

## COMMENTS

### THE CONSTITUTIONAL PRINCIPLE OF UNIFORM ECONOMIC AREA AND CENTRALIZATION OF PUBLIC FINANCE IN THE RUSSIAN FEDERATION: ANALYSIS OF THE RUSSIAN FEDERATION CONSTITUTIONAL COURT'S RULINGS

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*The paper is devoted to the issue of centralization in public finance in Russia, and highlights one of the problems of interpretation of the Russian Constitution clauses. The Rulings of the Russian Federation Constitutional Court from the period 1997–2006 created legal grounds for the process of centralization and reduction of the regional powers regarding budgeting and taxation. But all arguments of the Court are debatable. Wherein, the centralization is justified by the constitutional principle of uniform economic area. The author argues that the Russian Constitution does not have clauses establishing the uniform budget and tax systems directly, and any model of intergovernmental relations might comply with the Russian Constitution. Uniformity of economic area does not imply uniformity in taxation and budgeting in the sense of sameness. Study of foreign practices shows different approaches to the understanding of uniformity in economy, and in taxation and budgeting. The contemporary Russian public finance law is formed under the influence of the Constitutional Court's legal positions, and the process of centralization is still evolving. The Russian history of intergovernmental relations (1991–1997) shows another model of fiscal federalism – the decentralized federalism. Replacement of the fiscal federalism models is determined by the political considerations, not by constitutional requirements.*

*Keywords: public finance law; public budgeting law; tax law; constitution; uniform economic area; uniformity in taxation; uniformity in budgeting; intergovernmental relations; fiscal federalism.*



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## Introduction

The principle of uniform economic area is the basic principle of a united federate country consisting of different states (regions). A federal state is a form of consolidation of power facilitating unity of homeland defense, and social, monetary and economic policies. The federate form of a state presumes some financial autonomy of states (regions). Nevertheless, the degree of financial autonomy may be different, and depending on that degree we define centralized or decentralized fiscal federalism. Herewith, the principle of uniform economic area is realized in countries of both centralized and decentralized models. The centralized fiscal federalism model is characterized by uniformity of budget and tax systems,<sup>1</sup> meaning the uniformity of public finance laws, while the degree of such uniformity may be different. Professor R. Bahl specified fiscal decentralization as

the empowerment of people by the empowerment of their local governments.<sup>2</sup>

It should be noted, that fiscal federalism is not specific to only a federate nation, but also to a state of any power structure. Fiscal federalism is defined as

a set of principles which stand at the basis of delimiting revenue sources and budget expenditures between the central level and the inferior government levels, sometimes even without taking into account the type of state organization.<sup>3</sup>

This paper considers the understanding of the uniformity of economic area and selected clauses of the Constitution of the Russian Federation of 1993 (the “Russian

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<sup>1</sup> According to the legislature in force, a budget system means a set of budgets of different governmental units. A tax system consists of the main principles of taxation, tax legislature, and the tax authorities within a state.

<sup>2</sup> Roy Bahl, *The Pillars of Fiscal Decentralization*, CAF Working Paper No. 2008/07 (December 2008), at 4 (Nov. 26, 2019), available at <http://scioteca.caf.com/handle/123456789/257>.

<sup>3</sup> Oprea Florin, *Fiscal Federalism and Fiscal Decentralization in an Enlarged European Union* in *Annals of Faculty of Economics*, University of Oradea, Faculty of Economics, vol. 1(2), at 623, 624 (Nov. 26, 2019), available at <https://core.ac.uk/download/pdf/6263231.pdf>.



Constitution”) by the Constitutional Court of the Russian Federation (the “Russian Constitutional Court”) in the context of creating tax and budget systems, and public finance as a whole within the Russian Federation.

Russian Constitutional Court established the principles of uniform budgeting and the uniformity of taxes in Russia based on the principle of uniform economic area under Article 8 of Russian Constitution. The key research question of this paper is whether or not the principle of uniform economic area establishes the uniformity of budgeting and taxes in general. The study subject is Russian Constitutional Court’s rulings concerning governmental units’ powers on expenditures and taxes in Russia. The central thesis of this paper is that interpretation of the principle of uniform economic area by Russian Constitutional Court is determined by political considerations and is in conflict with the principle of political neutrality of interpretation of the constitutional clauses. Russian Constitution of 1993 has contained no clauses establishing uniformity of the budget system and the tax system directly. Uniformity of public finance laws at all governmental levels is a result of the interpretation of the constitutional clauses by Russian Constitutional Court. In this context Professor I. Levakin is on target, noting that Russian federalism “does not have a well-established nature and depends on relevant political situations and concrete persons.”<sup>4</sup>

### **1. A Scope of Uniformity of Economic Area in Russia and the Understanding of this Principle by Russian Scholars**

Different issues of uniformity of economic area in Russia were studied widely by V. Mnishko (Moscow, 2003),<sup>5</sup> D. Kuzovkin (Yekaterinburg, 2005),<sup>6</sup> V. Evdokimov and T. Tikhvatullin (Moscow, 2017),<sup>7</sup> V. Annenkova (Moscow, 2006),<sup>8</sup> I. Levakin

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<sup>4</sup> *Левакин И.В.* Государственное единство России: теоретико-правовое исследование: Автореф. дис. ... докт. юрид. наук [Igor V. Levakin, *The State Unity in Russia: A Study of the Theoretical and Legal Issues: Thesis*] 29 (Moscow, 2003).

<sup>5</sup> *Мнишко В.В.* Конституционно-правовые основы единства экономического пространства в Российской Федерации: Автореф. дис. ... канд. юрид. наук [Vladimir V. Mnishko, *The Constitutional and Legal Grounds for Uniformity of Economic Area in the Russian Federation: Thesis*] (Moscow, 2003).

<sup>6</sup> *Кузовкин Д.В.* Обеспечение единства экономического пространства Российской Федерации: конституционно-правовое исследование: Автореф. дис. ... канд. юрид. наук [Denis V. Kuzovkin, *Ensuring of Uniformity of the Russian Economic Area: Thesis*] (Yekaterinburg, 2005).

<sup>7</sup> *Евдокимов В.Б., Тухватуллин Т.А.* Конституционная законность и единство правового пространства в Российской Федерации: теоретические основы и правовые проблемы [Vyacheslav B. Evdokimov & Timur A. Tikhvatullin, *The Constitutional Legitimacy and the Uniform of Legal Space*] (Moscow: Yurlytynform, 2017).

<sup>8</sup> *Анненкова В.Г.* Единство Российского государства: проблемы конституционной теории и практики: Автореф. дис. ... докт. юрид. наук [Viktoria G. Annenkova, *Unity of the Russian State: The Issues of the Constitutional Theory and Practice: Thesis*] (Moscow, 2006).

(Moscow, 2003),<sup>9</sup> V. Sevumyan (Rostov-on-Don, 2006),<sup>10</sup> E. Sysoeva (Rostov-on-Don, 2006),<sup>11</sup> A. Khovanskikh (Samara, 2006),<sup>12</sup> D. Dzantiev (Moscow, 2010),<sup>13</sup> V. Blokhin (Moscow, 2004),<sup>14</sup> T. Zametina (Saratov, 2010),<sup>15</sup> E. Yurina (Tambov, 2002),<sup>16</sup> E. Shuvalov (Moscow, 2001),<sup>17</sup> and others. Uniformity of economic area is understood as a state territory within which economic activity is realized under laws on the basis of a uniform currency circulation. It is beyond argument that financial issues are very important for unity of an economic area, including a uniform currency regulation, banking regulations, and indirect taxation. Thus, the uniformity of economic area principle should be realized with an appropriate public finance policy. Most Russian scholars consider that unity of tax and budget systems is a necessary component of uniform economic area. Mnishko proposed a classification of functions of the Russian Federation Finance Ministry (the "Russian Finance Ministry") to support unity of Russian economic area, including uniform government financial, budgeting and tax policy design, and a currency regulation organization. The contemporary

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<sup>9</sup> Levakin 2003.

