

<https://doi.org/10.61345/2734-8873.2024.3.8>

CONSTITUTIONAL REGULATION OF ECONOMIC RELATIONS: INSTITUTIONAL ANALYSIS

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Annotation. The modern theory of constitutionalism considers the constitutional system as a basic element of the state system, which determines the fundamental principles of the organization of social and state life. In this system, the economic system appears as an integral component that establishes the basic principles of economic functioning and the nature of economic relations in the state. The study of the theoretical and legal aspects of the interaction of the constitutional and economic system in the context of modern global economic transformations is of particular relevance.

The study reveals a systematic analysis of the economic component of the constitutional system through the prism of its theoretical and legal understanding. The historical development of conceptual approaches to the interpretation of the constitutional system, its relationship with the categories of social and state systems is considered. The place of the economic system in the structure of the social system is determined along with other key components – political, social and cultural.

Based on a comprehensive analysis, it was established that the economic system is a historically formed complex of principles and normatively established rules that regulate economic relations in the process of production, distribution, exchange and consumption. The constitutional and legal mechanisms for regulating economic relations and their impact on the development of the economic system were studied. A complex interdependence between the constitutional system and the economic order was revealed, where constitutional norms outline the legal framework of economic activity, and economic processes influence the implementation of constitutional principles.

In the context of globalization and economic integration, the search for the optimal balance between state regulation and economic freedom, between the protection of national interests and international economic cooperation, is of particular importance. In the context of European integration, the need to adapt national legislation to European standards in the field of constitutional and legal regulation of economic relations is emphasized.

Key words: constitutional order, economic system, constitutionalism, constitutional economy, economic order, constitutional and legal regulation, state regulation of the economy.

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Problem statement. The constitutional system is a fundamental category of modern constitutionalism, which determines the basic principles of the organization of the state and society. An important component of the constitutional system is the economic system, which establishes the basic rules for the functioning of the economic system and determines the nature of economic relations in the state. In the context of global economic challenges and the transformation of economic systems, the study of the theoretical and legal principles of the relationship between the constitutional and economic systems is of particular relevance.

In modern conditions of state development, the problem of ensuring the effective functioning of the economic system within the framework of the constitutional system is of particular importance. This is due to the fact that the economic system not only determines the principles of management, but also directly affects the implementation of social rights of citizens, ensuring the economic security of the state and its sustainable development. The constitutional consolidation of the main elements of the economic system creates a legal foundation for the development of economic relations and the protection of economic rights and freedoms.

It is quite clear that today, the study of the economic system as a component of the constitutional system acquires particular importance precisely in the context of European integration processes and the need to harmonize national legislation with European standards. An important aspect is also the search for the optimal balance between state regulation of the economy and ensuring economic freedom, between the protection of national economic interests and openness to international economic cooperation. This necessitates a comprehensive theoretical and legal analysis of the relationship between the constitutional and economic system in modern conditions of state formation.

An analysis of recent studies indicates a significant interest of scientists in the issues of the constitutional and economic system. The theoretical and practical aspects of the constitutional system and its components have been the subject of research by many domestic scientists. In particular, D. Byelov in his works considers the constitutional system as the main element of constitutionalism and explores the structure of the norms that consolidate its foundations [1; 9]. Methodological aspects of constitutionalism and its relationship with the constitutional system were studied by I. Slidenko [2] and M. Savchyn [4].

Fundamental provisions on the essence and content of the constitutional system are revealed in the works of V. Pohorilko and V. Fedorenko [5], Yu. Shemshuchenko [6], Yu. Todyka [7] and V. Shapoval [8]. Their studies laid the theoretical foundation for understanding the constitutional system as a complex legal phenomenon and its relationship with other constitutional and legal institutions.

The economic component of the constitutional system and the features of the constitutional and legal regulation of the economic system were studied by K. Babenko [10], who focused on the constitutional foundations of the

development of the economic system of Ukraine, and P. Dobrodumov [12], who analyzed the constitutional and legal foundations of the economic system. Practical aspects of the relationship between the economic constitution and the financial and economic activities of the state were considered by B. Andrushkiv, N. Kyrych and I. Stoyko [11].

