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**CONSTITUTIONAL AND LEGAL REGULATION
OF ECONOMIC RELATIONS:
SEARCH FOR AN UP-TO-DATE STANDARD**

Criteria the development of a new standard of constitutional-legal support of functioning of economic relations in modern conditions are disclosed. The necessity of their system of institutionalization, a significant improvement of functionality of such legal means as: functions, principles, integrative properties, economic policy, economic security, economic power as the most important factors in the effectiveness of the Basic Law are justified.

Key words: constitutional legal regulation, economic system, constitutional and legal institutionalization, legal means of the constitutional legal regulation.

Problem setting. Accentuation on constitutional and legal changes is a commonly known process, which stimulates a reformation process of public life in Ukraine after the Revolution of Dignity. These changes encompass issues of a judicial reform, transparency of the property status of government officials, and correction of the state governance with distinct division of competences between government bodies and decentralization in relations «central governing bodies – local communities».

Within convergent processes of enrollment of public agreement on an ultimate version of solution of the above-mentioned issues and prompt implementation of the statements, particularly in the text of the Constitution, the issues of economic functioning, constitutional and legal endorsement of the basics of market economy functioning in its national framework are actually out of view.

Indeed, Ukraine faces the Russian Federation aggression, a hybrid war that didn't receive adequate international legal qualification, and draws off forces to organize resistance. Not today, but tomorrow the issues of efficiency of constitutional and legal regulation of economic relations, efficiency of its impact on current economic, agrarian and ecological law, efficiency of the Constitutional Court of Ukraine functioning regarding legal assessment of the content of the above mentioned legislation will certainly arise.

Recent research and publication analysis. It is worth mentioning that constitutional and legal issues of legal support of economic system functioning are disclosed in monographs of L. Y. Kuznetsova (2006), O. V. Skupynskiy (2002), D. V. Zadykhaylo (2014). The role of the state, especially in regulation of economic activity, is considered in papers of I. I. Dakhovaya (2008), V. V. Marchenko (2010), O. V. Sovhyr (2012).

Paper objective. Nevertheless, the issues of methodology of current constitutional and legal standard formation, a matrix of constitutional frameworks of the economic basis of society functioning as an integrative result of a scientific approach have not been thoroughly examined. These facts stipulate the topicality of the paper.

Paper main body. It is worth noting that the issues of improvement of constitutional and legal regulation of economic relations are to be considered in different contexts.

1. Systematization and institutionalization of the above-mentioned norms.

It is absolutely inadmissible for the country, which under historical circumstances transfers from a command to a market economy, to have fragmentary constitutional and legal regulation of economic system.

The author highlights that:

a) Ukraine is not just moves from a command to a market economy. In the process of transition, it has built an oligarchic market economy, the influence of which moves out of an economic area to an area of political and informational relations. This situation requires social and political judgment and target settlement in order to return to the market economy model within current parameters, eliminating neo-feudalistic formations.

Thus, the constitutional and legal mechanism of economic relations regulation must contain the purpose of replacement of the oligarchic economic model as a separate category of business entities. Oligarchic structures, nevertheless, won't spread their influence outside their business area.

b) Constitutional and legal institutionalization of market relations occurs with strict determination of peculiarities – characteristics of the market economy. That is to say, social and market, liberal and market, mixed, and other economies. It is

necessary because of ideological, economic and legal reasons. The Constitution of Ukraine must contain paragraphs that disclose the sense of a market mechanism of the national economy, which reflects in the role of state governance, a legal regime of the factors of production consumption, the volumes of economic rights provided to the entities, etc.

c) Both systematization and institutionalization require to follow certain fullness of constitutional and legal regulation of all core elements of business relations functioning: subjects, objects, property relations, type of economic coordination, rights and guarantees for entrepreneurship and a contractual process, state governance, public and private partnership, competition, economic concentration, etc.

d) systematization is to be stated in the Constitution in the juridical, technical sense as well as in the economic one. The economic system, its structure, character, social designation and peculiarities of functioning become subject to constitutional and legal regulation. This system as a subject of constitutional and legal regulation is a complicated complex of economic relations in the field of production, exchange, distribution and consumption, which operates on the basis and as a result of business activity under conditions of a government mechanism of its coordination between counterparties, the functioning of which is provided through adoption of certain legal norms of the constitutional economic order.