<sup>10</sup> Севумян В.Н. Конституционно-правовое обеспечение единства российского федерализма: Автореф. дис. ... канд. юрид. наук [Varlen N. Sevumyan, *The Constitutional and Legal Supporting for the Uniformity of the Russian Federalism: Thesis*] (Rostov-on-Don, 2006).

<sup>11</sup> Сысоева Е.А. Категория «территория» в правовой теории и практике законодательного регулирования федеративного устройства современной России: Автореф. дис. ... канд. юрид. наук [Elena A Sysoeva, *The Category "Territory" in the Legal Doctrine and the Practice of Legal Framework: Thesis*] (Rostov-on-Don, 2006).

<sup>12</sup> Хованских А.Ю. Принцип федерализма в российском праве: историко- и теоретико-правовой аспект: 1917–1991 г.: Автореф. дис. ... канд. юрид. наук [Andrey Yu. Khovanskikh, *The Principle of Federalism in the Russian Law: The Historical, Theoretical and Legal Issues in the Period from 1917 to 1991: Thesis*] (Samara, 2006).

<sup>13</sup> Дзантиев Г.Т. Конституционно-правовые основы развития федерализма в условиях объединения субъектов Российской Федерации: Автореф. дис. ... канд. юрид. наук [Georgiy T. Dzantiev, *The Constitutional and Legal Grounds for the Development of Federalism in the Context of the Constituent Units Integration: Thesis*] (Moscow, 2010).

<sup>14</sup> Блохин В.В. Правовое регулирование деятельности таможенных органов по обеспечению экономической безопасности Российской Федерации: Автореф. дис. ... канд. юрид. наук [Vladimir V. Blokhin, *The Legal Framework for Customs Service Ensuring of Russia's Economic Security: Thesis*] (Moscow, 2004).

<sup>15</sup> Заметина Т.В. Федерализм в системе конституционного строя России: Автореф. дис. ... докт. юрид. наук [Tamara V. Zametina, *Federalism in the System of the Constitutional Order in the Russian Federation: Thesis*] (Saratov, 2010).

<sup>16</sup> Юрина Е.А. Трансформация хозяйственных связей при формировании единого экономического пространства: Автореф. дис. ... канд. экон. наук [Elena A. Yurina, *The Transformation of the Economic Relations in the Context of Formation of the Uniform Economic Area: Thesis*] (Tambov, 2002).

<sup>17</sup> Шувалов Е.Н. Конституционные основы интеграционных процессов Российской Федерации и стран – членов СНГ в таможенной сфере: Автореф. дис. ... канд. юрид. наук [Evgeny N. Shuvalov, *The Constitutional Grounds for the Integrational Processes Among the Russian Federation and the Member States of the Commonwealth of Independent States in the Customs Sphere: Thesis*] (Moscow, 2001).



authors formulate the Russian uniform economic area as a complex of social, financial, currency, investment, and legal components. Herewith, the unity of Russia's economic area is determined by a unity of laws, which is understood as not a "geographic" uniformity of federal laws throughout the country as a whole, but as a uniformity of all laws, including federal and regional legislature and local legal acts. Mnishko concluded that the main government body for the assurance of uniform economic area in Russia was Russian Finance Ministry.<sup>18</sup> Kuzovkin supposed that the constitutional principle of uniformity of economic area in Russia demanded uniform tax policy realization as follows:

centralizing of tax power on the federal level, and that facilitates economic processes integration in Russian territory, and strengthens unity of a whole federation.<sup>19</sup>

Studying the principle of uniform economic area as a federalism issue is widespread in Russian legal doctrine. For example, Khovanskikh pointed out that the principle of uniform economic area was one of the principles of federalism.<sup>20</sup>

Analyses of papers and dissertations (or theses of dissertations) of Russian scholars show that constitutional law scholars understand the unity of economic area as the centralization of law, powers, and authorities. They pay no attention to foreign countries' practices and do not allow other interpretations of this principle. This approach is highlighted especially in papers and dissertations regarding unity of the Russian Federation as a whole, for example, in Annenkova's dissertation.<sup>21</sup> Such approach is explained by the Soviet period in Russian history. As Khovanskikh confirms, from 1917–1991, the federalism principle under the Soviet Constitutions of RSFSR<sup>22</sup> screened the centralized state with autonomous elements.<sup>23</sup> Modern Russian scholars' approach to uniform economy area is dictated by the Soviet experience of total centralization. G. Gadzhiev, the Judge of Russian Constitutional Court, cited Russian Finance Ministry's opinion of state ownership in Russia, as an example. Russian Finance Ministry supposed that it was state ownership of public finance as "unity of federal ownership and constituent units' ownership," which was understood as the united property complex of a federal state as a whole, as an economic basis of the Russian Federation. Gadzhiev pointed out, such an opinion was wrong because of

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<sup>18</sup> Mnishko 2003, at 19.

<sup>19</sup> Kuzovkin 2005, at 8.

<sup>20</sup> Khovanskikh 2006, at 17.

<sup>21</sup> Annenkova 2006, at 12–13.

<sup>22</sup> The Constitutions of the Russian Soviet Federative Socialist Republic of 1918, 1924, 1937, 1978.

<sup>23</sup> Khovanskikh 2006.



the current constitutional doctrine, refusing the unity of state ownership in Russia, which had dominated during the socialistic period. At that time there was the Russian Federation's ownership of public finance on the federal level, and the constituent units' ownership of public finance on the regional level.<sup>24</sup> We may conclude that the current understanding of the uniform economic area principle is stipulated by theoretical conservatism and legal inertia.

The constitutional law scholars' approach to specifying the uniform economic area principle coincides with the public finance law scholars' approach. A. Demin did not question that

demand to the Russian Federation tax system unity follows from the constitutional principles of the uniform financial policy and uniform economic area.<sup>25</sup>

S. Pepeliaev justified the real unity of tax policy and tax system by the principle of uniform economic area. The author noted, that was an institution of a unified state with a market economy, a condition of free and dynamic social development, and supported his opinion by the Ruling of Russian Constitutional Court of 21 March 1997. Pepeliaev wrote that the core of the unified tax policy principle was not in the concentration of financial powers by the federal government, but in the creation of unified obligatory standards of financial activity providing the balance of all participants' rights.<sup>26</sup> We agree with Pepeliaev's latter thesis, but do not agree with the common approach to the justification of fiscal centralization. The author understands the unified tax policy and fiscal policy as a whole, as a unified policy realized both by the federal and regional governments in the frame of unified taxes and duties system. At the same time, Russian Constitution establishes autonomy of regional and local governments, including autonomy in public finance. But this constitutional clause is understood as a regional governments' right to taxes and duties derived from the federal government's powers.<sup>27</sup> We should conclude that

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<sup>24</sup> Постановление Конституционного Суда Российской Федерации от 17 июня 2004 г. № 12-П // Собрание законодательства РФ. 2004. № 27. Ст. 2803 [Ruling of the Russian Federation Constitutional Court of 17 June 2004 No. 12-P, Legislation Bulletin of the Russian Federation, 2004, No. 27, Art. 2803], мнение судьи Конституционного Суда Российской Федерации Г.А. Гаджиева [Dissenting Opinion of the Judge of the Constitutional Court of the Russian Federation G.A. Gadzhiev].

