

THE ROLE OF THE PREDECESSORS IN THE DEVELOPMENT OF THE CONTEMPORARY FINANCIAL LAW

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Abstract

The „judicial phenomenon” which regulates the sphere of public finances, the complex problems raised through it, accentuates the dynamics of this domain which had developed intensely among the years.

Today the existence of financial law is an unquestionable reality, but by its outlining as an autonomous discipline a series of theorists and practitioners had contributed and their role must be accentuated.

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Through the years professors and specialist like G. N. Leon, I. Cojocaru, G. Zane, C. Tăutu, I. Rădulescu, R. Peretz, I. N. Stan, I. Lupascu, I. Răducanu have contributed to the foundation of financial science and financial law¹, taking into consideration the complexity of this domain which studies the problematic of financial institutions and relations.

We have to notice that taking into consideration the legal regulations which contain dispositions that are applicable to social connections from this domain, the judicial science of public finances contains and elaborates the following categories of judicial norms: financial judicial norms and fiscal judicial norms - these two being in a close relationship.

The studies of professor I. Cojocaru² elaborate mainly the domain of fiscal law, its norms and principles, the importance of fiscal law among the laws and not at least insists upon the autonomy of the discipline of fiscal law, based on the following considerations:

- Fiscal law is based on an own system of fundamental judicial principles which create its unity and independence;
- Taxation law is a law of public power;
- The origin of the judicial fiscal relation is the law (the obligation to pay taxes being a legal one, originating from the law, independent from the will of the tax-payer).

¹ Important role in the outlining and development of the *judicial science of public finances*;

² **I. Cojocaru, *Dreptul fiscal si obligatiunea de impozit: studii de doctrina si legislatie fiscală*, Bucuresti, Editura Administratiei Fiscale, 1936;**

The professor of the Faculty of Law from Iasi, G. Zane had structured his lecture of Fiscal law³ according to the following aspects: *the study of direct taxation in Romani*, based on the analyze of advantages and disadvantages of the proposed solutions by the fiscal reform from 1921; *general principles of the direct taxation*; *the main direct taxes*, for example the agricultural taxes, the taxation of buildings, of salaries, of personal goods; *administrative-fiscal aspects*; *the analyze of the system of direct taxation from European states like France, United Kingdom, Italy*.

An other author who accentuates the importance of studying fiscal law was “the general inspector of finances”, C. Tăutu⁴. His work is mainly addressed to the practicing, but taking into consideration the concise character of the information and the accessible language used in these, we can affirm that it constitutes a useful “instrument” even for students who are willing to research among other things: the financial and fiscal terminology, the evolution of direct taxation in Romania; aspects regarding to the declaration obligations of the tax-payers, technical aspects regarding to the disposal and perception of the salary taxation; the problem of avoiding double taxation.

An other author who recognizes the diversity of the domain of financial legislation and sustains the autonomy of fiscal law is I. M. Rădulescu⁵, invoking in the benefit of his conception also the fact, that the evolution of doctrines and the movement of contemporary ideas had contributed to the specialization of the judicial disciplines.

This way, fiscal law is defined as being “the branch of public law which is preoccupied with the norms according to which the organs of fiscal administration is organized in order to realize the necessary incomes for the functioning of public services, resulting from taxes”.

R. Peretz, in his work *Biruri la români*⁶ notices the risks of fiscal fraud generated even by the great number of regulations in the fiscal domain (disposition which are often contradictory, a great diversity of contributions contained by different fiscal laws). The author recognizes the fundamental role of researching the dimensions and the implications in the society of fiscal evasion, so that based on these, the efficient actions and measures of prevention and combating can be established.

Among the specialists of the analyzed domain we must focus our attention also on the studies of I. N. Stan, who using a synthesizing of information presents us the modalities of making more efficient the fiscal administration in the period of economic crisis. The author invites those who are interested to study a real „guide of fiscal administration”⁷ - useful not only for the tax-payers but even for the fiscal organs (stimulating these to lead „an intense and fair activity in the domain of fiscal administration”). His varied creation contains researches like: „*FinanTele locale în cadrul economiei publice*” (1933), „*Controlul financiar*” (1934), „*Impozitul pe veniturile întreprinderilor comercialesi industriale*” (1934) etc.

³ G. Zane, *LegislaTie fiscală romînăsi comparată*, curs predat în anul 1936-1937, Iasi, Editura Institutul de Arte Grafice „Albina Romînească”, 1937;

⁴ C. Tăutu, *Impozitele directe în România*, Bucuresti, Atelierele Grafice SOCEC, 1939;

⁵ I. M. Rădulescu, (doctor in political-economic sciences), *FuncTiunea jurisdicTională în dreptul fiscal*, Bucuresti, Tipografia I. C. Văcărescu, 1938;

⁶ R. Peretz, *Biruri la români*, Bucuresti, Editura Vremea, 1938;

⁷ I. N. Stan, *Fraudesi sancTiuni fiscale*, Bucuresti, Editura de Lucrări Financiare, 1935;

In the frame of the „High Academy of Commercial and Industrial Studies Bucharest”, professor I. Răducanu sustained a lecture of „Finances”, occasion through which he affirms his persuasion regarding to the importance of financial science, insisting to present the incidental legislation in the domain. He also attracts the attention of the legislators upon the high “challenge” of the evasion phenomena.

