

Review paper

ECONOMIC SYSTEM IN THE CONSTITUTIONAL STRUCTURE OF THE REPUBLIC OF SERBIA

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Abstract. *The problem of the relationship between law and economics represents one of the questions that draw the attention of researches from both economic and legal fields with the same intensity. Multidisciplinary nature of this relationship is reflected in the formal frame of legal and economic system, as well as in their academic fields. The strength of the mutual interaction of law and economics is particularly notable if this interaction is realized in primary legal document of a state. Of course, we are speaking about the constitution and as the authors of this work we will direct our research efforts towards the analysis of the current constitutional provisions of the Republic of Serbia, starting from the fact that it is a relatively new document, existing less than one decade. The title of this work reveals the focus of our research attention – the economic dimensions of the Republic of Serbia Constitution of 2006.*

Key Words: *economic system, law, constitutional matter, Republic of Serbia Constitution.*

INTRODUCTION

The relationship between law and economics is a continual conceptual issue that attempts to eliminate a one-sided and exclusive view when considering these social phenomena. The previous research endeavors have shown that there is an obvious methodological necessity that requires mutual interaction between law and economics related to the use of certain methodological instruments and exploring certain research themes. Such methodological pluralism has imposed itself as a necessary method for the realization of scientific needs of contemporary society and scientific community.

When considering these issues, special attention should be paid to the question of "what economics has to offer to law" (Barković, 2009:78). Such an approach is inspiring

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enough to incite us to undertake a set of research procedures in the direction of structural analysis of relevant legal texts that allow us to verify the position of economic fields within law. Among such legal acts, constitution represents a particular legal source that reflects the relationship between law and economics. The conclusions to which we have arrived based on the structural analysis of the nomotechnical form of constitutional provisions related to economics, serve as an incentive for conducting further research. Setting aside the structural form, there is a possibility to go deeper in our research efforts and explore whether law accepts or ignores the messages sent by economics, and if it accepts them, whether it understands them correctly which may result in its alienation from optimal models for the harmonization of social life in a community.

1. ECONOMIC SYSTEM IN CONSTITUTIONAL MATTER

In the sense of an academic discipline, the issue of "*materiae constitutionis*" evidently belongs to the list of introductory or general issues of constitutional law as a science. Traditional and classical concept of theoretical analysis of this issue starts from assuming the historical motives for the appearance of constitution as the basis for understanding its subject matter. Thereto, it has almost become a common practice to consider constitution as a law which was created, before all, as an articulation of constituting a new political concept of state and society in their transition from absolute monarchies to their reshaping into modern states. American and French revolutions greatly motivated and strengthened the political awareness of people that constitutions are created to facilitate harmonized organization of social communities, to establish rules for setting up and functioning of state governments, as well as the rules for regulating the relationship between the government and citizens. Such a conceptual approach in theoretical understanding of constitution has created the starting point and opinion that the constitutional subject matter is something to be exclusively sought within the formal regulation of political acts of an organized social community. Therefore, it is probably why the politological approach to constitutional analysis is added to the list of basic constitutional problems presented in professional literature within the framework of legal theory.

The above given starting points related to the realistic position of constitutional law as a science and its subject matter are also supported by the insufficient presence of the economic dimension of mentioned problems. There is often an unjustified trend of "silent overlooking" of the necessity to underline the economic dimension of constitutional matter, which is the issue which deserves particular attention. On the other hand, "there are few economic articles in economic literature that speak of the presence of economy in law" (Weigel, 2003:16). Of course, it should be noted that economic issues are present in constitutional science to the extent they are present in constitutional texts, which may point to the significance of gaining the insight into the structural composition of constitutional text. If we sum up this composition, we get a general impression that classical political problems are dominant in regulating the organization and function of a state government and its relationship with citizens.

It is interesting to note that constitutional texts of the states that represent contemporary models of western democracy do not give much space to economic issues, while the situation is quite opposite in the states with single-party political systems. This opinion is expressed

on the basis of the analysis of the structural composition of constitutions, while interesting results can also be observed in the practice – in applying these two basic types of constitutional texts. Contemporary democratic constitutional systems which treat economic issues in a narrow sense provide more fruitful, rich and free economic life within a state. Non-democratic constitutional systems have rich constitutional regulation of economic issues which entails the restriction of freedom of action of various economic subjects within a society. Thus, one might get a general impression that the state, as the most efficient constituent factor, acts according to the program-based vision of further development of society and, depending on the ideological concept of such orientation, the state can impose itself as more or less dominant factor in the economic sphere of society.

The above stated considerations are the result of the analysis based on the interpretation of the structural conception of constitutional texts that has developed throughout history in a quite expected, even intentional way. This is the occasion to let us remind you on the period of the development of Yugoslav state after the Second World War in order to grasp the meaning of the constitutional text that extensively spoke about the economic regulation of state and society. Thus, the Constitution of Federal Republic of Yugoslavia of 1974, structurally speaking, even in its introductory part abounded in economic issues since three out of ten given principles spoke about the social and economic order, the economic system and the goal of social, economic and political system. In the second part of the constitutional structure, the first section was dedicated to social and economic order embodied in the regulative opus that included 76 articles (from art. 10 to art. 86). The Constitution of Federal Republic of Yugoslavia was published in the Official Gazette of SFRY no. 9/1974.

