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## **ONCE MORE ON THE LEGAL IDENTITY OF THE BANK OF RUSSIA**

It is well known that the Bank of Russia is on the one hand entitled to perform various civil legal transactions, i.e., it is a subject of civil law, and on the other hand it possesses authoritative legal powers in relation to the Russian Federation’s lending institutions, i.e., it is a subject of public law. Therefore, various representatives of Russian legal science are attempting one way or another 1) to establish the legal nature of this body as a subject of civil law, and 2) to find its place in the system of the Russian Federation’s authoritative bodies.

An analysis of the legal position of the Bank of Russia in comparison with the theoretical constructs of various forms of legal entities known under the Russian Federation Civil Code does not permit its unambiguous placement among any of them. The legal nature of the Bank of Russia in the form in which it ensues from the current wording of the Law on the Bank of Russia may be established as follows. The Central Bank of the Russian Federation is a commercial organization that possesses, uses, and administers federally owned property by a special proprietary right not known under the Russian Federation Civil Code. The commercial activity of the Bank of Russia is combined by it with the performance of functions involving the administration of the Russian Federation’s credit system. Thus, the Bank of Russia has a dual legal nature: On the one hand, it is a legal entity performing entrepreneurial (banking) activity, and on the other it performs administrative functions.

Meanwhile, the list of legal entities contained in the Russian Federation Civil Code is comprehensive. The problem raised may be solved in two ways. First, appropriate amendments may be made to the Law on the Bank of Russia, and the legal position of the Central Bank of the Russian Federation may be brought into conformity with any construct of a legal entity that is closest to the intent of the authors of the relevant draft law. However, this way [leads] to radical changes not only in the Bank of Russia itself but also in the system of administration of the entire credit system. It appears that today society has tired of revolutionary transformations and is not ready for them. Therefore, the choice of another

way is proposed. Secondly, one may make the relevant amendments to the Russian Federation Civil Code and legalize all of the particulars of the legal position of the Bank of Russia as a legal entity that actually exist at present. The above proposal is equally applicable both in relation to the current wording of the Law on the Bank of Russia and in relation to the majority of known draft laws on amendments and addenda to it. Practically all of them, except the draft law of G. V. Kulikov, are of a “commercial” nature, and only a few alter the legal regulation of the activity of the Russian state’s central bank.

At one time, in connection with the sensational story of the falsified Chechen bank memos, when billions of sums of money were debited from the correspondent accounts of many commercial banks, the practice of the Russian Federation Constitutional Court gave rise to one theoretical problem whose resolution would decide the fate of a concrete petition submitted to this court. It was necessary to answer the question whether or not the Central Bank of the Russian Federation is a state administrative body. It was a question of a declaration of the unconstitutionality of certain telegrams of the Bank of Russia in which it instructed its institutions to perform a debit without recourse from commercial bank accounts of sums entered under falsified bank memos. If the Bank of Russia is a state administrative body, then the court may accept this petition for review. If not, the petition is not reviewable. Thus, a raised theoretical problem may at times acquire an entirely concrete, practical orientation.

No one disputes that the Bank of Russia exercises administrative powers, but the capacity in which it operates is unclear from the Law on the Bank of Russia: as a state administrative body or in some other capacity.

The legal literature expressed the following points of view in relation to the problem raised. First of all, the Bank of Russia was cited as a state administrative body of special competence.<sup>1</sup> Secondly, in the opinion of G. A. Tosunyan and A. Yu. Vikulin, the Central Bank of the Russian Federation is a federal body of state authority that is not included in the system of federal bodies of legislative, executive, and judicial authority and that exercises its powers independently of them. The competence of the Bank of Russia to administer the credit system is cited by authors as a “fourth authority” that exists along with the legislative, executive, and judicial authority.<sup>2</sup> Third, in the opinion of Ya. A. Geyvandov, the Bank of Russia is a state administrative body but at the same time is not included in the system of bodies of state authority.<sup>3</sup>

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<sup>1</sup> Yefimova, L. G. “The Characteristics of the Legal Position of the Central Bank of the Russian Federation.” The Legal Regulation of Banking. Moscow. YurInfoR. 1997. p. 20.

<sup>2</sup> Tosunyan, G. A. and Vikulin, A. Yu. “On the Issue of the Status of the Bank of Russia.” Money and Credit. 1998. No. 9. pp. 10-13.

<sup>3</sup> Geyvandov, Ya. A. The Central Bank of the Russian Federation. Legal Status.

It appears that the point of view of G. A. Tosunyan and A. Yu. Vikulin that the Central Bank of the Russian Federation is a fourth authority does not coincide with the Russian Federation Constitution, Article 10 of which stipulates only the legislative, executive, and judicial authority. In so doing, any mention of a fourth authority is absent. An analysis of the administrative functions of the Bank of Russia, whose main content is the administration of the credit system, also leads to such an opinion. In the process of performing this activity, the Central Bank of the Russian Federation is entitled to publish legally binding regulations. Thus, the nature of the activity of the Bank of Russia is comparable to the activity of bodies of executive authority; however, the Russian Federation's central bank is not included in their system. Therefore, the point of view that the Bank of Russia is a state administrative body but at the same time is not included in the system of bodies of executive authority and performs its functions independently should be recognized as just.