<sup>25</sup> Демин А.В. Единство налоговой системы как базовый принцип налоговой политики Российской Федерации // Правовая политика и правовая жизнь. 2002. № 4. С. 55 [Alexander V. Demin, *The Uniformity of the Tax System as a Basic Principle of Tax Policy in the Russian Federation*, 4 Legal Policy and Legal Life 55, 55 (2002)].

<sup>26</sup> Пепеляев С.Г. Основы налогового права [Sergey G. Pepeliaev, *The Basics of Tax Law*] (Moscow: Invest Fond, 2000) (Nov. 26, 2019), also available at <http://lawbook.online/page/nalog/ist/ist-19-idz-ax273-nf-17.html>.

<sup>27</sup> Постановление Конституционного Суда Российской Федерации от 21 марта 1997 г. // Собрание законодательства РФ. 1997. № 13. Ст. 1602 [Ruling of the Russian Federation Constitutional Court of 21 March 1997, Legislation Bulletin of the Russian Federation, 1997, No. 13, Art. 1602].



nobody interprets uniformity of financial policy as a geographic uniformity that serves as an embodiment of regions' equity.

The main objective of this paper is not to criticize the current centralization processes in the sphere of public finance, but to prove that the constitutional grounds for these processes are not existent. Although, the author does not support the idea that centralization of public finance in the federated Russia in the applied form, but analyses of advantages and disadvantages of the centralized fiscal federalism model in Russia is not an objective of the paper.

## **2. A Scope of Uniformity of Economic Area in National and International Law**

In general, we have not discovered any research on the scope of uniformity as a whole in Russian legal doctrine. Russian Constitutional Court and other supreme courts of Russia have not examined uniformity as a legal category. Foreign law scholars have researched uniformity. W. Hicks defined uniformity

as sameness, the absence of differences or distinguishing features, a degree of similarity approaching identity.<sup>28</sup>

The core idea of this scholar is that the uniformity of law is demonstrated as sameness of legal consequences of particular legal operations regardless jurisdiction. The author added that

uniformity could be achieved as long as the differences of outcomes are not importantly different.<sup>29</sup>


There are different approaches to understanding the uniformity of economic area in national and international law. For example, according to the Treaty on Eurasian Economic Union<sup>30</sup> uniform economic area, is a territory of countries-members, where similar (matched) mechanisms for economic regulation based on the market principles operate applying harmonized and uniform laws, and with a united infrastructure. According to the Economic Unity Agreement approved on 3 June 1957 the Council of Arab Economic Unity support personal and capital mobility, free exchange of goods and products, unifying import and export policies of members, unifying regulations for

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<sup>28</sup> William F.M. Hicks, *Uniformity: Uniformity of the Commercial Code*, 8(3) Boston College Law Review 568, 568 (1967).

<sup>29</sup> *Id.*

<sup>30</sup> Договор о Евразийском экономическом союзе (подписан в г. Астане 29 мая 2014 г.) [Treaty on Eurasian Economic Union, signed in Astana on 29 May 2014] (Nov. 26, 2019), available at <http://www.eurasiancommission.org/>.



transit, unifying and coordinating legislation to achieve equal conditions of agriculture, industry and trade among member states, coordinating monetary and fiscal policies and some other conditions for uniform economic area.<sup>31</sup> It does not require proof that the scope of the uniform economic area principle is broader in national law than in international law. In national law, a function of the examined principle is to create the grounds for full integration of different people's groups (regions, provinces, states, small national groups, aborigines, etc.) in a state. This principle is a factor of state wholeness, but for international law the uniform economic area principle fulfills a function of a target. This principle is not a condition of a union being, but is the main goal of an economic union. Kuzovkin proved different meanings of uniformity of economic area in national and international laws in his dissertation.<sup>32</sup>

### **3. The Understanding and Interpretation of the Principle of Uniform Economic Area in the Russia Constitutional Court's Rulings**

The principle of uniform economic area refers to Russian Constitution (Art. 8, sec. 1): *The uniform economic area, free goods, services and financial assets movement, supporting competition, freedom of economic activity are guaranteed.* This principle is reflected in Article 74, section 1, setting prohibitions for customs borders, duties, fees, and other barriers for free movement of goods, services, and financial assets. The Russian Constitutional Court's Ruling, dated 21 March 1997 examined those provisions. Russian Constitutional Court concluded that under those constitutional clauses it follows prohibition for levying taxes in conflict with the principle of uniform economic area of the Russian Federation. In this context, it is prohibited to levy regional taxes which could limit the free movement of goods, services and financial assets, directly or indirectly, or to levy taxes which allow the collection of revenues by one governmental unit at the cost of another, or to transfer a tax burden to taxpayers of another territory.<sup>33</sup> In fact, Russian Constitutional Court drew the conclusion that tax competition should be prohibited.

Nevertheless, the foreign practice of intergovernmental relations and, even the Russian practice between 1991–1997, show that tax competition is not a negative factor with regard to a federal state where the principle of uniform economic area is implemented. For example, in the USA, the principle of uniform economic area functions, too, but there is neither a uniform tax system nor a uniform tax law in this country.

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<sup>31</sup> *International Handbook on the Economics of Integration. Vol. 1: General Issues and Regional Groups* 508 (M.N. Jovanović (ed.), Cheltenham: Edward Elgar Publishing, 2011).

<sup>32</sup> Kuzovkin 2005, at 8.

<sup>33</sup> See *supra* note 27.





In 1997 Russian Constitutional Court deduced that tax administration (or tax collection) is an exclusive power of the federate center, because of “the uniform economic area and, consequently, the uniform tax system are supported by a single system of tax authorities.” So, Russian Constitutional Court pointed out the necessity of creating a centralized system of the federal tax authorities. But then again, it should be noted that the uniform tax system does not presume a centralized system of tax authorities, and foreign practices prove this thesis. For example, Germany has a uniform tax system supported by the federal tax laws, setting taxes in *Landers* and communities, and has a decentralized system of tax authorities, simultaneously.

Russian Constitutional Court mentioned the principle of uniform financial policy in accordance with Article 114 of Russian Constitution, but the Court did not examine that principle in detail and did not argue why that principle included the uniform tax policy. This statement of the Court serves as the basis for creating the uniform tax and budget systems in the Russian Federation.

According to Article 71 of Russian Constitution federal taxes and fees are an exclusive power of the federal government. It means that the Russian Federation Federal Assembly not only defines the list of federal taxes and fees, but also establishes all compulsory and additional (or optional) components of taxes and fees. With regard to regional taxes and fees, the Court concluded that the “imposition of taxes and fees” have different legal meanings. As the Court pointed out, the constituent unit’s right to impose taxes was derived from the uniform principles of taxation that had been established by the federal legislator. Thus, the Court presumed that the understanding of imposition of taxes and fees did not have a uniform scope and differed depending on the governmental level. We consider that this statement does not correspond with the principles of interpretation. The concrete term should have a single meaning, not different meanings. Furthermore, the Court presumed the principle of subsidiary responsibility of governmental units, which does not conform to modern approaches to fiscal federalism in other developed countries. In such a way, *Russian Constitutional Court presumed the principle of a uniform and centralized tax system, primary based on the principle of uniform economic area.*

Such a legal position of Russian Constitutional Court was developed in the following rulings. In the Ruling of Russian Constitutional Court, dated 10 December 1997, the Court pointed out, according to Article 71 (cl. “zh”) of Russian Constitution, the financial, exchange, and credit regulations were the exclusive objectives of the federal government. The constitutional principle of uniform economic area (Art. 8, sec. 1 of Russian Constitution) presumes uniformity of financial policy and, consequently, uniformity of the financial system of a state, including tax and budget systems.<sup>34</sup> As the Court noted, such presumption did not block subnational authorities’ activities on

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<sup>34</sup> Постановление Конституционного Суда Российской Федерации от 10 декабря 1997 г. № 19-П // Собрание законодательства РФ. 1997. № 51. Ст. 5877 [Ruling of the Russian Federation Constitutional Court of 10 December 1997 No. 19-P, Legislation Bulletin of the Russian Federation, 1997, No. 51, Art. 5877].



the accumulation and spending of their own financial resources, including regional budgets, regional out-budget and currency funds, and loan resources. In such a way, *Russian Constitutional Court widened its preceding judgment and extrapolated the principle of the uniform economic area to the budget system, as well.* In fact, the uniformity of tax and budget systems infers centralization of these systems by the federal center and is reflected not only in the uniform budgeting and tax law, and failure of regional and local practices diversity, but also in the hyper disproportionate federal powers and, consequently, in the ineffective public administration as a whole.