2. System institutionalization of constitutional and legal regulation creates important synergic effect stipulated by legal regulation. It enables to question about provision of certain qualitative macroeconomic features of functioning of both the national economy and the entire economic system. They are the following: anti-crisis resistance, flexibility and the ability to structure transformation, innovations and the ability to shift to technological structures, an ecological emphasis, and a social trend. The above-mentioned features provide competitiveness of the national economy and indicate efficiency of the constitutional economic order and functionality of governing bodies in the economic field.

Under conditions of global economic competition and rapid increase of the public price for competition of the national economy, a request for innovational nature of economic development has become an axiomatic require to the state and functioning of national economic systems. In this context, it is worth mentioning that social and economic imperative of innovational character of economic development requires constitutional and legal level of its provision as social and economic priority, core feature of national economy functioning, specific functions of public officials, functional loads of their competences through provision with demandable and sufficient forms and means of influence on certain social relations, etc.

Therefore, the basic legal means, which must receive constitutional and legal fixation within the competences of the Cabinet of Ministers, are as followed: a «scientific and innovational state policy», «national and local innovational systems», «innovational nature of economic development», a «system of state programs of technological development of national economy», «state support of projects for economic development».

3. Systematic institutionalization enables to form unified state functions for the entire economic mechanism, which will determine nature of its influence on business entities and other participants of economic circulation. They are the following:

- 1) providing national economic safety;
- 2) support and providing the stable constitutional economic order;
- 3) support and providing sustainable economic development through:
 - increase in national economy competitiveness;
 - increase in national economy innovativeness;
 - increase in national economy ecology;
- 4) anti-crisis stabilization of the national economy;
- 5) providing real economic sovereignty of the state and publicity.

4. Systematic institutionalization of regulation of business relations in the Constitution also requires determination of the basic principles of their functioning. It is worth noting that there is a need to apply such instruments to provide ideological factors in the sphere of economic relations, which may remain only declarative, as well as instrumental functionality. In turn, such purpose contemplates consciousness of methodologically important division of such principles into two categories in the process of norm-creating activity. These categories are as follows:

- a) principles of functioning of the economic relations system itself;
- b) principles of legal regulation of economic relations, which, because of their complex nature, should be divided into principles of regulation of «horizontal» (economic and production) relations and «vertical» (organizational and economic) relations.

Fixing such principles in particular hierarchical order for resolving a problem of their legal competition between each other as legal measures is an important goal.

The author highlights functional nature of fixing the principles as a legal measure. They should be unambiguously indicated with reference to a target and types of relations, where should be applied. For instance, the principle of economic diversity indicated in Article 15 of the Constitution of Ukraine should be set apart. In addition, the legislators should detail the most important aspects of its sense. Therefore, economic diversity as a principle of organizing the eco-

conomic life in Ukraine should be manifested through providing the following components:

- diversity of forms of ownership for economic assets, which forms the capital basis for business activity and includes property of the people of Ukraine, public, municipal, private, corporate, cooperative, and other ownership forms;
- diversity of organizational and legal forms of entrepreneurship;
- diversity of economic activity forms: economic and production in the commercial and non-commercial forms; investment; scientific and technical; labor; consumptive and self-providing, et al.;
- diversity of social and economic structures and national economy segments, including small, medium-seize, and large, transnational, foreign, state-owned, cooperative businesses, etc.

The government has to guarantee protection and development of economic diversity, conduct monitoring of its state, and provide, in a case of necessity, government support for its important components as an essential term of resistance and a potential of national economic development.

The proposed expanded definitions of the principles significantly enhance their functional effectiveness concerned with defining current legislation norms and indication of its directivity under conditions of gaps and collisions. These definitions are also important for current law-making activity through establishing conditional corridors of legislative activity.

5. A system and institutionally indicated structural paragraph of the Constitution of Ukraine «Economic System» enables to form an extremely important general category – the constitutional economic order. It is worth mentioning that a category of legal economic order, which is fixed in Article 5 of the Economic Code of Ukraine, is based precisely on a set of constitutional and legal norms being determinative for this order. Obviously, systematization, detailing, and enhancement of functional directivity and effectiveness of corresponding constitutional and legal norms will be a powerful incentive for regulation and development of economic legislation. This assertion can be applied to civil, ecological, financial, and other legislation.

However, it is worth noting that, in accordance with Article 8, norms of the Constitution of Ukraine are norms of direct impact itself. They can directly influence the content of social life regulation.

6. A state as an active participator of constitutional and legal regulation of economic relations needs peculiar attention.