The purpose of the article is a theoretical and legal analysis of the economic system as a component of the constitutional system of the state, the determination of their interconnection and mutual influence, as well as the study of the mechanisms of constitutional and legal regulation of economic relations. Special attention is paid to the analysis of the constitutional principles of the economic system, their implementation in modern conditions and the impact on the development of the economic system of the state.

Presentation of the research material. First of all, we note that the “constitutional system” is an integral part of “constitutionalism” as a broader concept. It reflects the specific structure of the state and society and “means the transformation of a theoretical model into a political and legal reality” [1, p. 25].

In general, in a modern state, the democratic form of government is inextricably linked with the concept of constitutionalism, it is he who acts as the fundamental basis that reveals both the theoretical principles of democratic governance and the mechanisms of its practical implementation. For the effective functioning of the system of constitutionalism, it is necessary to adhere to the basic principles and use the appropriate legal instruments [2, p. 136]. At the same time, the theoretical development of the concept of constitutionalism has significant methodological significance not only for constitutional law, but also for the entire system of legal sciences, its development directly affects legal practice and the evolution of social relations. In the context of the development of Ukraine as a state based on the rule of law and the formation of civil society, the study of the issues of constitutionalism is becoming particularly relevant, as a new paradigm of Ukrainian constitutional development is being formed [3, p. 102].

The concept of constitutionalism occupies a central place in modern constitutional law science, it is actively used to characterize the state system, assess the organization of state power and analyze constitutional practice both in Ukraine and in foreign countries. In addition, according to M. Savchyn, the idea of constitutionalism is based on the constitutional tradition, the sovereignty of the people, the separation of powers, legal succession (continuity) and judicial control over the legal content of acts of government bodies. Legal succession means the preservation of national traditions of constitutionalism, their multiplication on the basis of changing specific historical reality, real constitutional legal relations. The essential content of legal succession is the criterion of increasing the “catalog” of fundamental rights and freedoms, as well as expanding the procedural possibilities for their protection in order to ensure a decent life for the individual. Etymologically, the concept of constitutionalism can be defined as the duration, continuity

in time of certain constitutional phenomena and processes, in particular the long-term perception and reproduction of individual legal decisions, as well as the subordination of political decisions to social values, which are provided by constitutional protection [4, p. 17].

Thus, the “constitutional system” together with the concept of “constitutionalism” are key system-forming categories that determine both the theoretical paradigm of constitutionalism and the practice of constitutional and legal development of the state. In terms of logical generalization, the concept of constitutional order is the most comprehensive in the science of constitutional law, since its objects of study coincide with the general subject of this branch of law, it is this feature that gives scientists grounds to define constitutional order as the main integrating and limiting category of constitutional law science.

We note that at present it does not require additional proof that a clear distinction should be made between the concept of “constitutional order” and the categories of “social order” and “state order”, which were characteristic of Soviet state law and legislation. Such differentiation reflects a significant transformation of approaches to understanding the foundations of the organization of the state and society in the post-Soviet period. At the same time:

- according to the definition of V. Pogorilka, the constitutional order is a system of social relations that are enshrined and guaranteed by the constitution of the state and legislative acts adopted in accordance with it and on its basis [5, p. 100];
- according to Yu. Shemshuchenko, the constitutional order is by its nature a special type of constitutional and legal relations, which is determined by the achieved level of development of society and the state [6, p. 11];
- in legal science one can find justification for the position that the concept of the constitutional order evolved from the concepts of social and state order, which preceded it historically [7, p. 8–11],
- the constitutional order can also be defined as a complex system of legal relations that are established and guaranteed by the constitution of the state [8, p. 50].