In general, Russian Constitutional Court drew its focus toward the principle of the uniform economic area 35 times. In other rulings the Court followed the same understanding:

– In 2004 Russian Constitutional Court found clauses of the Budget Code of the Russian Federation of 1998 (the “Russian Budget Code”), Articles 155 and 156, which complied with Russian Constitution.<sup>35</sup> The above-mentioned clauses set the rule that all budget accounts (i.e. single accounts for all government budgets in the country), are serviced by only the Central Bank of the Russian Federation (the “Bank of Russia”) and prohibit banking services by other banks, of regional and local governments. But the latter may be acceptable only in the absence of Bank of Russia’s institutions in a region. And again, Russian Constitutional Court examined clauses of Russian Budget Code for compliance with the principle of uniform economic area. Russian Constitutional Court noted the constitutional requirement to uniformity of economic area was in conjunction with the basic grounds for the organization and functioning of a public authority in Russia. As Russian Constitutional Court supposed the national unity was supported by uniformity of economic area, and clauses of Russian Constitution presumed the single legal framework for economic activity, including financial relationships. This would keep the budget system uniform and centralized, and would serve as the financial and economic basis of public goods. *This Ruling authorized the unified system of banking services both for the national government and for regional governments supported by Bank of Russia’s institutions;*

– In the Ruling of Russian Constitutional Court of 15 December 2006<sup>36</sup> Russian Constitutional Court presumed that guarantees of a uniform economic area were included federal powers to issue laws and regulations for a unified market, financial activity, including budgeting, and prohibition of some barriers to free movement of goods, services and financial resources. The Court added, uniformity of the budget system, it meant the unified budget system, was the financial and economic basis of public finance in Russia; and a region’s powers were not reduced. *This Ruling authorized, not only the uniformity of the Russian budget system, but also a single system of cash*

<sup>35</sup> Ruling of the Russian Federation Constitutional Court No. 12-P, *supra* note 24.

<sup>36</sup> Постановление Конституционного Суда Российской Федерации от 15 декабря 2006 г. № 10-П // Собрание законодательства РФ. 2007. № 2. Ст. 400 [Ruling of the Russian Federation Constitutional Court of 15 December 2006 No. 10-P; Legislation Bulletin of the Russian Federation, 2007, No. 2, Art. 400].



*accounting for all budgets.* After 2005, all single bank accounts for the federal, regional and local budgets were opened for only the Federal Treasury of the Russian Federation (the “Russian Treasury”), and all regional and local treasuries were abolished. Russian Constitutional Court deduced that such powers of Russian Treasury were justified by the necessity of ensuring the safety and transparency of public finance. Herewith, Russian Treasury was not empowered to administer regional and local funds, to and determine aims of spending. For interpretation of the uniform economic area principle Russian Constitutional Court analyzed Russian Constitution, Article 71, clause “zh”, according to which the federal economic authorities were an exclusive federal power. The tax authorities and Russian Treasury, with their territorial bodies were classified as the federal economic authorities by Russian Constitutional Court, and the clause was considered as a component of the uniform economic area principle.

*In such a way, Russian Constitutional Court has widened the scope of the uniform economic area principle, and formed the legal grounds for a single public finance law, including budgeting and tax laws. Russian Constitutional Court presumed the exclusive powers of the federal tax authorities within the sphere of the collection of all taxes in the country, including regional and local taxes. Russian Constitutional Court presumed the exclusive federal cash administration for all budgets, as well.*

To understand of the principle of uniform economic area Russian Constitutional Court analyzed the following clauses of Russian Constitution:

1. The exclusive powers of the federal center are to create a legal basis for single market, *financial*, exchange, credit, custom *regulations*, money issue, price policy, and *federal economic services*, including federal banks (Art. 71, cl. “zh”);

2. The Federal Government’s power is to facilitate the implementation of *uniform financial*, credit, and monetary *policy* in the Russian Federation (Art. 114, sec. 1, cl. “b”).

One should understand that Russian Constitutional Court interpreted “*financial regulation*” as a regulation of both public and private finance, and not only a regulation of the financial market, which is now governed by Bank of Russia. But such interpretation of “*financial regulation*” is disputable. Russian Constitutional Court did not pay attention to that moment and did not examine that category. Financial regulation can be understood as creating the legal framework for the functioning of the financial market. Financial regulation, as a legal category, can mean financial law and regulations in aggregate. In Russia, financial law means a complex of legal norms for public finance. But in foreign countries, financial law can be understood to include other spheres of relations, meaning sets of laws and regulations regarding insurance, derivatives, commercial banking, capital markets and investment management sectors.<sup>37</sup> The financial market is a sphere of relations

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<sup>37</sup> Joanna Benjamin, *Financial Law* (Oxford: Oxford University Press, 2007). The same approach to understanding of the financial law is realized in John H. Friedland, *The Law and Structure of the International Financial System: Regulation in the United States, EEC, and Japan* (Westport: Quorum Books, 1994): the author uses the category of “financial regulation” as a regulatory framework for financial service, or financial market. In sense, the financial law may be understood as financial services law.



which allows the generation of both private and public funds. A government can use financial market tools as often as non-government agents. We do not mix the categories “financial regulation” and “financial law” with respect to Russia, because in Russia, most of the time, financial law has been understood as public finance law. Therefore, we consider that Russian Constitutional Court should not have interpreted the clause of Article 8 as a component of the uniform economic area principle without adequate examination of the clause of Article 71 in the part of financial regulation as one of the federal powers.

Due to Russian Constitutional Court’s interpretation, the meaning of “financial regulation” includes the legal framework for budget system and taxation, and the true meaning of this category is now not clear. We suppose that the absorption of “public finance law” by the term “financial regulation” is determined by Soviet practice without a mature financial market. The financial regulation was pointed out as the creation of laws and regulations for public finance functioning, in the context of socialist ownership, i.e., for the financial activity of the Soviet government. Nowadays, by virtue of vague wording, the term “financial regulation” is not often used. We can find some wording such as “management of public finance” and “regulation of the financial market.” Nevertheless, the term “financial regulation” is used, for example, in the Strategy of the banking sector development. Section 5 of the Strategy is named “Realization of the International Approaches to Financial Regulation in the Russian Federation.”<sup>38</sup> Here the term “financial regulation” is used in the sense of regulating the financial market. This fact proves the problematic nature of Russian Constitutional Court’s arguments set out in the rulings under study. To interpret, the principle of a single meaning of a term should be followed. We suppose, the term “financial regulation” should relate to homogeneous relationships, or to the single sphere of social relations. It is clear that relationships in the sphere of public finance and the financial market are not homogeneous; these spheres are different. Thus, the term “financial regulation” should mean the legal framework for either public finance or the financial market. Furthermore, if financial regulation is an exclusive power of the federal government, according to Article 71, regional governments do not have the rights to financial regulation entirely. However, there happens to be fiscal federalism in Russia, and regional governments do have rights to their own budgets and taxes, which corresponds with Russian Constitution and the current legislation. Taking these arguments into account, it should leave the interpretation of “financial regulation” by Russian Constitutional Court in serious doubt.