As was previously mentioned, the role of government and its functional obligations should be precisely substantiated in order to adhere to general requirements of Article 19 of the Constitution of Ukraine, which are related to providing consti-

tutional legitimacy, as well as to fix the national version of a market economy type. Under conditions of such market economy type, the government plays the determinative role, depending on scales of so-called state intervention. To achieve this goal, the Constitution of Ukraine has to strictly determine the main elements of competences of all the subjects of organizational and economic authorities, which have gained constitutional and legal status. The author means there is a need of gradual determination of «reasons of activity», «authorities and their scopes», and «ways» of exercising authorities. This assumes especial importance in cases of regulation of government macroeconomic supervision.

It is worth mentioning that a government macroeconomic policy is a common denominator joining various micro- and macroeconomic factors of economic system functioning. The main aspects of its content, processes of formation and pursuing should be indicated in the Constitution of Ukraine.

Relations of public-private partnership should become a separate object of constitutional and legal regulation concerned with an economic system of the society. Under conditions of market or mixed economies, these relations can influence a complicated algorithm of activities of worldwide national and foreign companies. The author thinks that social and economic as well as business and legal relevance of the institution of public and legal partnership should actively increase.

7. Under conditions of a hybrid aggression of Russian Federation against Ukraine, statements on national economic safety fixed in Article 17 of the Constitution of Ukraine, is insufficient. Extraordinary laconicism of the constitutional statement on the national economic safety impedes to establish some or other legal means in order to overcome corresponding threats. Obviously, application of ordinary authorities of the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Antitrust Committee of Ukraine, etc. can overcome or eliminate some of the threats. Although a considerable set of threats to economic safety may require application of extraordinary measures on the part of the state, they do not lead to a necessity of introduction of the emergency state of mobilization. The author thinks that the legislators should state the content of Article 17 of the Constitution of Ukraine concerned with economic safety as a separate article. In addition, they should extend this article, supplementing it by definitions of the main means, including application of special legal regimes, which should conduce to overcoming or elimination of corresponding threats.

8. The cratology aspect in the structure of economic relations is the most complicated matter of comprehensive and system institutionalization of the «Economic system» as an object of constitutional and legal regulation. A problem of arising power relations in the economic system can incite to create a new paradigm of our opinion regarding economic system functioning. This phenomenon is con-

cerned with business organizations as well as consumers, owners of production factors, the state, local self-government bodies, et al. The Constitution of Ukraine should achieve the following important goals: formation of mechanisms for distribution and balancing economic power sources in the economic system; prevention of transformation of economic power in political and information power. Nevertheless, this problem is a full deficiency in both conceptual and constitutional senses, which explains the necessity to activate scientific research.

Conclusion of the research. Consequently, it is worth mentioning that there is a need to create a new constitutional and legal standard of economic relations settlement, especially now, when majority of countries join the WTO and other international economic organizations that establish the global economic order. That order is determined by globalization as well as by new phases of technological development of the production basis, changes in the structure of production, exacerbation of global competition, and increasing role of intellectual assets.

These facts require development of a new model of the constitutional and legal framework of economic relations in their systematic and institutionally separate format. The quality of system-building relations, its internal integrative features and possibility to implement the determined functional objectives rather than proper legal fixation of all the elements of such system functioning is of considerable importance.

The new constitutional and legal standard of legal support of economic relations is a prior phase used to rebuild an integral interfiled system of legal frameworks of functioning of the modern national innovational economy.

REFERENCES

1. Кузнецова Л. Ю. Конституционные основы экономического строя современной России : автореф. дис. ... канд. юрид. наук / Л. Ю. Кузнецова. – Саратов, 2006. – 18 с.
2. Скупінський О. В. Конституційно-правові засади економічної системи України : автореф. дис. ... канд. юрид. наук : 12.00.02 / О. В. Скупінський. – Х., 2011. – 3 с.
3. Задихайло Д. В. Економічна влада та концентрація капіталу суб'єктів господарювання (правові аспекти) / Д. В. Задихайло // Вісн. Нац. ун-ту «Юрид. акад. України ім. Ярослава Мудрого». Серія: Економ. теорія та право / редкол.: А. П. Гетьман та ін. – Х. : Право, 2014. – № 2 (17). – С. 153–163.
4. Дахова І. І. Конституційно-правовий статус уряду в зарубіжних країнах : монографія / І. І. Дахова. – Х. : ФІНН, 2008. – 200 с.
5. Марченко В. В. Конституційно-правовий статус уряду в країнах ЄС (на прикладі Франції, Федеративної Республіки Німеччини, Іспанії) : монографія / В. В. Марченко. – К. : Алерта, 2010. – 216 с.

6. Совгира О. Конституційні засади взаємодії Кабінету Міністрів України та центральних органів виконавчої влади / О. Совгира // Вісн. Київ. нац. ун-ту ім. Т. Шевченка. – 2012. – Вип. 92. – С. 112–115.

