Branches of Law under the Russian Civil Code  
(with Special Attention to Labor Law)

Ger P. van den Berg (†)

Branches of Law
The most common definition of a branch of law in Russia is that it is the totality of rules regulating a certain kind of social relationship. Each branch unites the legal rules regulating one particular type of social relationship. According to their content, these social relationships may be financial, ecological, land or labor, etc.¹ This definition—going back to discussions in the USSR in the 1930s—puts the main accent on these relationships that are reflected, consolidated, and protected by the law. Some branches distinguish themselves from the others because the method of regulation stands out as central. Other fields of law may be called “complex branches” and use parts of other branches.²

In many present-day continental (civil law) legal systems, the idea is that a strict distinction between public and private law does not exist—or, in any event, is rather marginal. The state must have certain special powers e.g., in the field of defense or for the maintenance of public order; but, in principle, the state is an actor within society and does not stand above society. The most important aspect of the distinction is that in the field of public law, the requirement of the Vorrang des Gesetzes is fairly strict: the state does not have any power vis-à-vis private persons (save for certain, exceptional situations) unless its powers are based on a law, describing the conditions under which this power may be used. As far as the citizen is concerned, a principal difference between his/her legal possibilities—such as going to court—in public or private law no longer exists (although even in such documents as the European Convention on Human Rights, a certain distinction can be seen between judicial protection in public and private law matters [Art.6, ECHR] and, also, between the legal protection accorded natural persons and legal persons).

The Russian Constitutional Court has drawn a very strict distinction between public law and private law in its Fiscal Police ruling (17 December 1996).³ It was called upon to review the constitutionality of the existing

---

³ Rossiiskaia gazeta 26 December 1996; Sobranie zakonodatel’stva Rossiiskoi Federatsii
procedure for the summary collection (в бесспорном порядке) by the tax service and the tax police of taxes from private, commercial legal persons. Tax law is a part of public law; generally, the state is free to establish rules for the collection of taxes. Thus, it may provide that the tax authorities may collect the taxes from the bank account of the taxpayer—even where the taxpayer objects thereto. However, this is as far as commercial legal persons are concerned because they have separated or distinct (особленные) assets, destined only for their commercial activities. They may not dispose freely of their property, because they forfeit a part of the money to the state in the form of taxes. In this respect, these persons enjoy a certain legal protection only if this is provided for in the law, but this does not affect their right to judicial protection: they always can approach a court for review of the legality of acts of the tax authorities (Art. 46, RF Constitution). As far as natural persons—who are individual entrepreneurs—are concerned, they do not have separated assets for their commercial activities; rather, they have only one mass of property which they also use for their personal business. If the tax authorities have direct access to their bank accounts, this would amount to administrative interference in the rights of an individual and, therefore, would extend beyond the framework of the fiscal (public-law) relations and intrude into civil-law ones in which power and subordination relations (state to individual) do not exist. Therefore, the fiscal authorities may not enjoy direct access to the bank accounts of these natural persons.

Thus, in analyzing the relationships at issue, the court concluded that where only public-law relations play a role, the state is basically free in its regulation of the question. But if individual rights also play a role, the state must balance the various public-law and civil interests, and this may (has to) result in a different form of judicial protection. Therefore, the rule that—as

4 This procedure of the summary collection of funds from a bank account was widely applied by creditors in the past. The list of documents for which this is possible was established by RSFSR decree of 11 March 1976, Sobranie Postanovlenii Pravitel'stva RSFSR 1976 No.7 item 56 (as amended 1986 No.2 item 10, No.9 item 72; 1992 No.6 item 27). It was still widely used by the fiscal service in the 1990s (in 1995: 278,000 times); for them, in many cases, a court judgment is not necessary. The question was discussed by the Plenum of the Higher Arbitrazh Court in October 1993 as far as fines for ecological violations were concerned. The Plenum still deemed it possible in those cases, I. Karpenko, “Аrbitrazh oblachaetsia v mantii,” Izvestiia 23 October 1993; Finansovye izvestiia 1996 No.38, 9 April. Prior to the adoption of the 1992 Arbitrazh Procedure Code that regulates the court proceedings in commercial disputes before the arbitrazh courts, the courts could apply the law on ownership in case of an unlawful act of a tax inspector. See V.V. Vitrianskii, E.A. Sukhanov, Zashchita prava sobstvennosti, Moscow 1993, 40.