The second clause that presumes “*uniform financial policy*” is disputable, as well. The uniform financial policy is implemented by the federal government, and it does

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<sup>38</sup> Заявление Правительства Российской Федерации, Банка России от 5 апреля 2011 г. «О стратегии развития банковского сектора Российской Федерации на период до 2015 года» // Вестник Банка России. 2011. № 5 [Announce of the Russian Federation Government and the Bank of Russia of 5 April 2011 “On Strategy of the Banking Sector of the Russian Federation for the Period Until 2015,” Bulletin of the Bank of Russia, 2011, No. 21].



not denote uniformity of the tax system or the budget system. The federal uniform financial policy may denote “geographic” uniformity, dictated by the principle of constituent unities equality. For example, the uniform financial policy may be interpreted as the use of one distribution formula to allocate resources among the regional governments. We should note that the question is only regarding legal equalization, not about real equalization.

To examine of the term “uniform financial policy” in detail, the practices of foreign countries with the decentralized model of fiscal federalism need to be studied. To demonstrate a different understanding of the same categories and terms, we have used the USA practice as an example, regarding the key issues of the paper.

#### **4. The Understanding of the Principle of Uniform Economic Area and Uniformity of Taxation in the USA**

The problem of interpretation of any clauses and phraseologies of the constitutional acts is a problem not only for Russia. Research of approaches for explanation and interpretation of constitutional acts is the perspective and developing direction in the legal doctrine.

In the USA the Constitution rules uniformity of economic area, as well. These rules are named as the Commerce Clause, which refers to U.S. Constitution, Article 1, Section 8, Clause 3. The Commerce Clause allowed the Federation (Congress) power to regulate interstate commerce, and commerce with foreign nations and Indian tribes. Initially the Commerce Clause was designed to empower Congress to regulate trade between and among the states, in other words, the buying and selling of goods and services in interstate commerce. Over the course of time the understanding of the Commerce Clause has been widened. Under the Commerce Clause Congress has been empowered to regulate manufacturing, labor, agriculture, and industry. Such a widening of approach to the implementation of the uniform economic area principle was in consequences of the Supreme Courts’ decisions.<sup>39</sup> Professor R. Bork and D. Troy noted that the purpose of the Commerce Clause had been to remove barriers to interstate commerce, and the original understanding of the Clause permitted federal regulation of the purchase and sale of goods in commerce to address barriers created by discriminatory or inconsistent state laws.<sup>40</sup> Apart from the Commerce Clause, the U.S. Constitution rule uniform duties, imposts and excises, and empowers Congress to coin money. U.S. Constitution, Article 1, Section 8, Clause 1

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<sup>39</sup> For example, in the case *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824) the Supreme Court interpreted the Commerce Clause to allow Congress to regulate interstate navigation; in case *Swift and Company v. United States*, 196 U.S. 375 (1905) the Supreme Court allowed Congress to prohibit the meat industry’s price fixing in Chicago.

<sup>40</sup> Robert H. Bork & Daniel E. Troy, *Locating the Boundaries: The Scope of Congress’s Power to Regulate Commerce*, 25(3) *Harvard Journal of Law & Public Policy* 849 (2002).



empowers Congress to levy and collect taxes, duties, imposts and excises, to pay debts and provide for the common defense and general welfare of the United States; but all duties; imposts and excises shall be uniform throughout the United States. The main question for examination is that “all duties, imposts and excises shall be *uniform* throughout” the whole country – the so-called the Uniformity Clause. The Uniformity Clause was studied in detail by E. Jensen. He proved that a subject of the uniformity rule was only indirect taxes, and uniformity should be understood only as “geographically” uniformity. The author analyzed the relevant Supreme Court rulings (*Head Money Cases* (1884), *Knowlton v. Moore* (1900), *Ptasynski v. United States* (1982)). He cited one of studied rulings, *Knowlton v. Moore*,

wherever a subject is taxed anywhere, the same must be taxed everywhere throughout the United States, and at the same rate.<sup>41</sup>

It is a key meaning of the Uniformity Clause. Additional research on the Uniformity Clause, by the Professor of law, Laurence Claus wrote that in *Knowlton v. Moore* the Court established that

a federal tax regime may be uniform even though its effect upon citizens in one state differs from its effect upon those in another because of differences in state government policy.<sup>42</sup>

The uniformity of indirect taxes is a vitally important principle and it affects as a guarantee of parity conditions for all states. Claus described how the Uniformity Clause gained validity to all federal taxes including income tax and other direct taxes.<sup>43</sup> The question of tax classification is not important for this study but we may observe that interpretations have high potential. It is remarkable that Professor W. Newhouse noted,

There is a substantial and significant diversity in the phraseology of the several types of so-called “uniformity clauses.”<sup>44</sup>

The author pointed out the special importance of court decisions for the understanding of the constitutional provisions; he wrote:

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<sup>41</sup> Erik M. Jensen, *The Taxing Power: A Reference Guide to the United States Constitution* 77–88 (Westport: Praeger, 2005).

<sup>42</sup> Laurence Claus, “*Uniform Throughout the United States*”: *Limits on Taxing as Limits on Spending*, 18(3) *Constitutional Commentary* 517, 522 (2001).

<sup>43</sup> *Id.*

<sup>44</sup> Wade J. Newhouse, *Constitutional Uniformity and Equality in State Taxation* (Ann Arbor: University of Michigan Law School, 1959) (Nov. 26, 2019), available at [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1013&context=michigan\\_legal\\_studies](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1013&context=michigan_legal_studies).



the equal protection clause in the federal Constitution, the language of these provisions is so general as to be meaningless without an extensive study of court decisions.<sup>45</sup>

The requirement to uniformity in taxation is established not only in the federal Constitution, but also in the constitutions of states. Newhouse analyzed the states' constitutions and revealed nine variations of uniformity clauses.<sup>46</sup>

Unity is implied regarding any state, and the uniformity as a process is an immanent feature of every state. Therefore, the requirement to uniformity touches on the question of sameness on the order of equality. Consequently, the limitation of governmental units' powers is necessary. However, the degree of such limitation may be different. In the USA the Equal Protection Clause, as a part of the Fourteenth Amendment to the U.S. Constitution, took effect in 1868. This clause provides "not shall any State ... deny to any person within its jurisdiction the equal protection of the laws."<sup>47</sup> The process aimed at uniformity is dictated by the requirement of equality. Equality in taxation is a debatable issue closely connected with the uniformity. It should not used to prove that the uniformity in taxation facilitates equality of citizens' rights and unity of a country as a whole. All countries and even unions as political systems, but not states (e.g., the European Union), lean toward uniformity concerning many different spheres including taxation and public finance. However, a degree of such uniformity may be different. Ultimately, these processes are reflected in law. In the USA, various states perform efforts to ensure uniformity and equality in taxation. It is remarkable that the states initiate some processes aimed at tax uniformity, not the federal government. In 1967 the Multistate Tax Compact became effective. One of the purposes of this compact was to promote uniformity or compatibility in significant components of tax systems.<sup>48</sup> In Russia the degree of tax uniformity is maximized, and the primary and sole actor of the process aimed at uniformity is the federal legislator.

The USA practice shows to what degree approaches to the same categories may be different. The uniformity of economic area in a state and the uniformity of government financial policy may be understood as the creation of equal conditions for social and economic development for all constituent units. Russian Constitutional Court's approach to the uniformity of government financial policy is too parochial and does not correlate with the current ideas and insights into fiscal federalism. Fiscal federalism should be based upon integration of some territories by delegating their powers to the federal government. The understanding of uniformity in another

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<sup>45</sup> Newhouse, *supra* note 44.

