing public duties assigned by the state. These relationships include the following:

- a) mediating the formation and use of the finances of state and municipal unitary enterprises and institutions;
- b) mediating the formation and, occasionally, the use of monetary funds of state corporations;
- c) mediating the formation and use of monetary funds of public not-for-profit organizations.

As regards the second group of relationships, the state currently assigns public tasks to state corporations established by federal laws. For example, the State Corporation for Space Activities, Roscosmos, was created under the Federal Law of the Russian Federation "On the State Corporation for Space Activities Roscosmos," dated July 1, 2015. The Rosatom State Corporation was established under the Federal Law of the Russian Federation "On the State Atomic Energy Corporation Rosatom," dated November 13, 2007. Similarly, there are other entities such as the state development corporation VEB.RF, a Rostech State Corporation for promoting the development, production, and export of high-tech industrial products, and State Corporation Deposit Insurance Agency.

Public not-for-profit organizations are also unitary nonprofit organizations with a public legal character and act in the state's interests⁵. Founded by the Russian Federation, their objectives are purely state-oriented and focused on implementing the state policy, providing public services, and managing state property. The funds generated by these companies are also used for these purposes.

State corporations and public not-for-profit organizations undertake financial activities in the state's public interest because they are authorized to engage in entrepreneurial activity solely for public purposes for which they were established. Accordingly, the state corporation's revenues are directed exclusively toward these objectives.

All relations constituting public finances included in financial law can be categorized into *property and nonproperty* relations.

Property relations within the subject of financial law include those related to the payment of taxes, fees, and nontax payments to the budget and state extra-budgetary funds, as well as the transfer of funds from these sources to their recipients. Legally, these are property relations as they involve the movement of material goods in a monetary form [18].

Conversely, several relations that constitute the subject of financial law do not involve the availability

and movement of funds; instead, they are *nonproperty relations*. These include relations related to the preparation of draft budgets, their consideration and approval, and those regulating the procedures for tax collection and the application of tax liability measures within the framework of tax law.

Accordingly, the current state of financial law allows us to consider its *subject as a set of property and related nonproperty relations that arise in the field of public finance and ensure the public interests of the state and municipalities*.

However, note that the public interests of the state and municipalities are achieved through both the financial activities of the state and municipalities and the independent financial activities of other entities established to support these goals and objectives of the state and municipalities, including state and municipal unitary enterprises and institutions, state corporations, and public not-for-profit organizations.

Thus, defining the subject of financial law solely through the financial activity of the state and municipalities, as is common in many financial law textbooks, does not capture the essence of those relations governed by financial law. It would be more accurate to use the categories "public finance" and "public interests" for these purposes.

REFERENCES

1. Drobozina LA, Allahverdyan DA, Dementsev VV, et al. *Finance and credit of the USSR*. Moscow: Finance and Statistics; 1988. (In Russ.)
2. Bit-Shabo IV. *Budgetary institutions as subjects of financial law* [dissertation abstract]. Saratov; 2004. (In Russ.) EDN: NHWSZJ
3. Boyko NN. *Financial and legal regulation of budgetary institutions* [dissertation abstract]. Moscow; 2008. (In Russ.) EDN: NKKCUT
4. Doshchitsyna OV. *Financial and legal status of an autonomous institution* [dissertation abstract]. Moscow; 2010. (In Russ.) EDN: QHNSV
5. Pisareva EG. *State institutions in the system of subjects of financial law* [dissertation abstract]. Saratov; 2011. (In Russ.) EDN: QHRYYL
6. Karandaev IYu. *Financial and legal regulation of the activities of budgetary institutions in the Russian Federation* [dissertation abstract]. Moscow; 2014. (In Russ.) EDN: ZPJIXT
7. Eremina EA. *State cultural institutions as subjects of financial law* [dissertation abstract]. Saratov; 2021. (In Russ.)
8. Turbanov AV. *Financial and legal foundations for the creation and functioning of the bank deposit insurance system in the Russian Federation* [dissertation abstract]. Moscow; 2004. (In Russ.) EDN: NHRDVD
9. Strikhanova DM. *State corporations as subjects of financial legal relations* [dissertation abstract]. Moscow; 2010. (In Russ.) EDN: QHCQMV
10. International Association of Financial Law; Zapolsky SV, editor. *State corporations and decentralized public finances (yearbook). 2008*. Moscow: Statut; 2009. EDN: QTWRRZ
11. Karaseva (Sentsova) MV. State corporations and public law companies as financial law subjects. *Financial Law*. 2024;(1):11–15. EDN: EPOWDO doi: 10.18572/1813-1220-2024-1-11-15

⁵ Federal Law "On Public Not-for-profit Organizations in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation," dated 03.07.2016 No. 236-FZ // ConsultantPlus legal reference system.