Thus, the concept of “constitutional order” together with “constitutionalism” are fundamental elements that form the basis of constitutional theory and practice. At the same time, among all the terms of constitutional law, it has the broadest meaning and the highest level of generalization, the scope of its study covers the entire spectrum of issues studied by constitutional law. That is why legal scholars define “constitutional order” as a basic unifying and comprehensive category in the science of constitutional law. According to D. Belov, it is important to distinguish between the concepts of “constitutional order” and “state order”, where the latter is narrower in content. The main difference is that a constitutional order is impossible without a constitution and necessarily includes such elements as popular sovereignty, the electiveness of power, the separation of state powers and the inviolability of human rights and freedoms, while a state order can exist without these features. In addition, the scientist notes that in legal science, the study of

the constitutional order began at the beginning of the Soviet period, but this topic was especially actively studied after the adoption of the Constitution of the USSR in 1936, the first chapter of which was called "Social Order" – it was then that the issues of the concept and constitutional content of the social order were considered in detail [9, p. 31]. The constitutional order, notes the scientist already quoted by us, is an integral part of the social order, which is directly related to the constitutional regulation, implementation and protection of constitutional norms, in fact, the constitutional order covers that part of the social order that is directly regulated by constitutional foundations. The history of constitutional legislation shows that it reflects only certain aspects of the social order, therefore it is important to determine the features of the constitutional (state and legal) content of the social order. At the same time, the researcher emphasizes that the role of constitutional legislation is not limited only to the regulation of state power, because power affects all elements of the social order and at the same time is itself its component, reflecting its main characteristics [1, p. 25].

Thus, in Ukrainian constitutional law, an evolution of terminology took place, when the concept of "social order" was replaced by "constitutional order" – a term that some scholars began to use back in Soviet times. At the same time, we cannot fail to note that a number of scholars express doubts about the appropriateness of using the term "constitutional order", pointing to two main problems: the possibility of its ambiguous interpretation and the unclear reflection of the reality that the norms of constitutional law should regulate, that is, if we understand the "constitutional order" as a system created by the constitution and analogous to civil society, then this contradicts the very concept of civil society, which by its nature should stand above the state and be free from state regulation [5, p. 45].

Within the scope of our research, we note that the constitutional system and the economic order are fundamental categories that determine the architecture of the modern state and its socio-economic development. Their interconnection and interdependence form a complex system of relations, where constitutional norms establish the legal boundaries of economic activity, and economic processes, in turn, influence the implementation of constitutional principles and the provision of citizens' rights. In the context of globalization and increasing economic integration, the study of the mechanisms of interaction between the constitutional system and the economic order becomes particularly relevant. This interaction is manifested through a system of constitutional and legal norms that regulate economic relations, establish the principles of economic activity and determine the limits of state intervention in the economy.

The social order consists of several interconnected subsystems, among which the economic one plays a particularly important role. Thus, according to the definition of V. Pogorilka, the social order is a complex system that includes political, economic, social and cultural (spiritual, ideological) subsystems, while the economic system is defined as a set of basic forms of ownership and economic activity [5, p. 44].

Analyzing the influence of the Constitution of Ukraine on the development of the social order, it is necessary to pay special attention to the constitutional principles of the economic system. The relevance of this issue, according to the correct statement of K. Babenko, is due not only to the modern problems of legal regulation of economic relations in Ukraine, but also to the fact that the economic system is considered a basic system-forming element of the social order. It is significant, the scientist notes, that within the framework of constitutional law, the direction of “constitutional economics” is distinguished, which studies the principles of constitutional regulation of economic relations and the influence of constitutional norms on the development of the economic system. It is important to understand that constitutional norms can both stimulate economic development and inhibit it, entrenching outdated forms of economic relations [10].

The Constitution of Ukraine, notes creates a legal basis for implementing political and economic transformations in the direction of building a state on the principles of national democracy. However, the modern political situation demonstrates that all political forces in Ukraine operate within the framework of one political paradigm, while the opposition (regardless of ideological orientation) does not fulfill its traditional role as a defender of people’s interests or an alternative vision of the state system. This indicates an urgent need to improve the existing system of state power and mechanisms for managing the economy [11, p. 4].

The economic system of society, notes P. Dobrodumov, is defined as a historically formed set of principles, rules and legally enshrined norms that regulate the main economic relations in the processes of production, distribution, exchange and consumption of economic goods. Despite the fact that each country has its own specifics of the economic system, which is formed under the influence of various factors, traditionally three main types are distinguished: free (pure) market, mixed economy and centrally planned (command) economy, however, such a division is conditional, since practically all economic systems are mixed, that is, they combine elements of market and state regulation, and their classification is carried out precisely on the basis of the ratio between state and market mechanisms of regulation [12, p. 33].