<sup>46</sup> *Id.*

<sup>47</sup> Constitution of the United States (Nov. 26, 2019), available at <http://constitutionus.com/#x14>.

<sup>48</sup> Multistate Tax Compact, Multistate Tax Commission (Nov. 26, 2019), available at <http://www.mtc.gov/The-Commission/Multistate-Tax-Compact>.





way, rather than in a “geographical sense” to ensure the implementation of the non-discrimination principle, is in conflict with the principle of autonomy and independence of regional and local governments. Studying the processes aimed at uniformity in the USA allows proving the political content and motivation concerning the current interpretation of particular Russian Constitution clauses. Simultaneously, it should be noted that the Uniformity Clause in the USA rules a limitation of Congress’ power to tax. And in Russia the requirement to uniformity of financial policy affects as limitation of regional governments’ powers to tax and budgeting.

For verification of erected propositions the evolution of the tax and budget systems in Russia beginning in 1991 should be analyzed.

### **5. The Development of Budget and Tax Systems in the Russian Federation After 1991**

The process of centralization began long before 1991, after 1917. The first Constitution of the Russian Socialist Federative Soviet Republic of 1918 included Section 5 “Budgeting Law.” The famous Soviet scholar of public finance law E. Rovinsky analyzed the clause of section 5, part 80, under which public revenues and expenses was integrated into the national budget. Rovinsky characterized that clause as the principle of budget system integration determined by the principle of “democratic centralism.”<sup>49</sup> The soviet Russian Federation was a federal state *de jure*, rather than a unitary state *de facto*. Therefore, the public centralization was peculiar to that period. Now the principle of unity of the budget system is understood in a different way, as the unity of budgeting laws for the federal, regional and local governments concerning their budgets. This fact demonstrates the heterogenic understanding of the same categories and terms in law and doctrine, and the heterogenic approaches to public finance management even in a short period of time.

The understanding of the uniform economic area principle, the uniform budget and tax systems has its own history in the modern Russia following 1991. Initially, uniformity of economic area was not connected with public finance as evidenced by the Russian Soviet Federative Socialist Republic President Decree of 12 December 1991.<sup>50</sup> According to the President’s decision the regional authorities were empowered to facilitate free movement of goods, labor, and services, and the single national

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<sup>49</sup> Ровинский Е.А. Основные вопросы теории советского финансового права [Efim A. Rovinsky, *The Main Doctrine Issues of the Soviet Financial Law*] 35 (2<sup>nd</sup> ed., Moscow: INFRA-M, 2018) (reprint of the treatise “The Main Doctrine Issues of the Soviet Financial Law” by Rovinsky of 1960).

<sup>50</sup> Указ Президента Российской Советской Федеративной Социалистической Республики от 12 декабря 1991 г. № 269 «О едином экономическом пространстве РСФСР» // Ведомости Совета народных депутатов и Верховного Совета РСФСР. 1991. № 51. Ст. 1830 [Russian Soviet Federative Socialist Republic President Decree No. 269 of 12 December 1991. On the Uniform Economic Area of the RSFSR, Journal of the Council of People’s Deputies and Supreme Council of the RSFSR, 1991, No. 51, Art. 1830].





currency was established as well. Public finance was decentralized during that period, which was in compliance with the uniform economic area principle.

A study of the historical development of intergovernmental relations shows that opposite models of fiscal federalism was evidenced in the context of current constitutional provisions.<sup>51</sup> From the breakup of the Soviet Union and until the contemporary Russian Constitution becoming effective (1991–1993), intergovernmental relations was characterized as “reactive decentralization.” The share of regional and local revenues in the consolidated budget was increased in the context of regional tasks expansion growth. The governmental units intended to change the existed intergovernmental relations based on the tax mechanism of disposition of funds and turn to a new format of relations based on paying one-off sum. An intergovernmental agreement was a legal form of new intergovernmental relations. But the intergovernmental relations were reformed in 1994 and disposition of funds was formalized by the setting of federal tax revenue rates for the federal budget, regional budgets and local budgets in laws. Beginning in 1994, the limits for the levying on regional and local taxes were lifted. Besides, intergovernmental relations between the federal center and particular governmental units were changed by specific individual intergovernmental agreements, which forced disproportional powers. The period of decentralized fiscal federalism was finished with regard to the interpretation of the principle of uniform economic area and other above-mentioned clauses of Russian Constitution by Russian Constitutional Court in 1997. Professor of politics, C. Ross characterized that historical period as “legal separatism.”<sup>52</sup>

Professor J. Backhaus pointed out,

[t]he apparent paradox that ... constitutions are written so as to provide immutable standards of the law and ... have usually proved to be sufficiently flexible [and] ... can be explained by looking at the underlying process of constitutional change without amendment.<sup>53</sup>

We can agree with Backhaus in a positive way, but Russian Constitutional Court’s legal opinion is not only contrary to global interpretation of the principle of uniform economic area, but also contrary to the primary keystone idea of fiscal federalism

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<sup>51</sup> History of intergovernmental relations in the Russian Federation was studied by A. Suglobov, Yu. Cherkasova, V. Petrenko. *Суглобов А.Е., Черкасова Ю.И., Петренко В.А. Межбюджетные отношения в Российской Федерации* [Alexander E. Suglobov et al., *Intergovernmental Relations in the Russian Federation*] 45–73 (Moscow: YUNITI-DANA, 2013).

<sup>52</sup> Cameron Ross, *Federalism and Democratisation in Russia* 174 (Manchester; New York: Manchester University Press, 2002).

<sup>53</sup> Jürgen G. Backhaus, *Economic Principles of Constitutions: An Economic Analysis of Constitutional Law*, Independent Institute Working Paper No. 40 (August 2001) (Nov. 26, 2019), available at [http://www.independent.org/pdf/working\\_papers/40\\_economic.pdf](http://www.independent.org/pdf/working_papers/40_economic.pdf).



in Russia. In substance, Russian Constitution was changed within four years after going into effect.

Now Russia's budget and tax systems are super-centralized, the Russian budget system is based on intergovernmental transfers including tax transfers and the concentration of the primary large taxes on the federal level. (Legal background: above-mentioned Russian Constitutional Court's rulings.) An expert in public finance, R. Bahl denoted, one of the negative justifications for intergovernmental transfers is to maintain or enforce uniformity.<sup>54</sup> We can agree with him fully.

### **6. The Legal Effect of the Current Understanding of Uniform Economic Area on Public Finance Law in Russia**

The interpretation of uniformity of economic area by Russian Constitutional Court has caused changes in the content of other Russian Constitution clauses regarding public finance. Article 73 establishes the exclusive powers of regional legislators and governments. Under Russian Constitution the federal authorities do not have any powers in the spheres named in Articles 71, 72. Such powers as regional taxes and regional budgets are not named in above-mentioned articles. Therefore regional taxes and regional budgets are the exclusive and unique powers of the regional legislator. What do "regional taxes" and "regional budgets" as the regional powers mean? Would these powers mean rights to regulate and possess? Or only right to possess? The above-analyzed interpretation of uniformity of economic area and financial policy restricted a scope and components in the "content" of the regional powers in question and invalidated the regulatory component in general. Should the power of a government include all competences for its realization? Or should the list of competences be limited? These questions were not analyzed by Russian Constitutional Court. Thus, the power of regional taxes has been led to the budgetary component, excluding the tax component itself. We mean that the governmental units of Russia have right to the possession of regional taxes and, consequently, to accumulate regional taxes into regional budgets. For interpretation of Russian Constitution clauses Russian Constitutional Court does not maintain a single mindedness. Russian Constitutional Court includes the regulatory component into the federal power to taxes and does not include the same component into the regional power. This conclusion is followed from the above-mentioned Russian Constitutional Court's Ruling of 21 March 1997. Russian Constitutional Court pointed out that the imposition of taxes was empowered to the federal, regional and local authorities and that proposition was conformed to Articles 71, 73, and 132 of Russian Constitution. Then the Court wrote that the federal legislator imposed taxes under Russian Constitution and set not only the complete list