12. Karaseva MV. Decentralized finance; issues of financial and legal theory // *Russian Journal of Legal Research*. 2023;10(4):45–50. EDN: RVESYD doi: 10.17816/RJLS623405
13. Andrianova NG. Deoffshorization as an institute of financial law [dissertation]. Saint Petersburg; 2022. EDN: CNWSHE
14. Artyukhin RE. The treasury payment system as a new institute of budget law. *Journal of Russian Law*. 2024;28(2):91–104. EDN: XICJNO doi: 10.61205/S160565900028441-9
15. Karaseva MV. Legal institutions of the general part of the financial law science: issues of theory. *Financial Law*. 2024;(4):2–7. EDN: EJULSG doi: 10.18572/1813-1220-2024-4-2-7
16. Belsky KS. *Financial law: science, history, bibliography*. Moscow: Jurist; 1995. (In Russ.)
17. Arzumanova LL. The doctrine of the financial law science: evolutionary development and modernity. *Journal of Russian Law*. 2023;27(5):171–184. EDN: CGGILD doi: 10.12737/jrp.2023.060
18. Krasnyukov AV. *Tax property relations*. Moscow: Prospect; 2022. (In Russ.) EDN: IJOHTP

СПИСОК ЛИТЕРАТУРЫ

1. Дробозина Л.А., Аллахвердян Д.А., Деменцев В.В., и др. Финансы и кредит СССР. Москва: Финансы и статистика, 1988. 463 с.
2. Бит-Шабо И.В. Бюджетные учреждения как субъекты финансового права: автореф. дисс. ... канд. юрид. наук. Саратов, 2004. 22 с. EDN: NHWSZJ
3. Бойко Н.Н. Финансово-правовое регулирование деятельности бюджетных учреждений: автореф. дисс. ... канд. юрид. наук. Москва, 2008. 24 с. EDN: NKKCUT
4. Дощицина О.В. Финансово-правовой статус автономного учреждения: автореф. дисс. ... канд. юрид. наук. Москва, 2010. 22 с. EDN: QHENSJ
5. Писарева Е.Г. Государственные учреждения в системе субъектов финансового права: автореф. ... дисс. докт. юрид. наук. Саратов, 2011. 58 с. EDN: QHRYYL
6. Карандаев И.Ю. Финансово-правовое регулирование деятельности бюджетных учреждений в Российской Федерации: автореф. дисс. ... канд. юрид. наук. Москва, 2014. 24 с. EDN: ZPJIXT
7. Еремина Е.А. Государственные учреждения культуры как субъекты финансового права: автодеф. дисс. ... канд. юрид. наук. Саратов, 2021.
8. Турбанов А.В. Финансово-правовые основы создания и функционирования системы страхования банковских вкладов в РФ: автореф. дисс. ... докт. юрид. наук. Москва, 2004. 47 с. EDN: NHRDVD
9. Стриханова Д.М. Государственные корпорации как субъекты финансовых правоотношений: автореф. дисс. ... канд. юрид. наук. Москва, 2010. 21 с. EDN: QHCQMV
10. Международная ассоциация финансового права. Государственные корпорации и децентрализованные публичные финансы (ежегодник). 2008 / под ред. С.В. Запольского. Москва: Статут, 2009. 21 с. EDN: QTWRZZ
11. Карасева (Сенцова) М.В. Госкорпорации и публично-правовые компании как субъекты финансового права // *Финансовое право*. 2024. № 1. С. 11–15. EDN: EPOWDO doi: 10.18572/1813-1220-2024-1-11-15
12. Карасева М.В. Децентрализованные финансы; вопросы финансово-правовой теории // *Российский журнал правовых исследований* 2023. Т. 10, № 4. С. 45–50. EDN: RVESYD doi: 10.17816/RJLS623405
13. Андрианова Н.Г. Деофшоризация как институт финансового права: дисс. ... канд. юрид. наук. Санкт-Петербург, 2022. 209 с. EDN: CNWSHE
14. Артюхин Р.Е. Система казначейских платежей как новый институт бюджетного права // *Журнал российского права*. 2024. Т. 28, № 2. С. 91–103. EDN: XICJNO doi: 10.61205/S160565900028441-9
15. Карасева М.В. Правовые институты общей части науки финансового права: вопросы теории // *Финансовое право*. 2024. № 4. С. 2–7. EDN: EJULSG doi: 10.18572/1813-1220-2024-4-2-7
16. Бельский К.С. *Финансовое право: наука, история, библиография*. Москва: Юрист, 1995. 208 с.
17. Арзуманова Л.Л. Доктрина науки финансового права: эволюционное развитие и современность // *Журнал российского права*. 2023. Т. 27, № 5. С. 171–186. EDN: CGGILD doi: 10.12737/jrp.2023.060
18. Красюков А.В. *Налоговые имущественные правоотношения*. Москва: Проспект, 2022. 336 с. EDN: IJOHTP

AUTHOR INFO

Marina V. Karaseva (Sentsova), doctor of law, professor,
Honored Worker of the Higher School of the Russian Federation;
ORCID: 0000-0002-0657-3411; eLibrary SPIN: 9679-4429;
e-mail: mvsentsova@gmail.com

ОБ АВТОРЕ

Марина Валентиновна Карасева (Сенцова), д-р юрид. наук,
профессор, заслуженный работник высшей школы РФ;
ORCID: 0000-0002-0657-3411; eLibrary SPIN: 9679-4429;
e-mail: mvsentsova@gmail.com