Also, for the correct interpretation and application of the financial legislation, we must consider the work of I. Lupascu entitled „*Legile financiare rezumate si sistematizate metodic completate cu tablouri sinoptice pentru întrebuintare practicăsi rapidă*”⁸. The research presents itself under the form of a practical manual which can be used by fiscal organs in case of the activity of some fiscal inspections. The this way summarized laws are those for the unification of fiscal procedure, the law of direct contributions, the law of taxation on luxury and on the amount of incomes, the law of the taxation of shows, respectively the law of taxation of vehicles.

Professor Gheorghe N. Leon had important contributions in the domain of public finances and the eloquent expression of his intense scientific activity are represented by his works of references which had crowned his didactic activity and even his political activity, both remarkable, proving his high professional status. The study of works of Gheorghe N. Leon presents great importance because his ideas and concepts were and are adopted and analyzed by both theorists and practitioners, economists and jurists.

Having elaborated knowledge of specialty and showing a great interests for the research of economic-financial problems (including the legislative aspects in this matter) Gheorghe N. Leon explored a variety of subjects, fact that offered him the attribute of draftsman of knowledge and educator of many jurists and economists.

The complex sphere of public finances was approached in the work „Elements of Financial Science” (1925) - the first Romanian treaty of financial science, where, based on some detailed researches, the author had created: *in the first volume*, a history of public finances, a detailed presentation of the structure and evolutionary perspectives of the public incomes and expenses and also created a radiography of the announced reform of the system of indirect taxes, and in *volume II* there are compromised conceptual clarifications upon the notion of budget and it’s execution, respectively upon the notion of public credit.

From the economic-financial doctrine we take the idea that to the notion of public finance there were attributed more meanings, according to the dimensions considered to be significant for it’s definition. This kind of activity had developed professor Gheorghe N. Leon, who had written that „the economic activity, arranged according to a certain order, which aims for procuring and usage of goods for collective needs is named *financial economy*, and the study of financial economy is called *financial science*. In other words, financial science is preoccupied with the administration of the state or of other public organizations: provinces, districts, villages, etc.”⁹ In the earlier mentioned work there is also interesting the approach of theories regarding to the establishment of the judicial nature of the budget of the state - beginning with it’s consideration as being an administrative document, a legislative document or a law, or

⁸ Published in Bucharest, Editura Bucovina, 1939;

⁹ G.N. Leon, *Elemente de  tiin ă financiar *, Cluj - Napoca, Editura Cartea Rom neasc , 1925, pp. 5-6;

having all these features. After the presentation of the doctrinal opinions and from the point of view of revealing some jurisprudential aspects, Gheorghe N. Leon have reached the conclusion that the budget of state from Romania had the character of a document of foresights regarding to the part concerning with incomes, and it's administrative character was even more accentuated in the part concerning with expenses. Also, the author presented the importance of respecting some regulations/principles in the matter of creating budgetary incomes, among which collecting the taxes, fees and other contributions only according to law (making a reference in this matter to the text of the fundamental law, the Constitution of Romania from 1923 which had foreseen in article 109 that „no tax of any kind can be established only based on a law”).

Gheorghe N. Leon had a great contribution also regarding to the presentation of the historical evolution of the Romanian public finances, publishing the work „The history of the public economy of the Romanians” (1924), in a moment when the financial history of the Romanian state was not very well-known. The author shows that at that moment the referential works in this matter were written by N. Iorga and Xenopol (though including some doctor's degree thesis or license works), but all the documentary sources were referring to the period of 18th, 19th and 20th century, so that the period before the establishment of the Romanian Principalities, the one between the establishment of these and until the Phanariot period, were not present in these works. The option for the title of this work is firmly motivated by the author, who had written that in case when he would be occupied with „the structure of the financial economy of the Romanians, only beginning with the establishment of the Principalities”, there would be more opportune the title „The history of the Romanian Finances” because only beginning with that period we can talk about concrete relations between the competent authority in the domain (fiscal), on one side and the Romanian tax-payer on the other side, but taking into consideration that he had also chosen to analyze the contributions due by the Romanians under the domination of foreign power, he had chosen the more comprehensive variation of the history of public economy¹⁰. Under the aspect of research and processing methods of his own works, Gheorghe N. Leon promotes analyze and synthesis, induction (based on perception of facts) and deduction (based on generalizing the consequences of certain facts), the statistic method, etc. even more, the professor reveals the fundamental importance of the research methods in the scientific process, stating that: „method is indispensable for the scientific research. Without it's help the most elementary truths can be ignored by our attention. No one must trust in good judgment, in the brilliance of the intelligence ... because one with no so much intelligence, but armed with a good method will succeed easier, than one with a special intelligence and without any method”¹¹. From the approached studies we can observe, that professor Gheorghe N. Leon promoted in his expositions from the professor's chair the use of all the theories (regardless of the fact whether these are or not in concordance with his principles or concepts, implying his political views - being a doctrinaire of the liberal movement - we mention here the

¹⁰ Idem, *Istoria economiei publice la români*, Bucuresti, Editura Cultura Națională, 1924, pp. 7-8;

¹¹ Idem, *Cum se scrie o carte. Cu privire specială la economia politică*, Bucuresti, Editura Cartea Românească, fără an, pag. 85;

lecture „The economic politics of the National Liberal Party” sustained in Bucharest in the Liberal Club) just because of his wish to cultivate an adequate environment, based on scientific knowledge.

In conclusion, we can affirm that the financial discipline have evaluated continuously, suffering some changes and through their prism and those of the researches of specialists its contain have enriched, reaching the thing which is represented nowadays by *public financial law*.

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