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<sup>54</sup> Roy Bahl, *Intergovernmental Transfers in Developing and Transition Countries: Principles and Practice*, The World Bank, Municipal Finance (April 2000), at 4 (Nov. 26, 2019), available at <http://www1.worldbank.org/publicsector/LearningProgram/Decentralization/ITFPrinciples.pdf>.



of all taxes, but also all components of tax liability regarding both federal taxes and regional and local taxes. The wording “power to imposition of taxes” has another legal sense with regard to the regional and local legislators. Russian Constitutional Court presumed the principle of limiting a regional taxes list determined by the tendency of tax law to unifying all taxes within the country. Taking this principle into account the governmental units are terminated to impose additional taxes and duties and increase tax rates. Imposition of a tax on the regional level means a power to the introduction of a tax and elaborate such components (or elements) of a tax as a taxpayer, taxable items, taxable base, tax benefits, rates, etc. But Russian Constitutional Court’s legal position has not been embodied into the current tax legislature explicitly. Under Article 12 of the Tax Code of the Russian Federation (the “Russian Tax Code”)<sup>55</sup> for imposition of a regional tax it should be elaborated that such elements of taxation, as a tax rate, a procedure and deadline for payment of a tax by the regional legislator in the case of a lack of the federal rules. This provision means that all components (or elements) of a regional tax may be elaborated on by the federal legislator and in this case the regional legislator is deforced of his constitutional right to impose a regional tax in the sense of the above-mentioned Russian Constitutional Court’s interpretation. In such a way, the regional legislator’s right to the introduction of a regional tax might be left alone within the constitutional power to regional taxes under Article 73 of Russian Constitution.

The contemporary doctrine of public finance law posits on the principle of uniformity. It is implied that public finance should be uniform at all governmental levels and this position should be considered as the implementation of the principle of uniform economic area by public finance law. Interpretation of that principle has affected both tax law and budgeting law and has changed the public finance system as a whole. A study of Russian Constitutional Court’s position allows us to presume uniformity of public finance in Russia. With regarding to the Russian budget system, Professor in public finance law, D. Komyagin, notices correspondence of the uniform budget system principle to the principle of harmonization. The latter is determined by the fact that every region needs interaction with the center and other regions. Komyagin adds that the principle of harmonization is specific for Germany, which had accomplished a difficult path to integration.<sup>56</sup>

Unfortunately, a sense of uniformity as a common legal category has not been explored by Russian scholars. If uniformity is understood as equality and non-discrimination in the USA, then uniformity is understood as “sameness,” “identity” in Russia. Uniformity means that all governments should act in the same order following

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<sup>55</sup> Налоговый кодекс Российской Федерации (часть первая) от 31 июля 1998 г. № 146-ФЗ // Собрание законодательства РФ. 1998. № 31. Ст. 3824 [Tax Code of the Russian Federation (Part One) of 31 July 1998 No. 146-FZ, Legislation Bulletin of the Russian Federation, 1998, No. 31, Art. 3824].

<sup>56</sup> *Комягин Д.Л.* Бюджетное право [Dmitry L. Komyagin, *Budgeting Law*] 60 (Moscow: Publishing House of the Higher School of Economics, 2017).



the federal pattern. However, not only habitual tendency towards centralization moves these processes, but also low a level of legal culture and financial discipline forces the federal legislator to govern more and more relationships at sub-national and local levels. It is vicious circle, because lack of real independence and financial autonomy discourages regional and local governments to improve public finance management.

However, uniformity as a common legal category is heterogeneous and used in different meanings. Russian Budget Code sets the uniform percentages from federal tax revenues for regional budgets, and the regional legislator is empowered to establish the uniform percentages from tax revenues of regional budgets and for local budgets as well (referring to so-called tax transfers). The differentiated percentages from tax revenues are possible in rare cases and only regarding specific tax revenues. These propositions are determined by the principle of governmental units' equality. Indeed, in this case uniformity means only equality, but not sameness. So, the Russian legislator knows and uses another meaning of uniformity, and this fact is not in favor of Russian Constitutional Court.

The interpretation of Russian Constitution clauses by Russian Constitutional Court affected all public finance legislation. Here, public finance legislation is understood as a set of separate laws on budgeting, public financial control and audit, taxes, other duties, and tax procedures. The principle of a uniform budget system is set in Russian Budget Code, Article 29. It means uniformity of budgeting legislation in the Russian Federation, uniformity of organization and functioning of the Russian budget system, the single forms of budgetary documentation and reporting, the single budget classification for revenues and expenditures, and the federal and single system of enforcement measures in the case of offences. According to Article 29, the uniform rules and order for occurrence and performance of financial obligations, revenue generation, spending, budgetary accounting and reporting exist in the Russian Federation. It should be noticed that the federal legislator uses the wording "the budgeting legislation of the Russian Federation" leaving no opportunity for the regional legislator to create "the budgeting legislation of a subject of the Russian Federation [a constituent unit of the Russian Federation]." Such combination of words is not random and indicates the process of centralization in the sphere of public finance. For example, the current legislation provides that enforcement measures and punishment for violation of budgeting laws can be established only by the federal legislator, but until 2011 the practice was different. Despite the fact that Russian Budget Code empowers the regional legislator to establish punishment for violation of regional laws on budgeting, since 2011 the regional legislator does not establish any responsibility. Meanwhile, the propositions of Russian Budget Code in this part are often the object of analysis by courts. The primary question that should be examined is what kind of measures have the regional legislator established. If it is the measure used by public financial control bodies, it should be regarded as illegal. If it is the measure



used by authorities administrating budget expenditures, it should be regarded as exercise of the regional authorities' powers to budget process. Such position we can see in the Russian Federation Supreme Court's Ruling of 11 July 2018.<sup>57</sup>

The process of centralization covers many aspects of public budgeting. In 2011–2013 this process covered public financial control and audit. In 2011 the Law on General Principles of Organization and Activity of Audit Institutes in Constituent Units of the Russian Federation and Municipalities was adopted. That Law established the general principles and uniform requirements to public audit institutes in governmental units, thereby the system of public audit was created. Then, in 2013 the whole system of public financial control was formed including external and internal public control at the federal, regional and local levels.

There are not only the powers to regulate centralized, but also even some powers to control budgeting. Currently, most regional governments have concluded agreements with Russian Treasury on servicing the regional and local authorities and controlling their financial transactions (the internal preliminary financial control). In fact, it is the delegation of the regional and local authorities in the sphere of public finance and budget process to the federal government. Such delegation may be voluntary or compulsory in the case of receipt of the general nonmatching transfers from the federal budget by volume of more than 40 percent of their own budget revenues.

The process of centralization covered not only the regulatory component, but also the material component – most of the money is concentrated in the federal budget and then distributed among regional and local budgets. Regional and local taxes cannot provide the performance of all or even a half of regional and local government's financial obligations. Professor Laurence Claus recognized that

the power to spend ultimately derives from the power to tax.<sup>58</sup>

He is absolutely right, but it is true for only developed countries and not relevant for developing countries, for the Russian Federation in particular. In Russia federal taxes and intergovernmental transfers form most regional and local budgets. Many scholars consider that this fact facilitates the Russian Federation's unity, because it is implied that if a governmental unit has financial autonomy it has a better chance of gaining full independence and leaving a country.