Conclusions. Thus, the conducted theoretical and legal analysis allows us to state that the constitutional system is a fundamental category of modern constitutionalism, which, together with the concept of “constitutionalism”, forms the basis of constitutional theory and practice. At the same time, it is important to distinguish between the concepts of “constitutional system” and “state system”, where the latter is narrower in content and can exist without such mandatory elements of the constitutional system as popular sovereignty, elected government and separation of state powers.

The economic system is one of the key subsystems of the social order, along with the political, social and cultural. It is defined as a historically formed set of principles, rules and legally established norms that regulate the main economic relations in the processes of production, distribution, exchange and consumption of economic goods. Of particular importance is

the separation within constitutional law of the direction of “constitutional economics”, which studies the principles of constitutional regulation of economic relations.

In the context of globalization and increasing economic integration, the relationship between the constitutional order and the economic system is manifested through a system of constitutional and legal norms that regulate economic relations, establish the principles of economic activity and determine the limits of state intervention in the economy. At the same time, constitutional norms can both stimulate economic development and inhibit it, entrenching outdated forms of economic relations.

References:

1. Byelov D.M. Konstytutsiyni lad, yak osnovnyi element konstytutsionalizmu. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Serii «Pravo». 2011. Vypusk 17. S. 24–28. [in Ukrainian]
2. Slidenko I.D. Do problemy nominalnoho ta realnoho konstytutsionalizmu, teorii «Reine Rechtslehre» y ontolohii konstytutsiinoho kontroliu. Problemy filosofii prava. 2008-2009. Tom VI-VII. S. 135–146. [in Ukrainian]
3. Byelov D.M. Reformuvannia konstytutsiinoho ladu: pozytyvy ta nehatyvy. Chasopys Kyivskoho universytetu prava. 2012. № 1. S. 101–105. [in Ukrainian]
4. Savchyn M.V. Konstytutsionalizm i pryroda konstytutsii: Monohrafiia. Uzhhorod: Polihraftsentr «Lira», 2009. 372 s. [in Ukrainian]
5. Pohorilko V.F., Fedorenko V.L. Konstytutsiine pravo Ukrainy: Pidruchnyk / Za zah. red. prof. V.F. Pohorilka. K.: Naukova dumka; Pretsedent, 2006. 320 s. [in Ukrainian]
6. Konstytutsiine pravo Ukrainy. Akademichniy kurs: Pidruchnyk: U 2 t. T. 2 / Za zah. redaktsiiei Yu.S. Shemshuchenka. K.: TOV «Vydavnytstvo «lurydychna dumka», 2008. S. 11–13. [in Ukrainian]
7. Todyka Yu.N. Osnovy konstytutsyonnoho stroia. Kh.: Fakt, 1999. 441 s. [in Russian]
8. Shapoval V.M. Suchasnyi konstytutsionalizm. K.: Yurinkom Inter, 2005. 331 s. [in Ukrainian]
9. Bielov D.M. Struktura normy, shcho zakripliuie osnovy konstytutsiinoho ladu. Naukovi zapysky Instytutu zakonodavstva Verkhovnoi Rady Ukrainy. 2012. № 4. S. 30–33. [in Ukrainian]
10. Babenko K.A. Konstytutsiini osnovy rozvytku ekonomichnoi systemy Ukrainy. URL: <https://6aas.gov.ua/ua/proekty/articles/b/211-konstitutsijni-osnovi-rozvitku-ekonomichnoji-sistemi-ukrajini.html> [in Ukrainian]
11. Andrushkiv B., Kyrych N., Stoiko I. Ekonomichna konstytutsiia Ukrainy, yak zasib rehlamentatsii finansovo-ekonomichnoi diialnosti derzhavy. Ekonomika. № 4 (104) lypen-serpen. 2010 r. S. 3–7. [in Ukrainian]
12. Dobrodumov P.O. Konstytutsiino-pravovi osnovy ekonomichnoi systemy Ukrainy. Pidpriemnytstvo, hospodarstvo i pravo. 2002. № 12. S. 32–39. [in Ukrainian]