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КОНСТИТУЦИОННО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ ЭКОНОМИЧЕСКИХ ОТНОШЕНИЙ: ПОИСК СОВРЕМЕННОГО СТАНДАРТА

В статье сделана попытка обоснования ряда критериев развития нового стандарта конституционно-правового обеспечения функционирования экономических отношений в современных условиях. Экономические отношения как объект такого регулирования рассматриваются в системном формате, что обуславливает необходимость их системной институционализации в контексте конституционно-правового регулирования. Внимание акцентировано на необходимости существенного усиления функциональности таких правовых средств, как: функции, принципы, интегративные свойства экономических процессов, а также на вопросах экономической политики, экономической безопасности, экономической власти как важнейших факторах эффективности Основного Закона.

Ключевые слова: конституционно-правовое регулирование, экономическая система, конституционно-правовая институционализация, правовые средства конституционно-правового регулирования.

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КОНСТИТУЦІЙНО-ПРАВОВЕ РЕГУЛЮВАННЯ ЕКОНОМІЧНИХ ВІДНОСИН: ПОШУК СУЧАСНОГО СТАНДАРТУ

Постановка проблеми. Загальновідомою є акцентуація на конституційно-правових змінах, що мають забезпечити процес реформування суспільного життя в Україні після Революції Гідності. Це питання судової реформи, прозорості майнового

стану державних посадовців, корекції форми державного правління з чітким розподілом компетенції між вищими органами державної влади, а також – децентралізації у сфері відносин центр – територіальні громади.

Аналіз останніх досліджень і публікацій. Конституційно-правові аспекти правового забезпечення функціонування економічної системи розглядались у монографічних роботах Л. Ю. Кузнецової, О. В. Скупінського та Д. В. Задихайла. Роль держави, зокрема і в регулюванні економічної діяльності, була висвітлена в роботах І. І. Дахової, В. В. Марченка, О. В. Совгирі.

Формулювання цілей. Стаття присвячена аналізу методології формування сучасного конституційно-правового стандарту, матриці конституційного забезпечення економічної основи життєдіяльності суспільства як інтегративного результату наукових підходів.

Виклад основного матеріалу. Економічна багатоманітність як принцип організації економічного життя в Україні має виявляти себе через забезпечення державою таких його складових:

- багатоманітності форм власності на економічні активи, що утворюють майнову основу господарювання, і яка включає в себе власність Українського народу, державну, комунальну, приватну, корпоративну, кооперативну та інші форми власності;
- багатоманітності організаційно-правових форм підприємництва;
- багатоманітності форм економічної діяльності: господарсько-виробничої як комерційної, так і некомерційної; інвестиційної; науково-технічної; трудової; споживчо-самозабезпечувальної та ін.;
- багатоманітності укладів та сегментів національної економіки, включаючи малий, середній, великий бізнес, транснаціональний, іноземний, державний, кооперативний тощо.

Важливим завданням Основного Закону є створення механізму для розподілу та балансування джерел економічної влади в економічній системі, а також унеможливлення трансформацій економічної влади у владу політичну та інформаційну.

Висновки. Необхідним є формування нового конституційно-правового стандарту врегулювання економічних відносин з урахуванням входження більшості країн до СОТ та інших міжнародних економічних організацій, що створюють глобальний економічний порядок. Завданням є розбудова нової моделі конституційно-правового забезпечення економічних відносин, по-перше, в їх системному та виокремлено інституційному форматі. Новий конституційно-правовий стандарт нормативного забезпечення економічних відносин є першочерговим етапом розбудови цілісної міжгалузевої системи правового забезпечення функціонування сучасної національної інноваційної економіки.

Коротка анотація статті

Анотація. У статті зроблено спробу визначити низку правових позицій для розбудови нового стандарту конституційно-правового забезпечення функціонування економічних відносин у сучасних умовах. Економічні відносини як об'єкт такого регулювання розглядаються в системному форматі, що викликає необхідність ставити питання про їх системну інституціоналізацію у змісті конституційно-правового регулювання як такого. Увагу акцентовано також на необхідності суттєвого посилення функціональності таких правових засобів, як: функції, принципи, інтегративні властивості економічних процесів, а також питаннях економічної політики, економічної безпеки, економічної влади як найважливіших чинників ефективності Основного Закону.

Ключові слова: конституційно-правове регулювання, економічна система, конституційно-правова інституціоналізація, правові засоби конституційно-правового регулювання.