We suppose, formally the process of public finance centralization has started with the interpretation of Russian Constitution by Russian Constitutional Court. We do not exclude that such interpretation of Russian Constitution is a valid, but we suppose that

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<sup>57</sup> Апелляционное определение Верховного Суда Российской Федерации от 11 июля 2018 г. № 58-АПГ18-6 [Ruling of the Russian Federation Supreme Court of 11 July 2018 No. 58-APG18-6], Legal Reference System "ConsultantPlus."

<sup>58</sup> Claus 2001.



different interpretations may exist. It is proved by the practice of other federal states, the USA in particular, and the practice of the Russian Federation itself in period from 1993 to 1998. There are no direct constitutional grounds for the existing system of public finance in Russia. The whole system of public finance is based only on Russian Constitutional Court's understanding of some clauses of Russian Constitution.

For purposes of the paper public finance means relationships between a state or a governmental unit and other public actors regarding public funds generation and their expending. Public finance may be understood as a process directed to generation and expending of public funds for implementation of public objectives and functions. This concept still prevails in the Russian legal doctrine, despite the fact that public finance is analyzed as a public sector for resource allocation in Western economic and legal doctrine.<sup>59</sup> It explains the use of a flat rate for individual income tax in Russia – the progressive flat is not considered as a social transfer here; at least this point of view is not popular in the Russian legal doctrine. Public finance may be considered as a system of relationships mediating public funding to directly satisfy individual or collective needs of members of the community. Public finance covers not only the centralized public funds, such as government budgets and public off-budget funds (the Russian Federation Pension Fund and others), but also the decentralized public funds or other off-budget funds accumulated by government-owned entities. The federal legislator is empowered to govern almost all issues on decentralized public finances not included in the budget system. To a greater extent functioning of decentralized public funds is ruled by civil law. In Russia civil law is an exclusive power of the federal parliament. Public finance law rules some issues, such as accounting, reporting, and public financial control and audit. The regional legislator is deprived of the right to regulate all key questions on the regional off-budget funds because it is a sphere of economy and civil law principally. Concerning centralized public finance the regional legislator is empowered to regulate particular issues on regional budgets and taxes. However, the specific matters that a region might rule are less and less due to the process of centralization. So, we can observe that the regulatory component of financial powers of governmental units is being withdrawn by the federal center. Consequently, we consider that public finance laws are concentrated at the federal level of governing in Russia. If these processes are determined by the specific interpretation of Russian Constitution, as we suppose, other models of fiscal federalism are possible in Russia. Thus, decentralized fiscal federalism would not contradict or come into conflict with Russian Constitution in the conditions of another interpretation and understanding of clauses of Russian Constitution in relation to the principle of uniform economic area, or the powers of the federal and regional governments to budgeting and taxes.

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<sup>59</sup> Randall G. Holcombe, *Public Finance and the Political Process* 11 (Carbondale: Southern Illinois University Press, 1983).



## Conclusion

Professor of political science D. Kempton notes,

although Russia inherited a federal structure, it did not inherit a federal tradition.<sup>60</sup>

It is true, as noted C. Ross,

[c]entre – periphery relations in Russia have been determined principally by political and economic factors rather than constitutional norms.<sup>61</sup>

This paper proves the correctness of the latter citation successively.

Uniformity of a state's economic area as well as uniformity of public finance should be studied within the national unity as a whole. In the context of intention to conservation of the national unity and territorial integrity, the degree of centralization in the governing of different social relations is rising. The understanding of "uniform economic area" may be dictated by a relevant political situation. It is not a single understanding of uniform economic area neither in different countries, nor in national and international law. It has not been a single understanding of uniform economic area even in a concrete country for a long time because of the internal and external policies are variable. Broadening of the scope of the uniform economic area principle and covering public finance by this principle are stipulated by the tendency towards centralization. This thesis is confirmed by researcher T. Zametina, who points out that

continuing modernization of Russian federalism is following the line of strengthening the tendency towards integration and centralization in a state building.<sup>62</sup>

As the results of analyses of specific key rulings of Russian Constitutional Court in public finance law, we should conclude following:

– According to Rulings of Russian Constitutional Court the uniform economic area principle predetermines uniformity of the budget system and the tax system in Russia, wherein, uniformity is understood as sameness. Russian Constitutional Court interpreted the requirement to uniformity of the federal financial policy as a single financial policy for all governmental units, justifying the first thesis. The primary argument of Russian

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<sup>60</sup> Daniel R. Kempton, *Russian Federalism: Continuing Myth or Political Salvation?*, 9(2) *Demokratizatsiya: The Journal of Post-Soviet Democratization* 201 (2001). Cited by Ross 2002, at 175.

<sup>61</sup> *Id.*

<sup>62</sup> Zametina 2010, at 4.





Constitutional Court is the constitutional requirement to uniformity of economic area. But we consider that the principle of uniform economic area does not require uniformity of public finance in the meaning of sameness. The principle of uniform economic area should not limit the regional powers to govern regional taxes and budgeting. All countries implement the principle of uniform economic area, but not all countries implement the principle of uniform public finance;

– Uniformity in taxation may be understood differently. While in Russia, tax uniformity is understood as sameness and limits the power to tax governmental units, in the USA tax uniformity as a limitation of Congress' power to tax and is understood as a requirement to equality of governmental units. Meanwhile, states of the USA themselves intended to tax uniformity, and it is determined by the constitutional requirement to equality in taxation;

– The principle of state unity is a basic principle of every state. This principle dictates and causes some processes aimed at uniformity in different spheres including public finance. A state government may use different legal avenues to tax uniformity. There are two primary ways, the first way is to centralize the main part of financial powers of governmental units and ensure tax uniformity by federal laws, and the second way is to decentralize the financial powers of governmental units and ensure tax uniformity by the constitutional requirements to equality which may be ensured and protected by a treaty or other legal measures applied by governmental units;

– The current model of fiscal federalism in Russia is based not on the direct requirements of the Russian Federation Constitution, but on the debatable interpretation of some clauses of Russian Constitution by Russian Constitutional Court. The analyzed Rulings formed the constitutional grounds for Russian Budget Code and Russian Tax Code in force. Russian Budget Code of 1998 established the principle of uniform budget system, and Russian Tax Code (Part One) of 1998 established the single list of federal, regional and local taxes and limited the regional power to taxes. The legal position of Russian Constitutional Court creates legitimacy and constitutionality for uniform budgeting and taxation in Russia;

– Models of fiscal federalism are differentiated by criterion of a degree of financial autonomy, i.e. by content of financial powers to expenditures and taxes of governmental units. Another model of fiscal federalism is possible in Russia. This model may be characterized as a model of more degree of financial autonomy for governmental units. Any degree of decentralization is not in conflict with the current Russian Constitution. This thesis is proved by rigorous analyses of arguments of Russian Constitutional Court and the existence of other intergovernmental relations during the period from 1991 to 1997 in Russia. The historical replacement of the fiscal federalism model was caused not by constitutional requirements, but by the political decision and necessity of ensuring Russian unity;

– Russian Constitutional Court's Rulings, that had been analyzed, caused the continuous process of centralization in public finance. Russian Constitutional Court





has broadened the scope of the uniform economic area principle and formed the legal grounds for single public finance law as a set of legal norms, including budgeting and tax laws, the exclusive federal administration of all taxes in the country, and the exclusive federal cash administration for all budgets. Recently, the process of centralization affected public financial control laws. In 2011 the Federal Law on external financial control in regions and municipalities became effective, then, in 2013 internal financial control at all governmental levels was made uniform by amendments to Russian Budget Code;

– In Russia the process of centralization in public finance affects predominantly the regional powers to govern regional taxes and budgeting. Therefore, we can consider centralization of public finance law, which means creation the single public finance law for all constituent entities in Russia.

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