Accordingly, we can conclude that the analysis of the space which is in a constitutional text dedicated to economic issues and problems leaves us to make certain assumptions. Thus, it can be expected, hypothetically, that the restricted regulation of the economic sphere of society is the result of the legislators' intention to let this sphere be regulated by economic subjects beyond the state influence. In other words, if a concrete constitutional text dedicates considerable space to economic sphere, this reveals the legislators' intention to assign a monopolistic position to the state in the most significant parts of society's economic structure. In order to draw such conclusions for each particular state it is necessary to analyze the realistic situation of its economic conditions which requires additional testing and checking of assumed opinions established on the basis of reviewing the structural composition of constitutional texts and the position of economic issues within them.

The justification of this approach is additionally supported by contemporary theoretical tendencies, especially present in the last decades of the 20th century when it seemed to be attractive and popular to research social problems related to law and economics using the advantage of resorting to the principles of both social sciences. Thus, for example, the movement *Law and Economics* was particularly dominant in the USA whose proponents were focused on the "application of the principles of marketing analysis for the purpose of resolving difficult social problems that affected the postindustrial society. Since there is a close link between legal and economic spheres of life, they insisted on law being based on economic principles, such as, rationality and efficacy" (Vukadinovic, 2006:26).

Another justification why we should dedicate a part of the constitutional matter to economic issues lays in the fact that a considerable number of sources of substantive law, including the constitutional law, comprise economic relations that should be regulated by

basic constitutional rules. This fact also reflects the specific characteristics of economy and its basic principles which in modern democratic states are the subject to economic freedom and mechanisms beyond the state influence. On the other hand, we should bear in mind the well-known fact that scientific research of legal issues has been very much refreshed by the application of economic methods, categories and principles. "When performing a normative analysis, we should take into account that every society has its own assumption about the meaning of social welfare and the instruments of social protection." (Sakalaš, Lendak-Kabok, 2011:118).

2. THE REPUBLIC OF SERBIA CONSTITUTION OF 1990

In order to correctly comprehend the key issue, outlined in the very topic of this work, it is necessary to consider a few important factors which determine the essence of our understanding of the given problem. In one hand, it is a historical dimension embodied in the fact pointing to the radical distinction between the concept of economic order formally established by the Republic of Serbia Constitution and the concept of the economic order that was regulated by the previous Serbian Constitution of 1990 ("Official Gazette of RS no. 1/90). In addition, the context of economic ambient of Serbian society in the period of the adoption of the existing Constitution is a valid indicator which theoretically, logically and successively relies on the previously mentioned historical dimension. This creates the basis for further methodological analysis of the formal structure of the constitutional text and its content from the economic point of view. It would be probably also interesting to explore economic rationality of the constitutional text in the sense of its terminology, which would enable us to understand jurists' linguistics from the perspective of economic principles and categories. Yet, adhering to basic conceptual line that has formulated the headline topic of this work, the authors have decided to abandon this issue, at least for the time being.

This Constitution had a short preamble and 136 articles systematized within nine sections, while the individual units did not bear any particular title or headline. By establishing the Republic's rights and duties, this Constitution actually defined the jurisdiction of the state. Having split this jurisdiction between various state organs, the Constitution established that the rights given to the Republic and responsibilities, to which it was bound, were actually assumed and exercised by its organs, also defined by the Constitution, which constituted the organ-based functioning of the state government. As the basis and measure of the authority and responsibility of the state organs which take the Constitution as their source, the legislators foresaw three principal value-oriented legal and political categories: 1) human and citizens' rights and freedoms to which the Constitution dedicates special section, 2) equality before law, as the principal basis for establishing the state with the rule of law 3) autonomy and equal position of enterprises and other organizations. These three characteristics were seen by the legislators as three qualifying principal postulates embodied in the phrase "the basis and the measure of the authority and responsibility". While performing the assigned duties within their jurisdiction, the state organs should continually seek the purpose and sense of their existence, particularly exercising their duties in the field of human rights, equality before law and autonomy and equality of all economic subjects and other organizations. These three values represented the bottom line

of the state authority and their violation would mean the violation of the constitutional sense of the state government and its organ-based function.

The Constitution also foresaw that the rights and duties of the Republic of Serbia also included the regulation of the following issues: legal position of enterprises and other organizations and their associations and chambers; financial system; the system regulating economic relations with other countries and markets, including planning and other economic relations of general interest; control over the distribution of the assets of economic subjects, financial revision of public expenditure and the method of unified organization of these activities; collecting statistical and other data of general interest; principal goals and guidelines of economic, rural and agricultural development; spatial organization and its economic use; policies and measures aimed at inciting the economic growth and development and finally, financing the implementation of the Republic of Serbia rights and duties.

It is interesting to note that in this Constitution the human rights corpus was not systematized through a specific classification that can be encountered in standard constitutional and political theory and practice and on the basis of commonly known criteria that can be found in constitutional and political theory and practice. They were rather dispersed throughout the entire section lacking any catalogized form and approach.

3. CONTEMPORARY SERBIAN CONSTITUTION

Unlike the previously mentioned monotekhnical model, the structure of the contemporary Serbian Constitution (Official Gazette of RS no. 83/06) includes "three obvious basic systematic units: section, subsection and article. Each systematic unit has its own title. There are 10 sections, 16 subsections and 206 articles. The systematic structure of these units is not identical and majority of sections actually do not have subsections – only four of them do. The third section has two subsections, the second and seventh have three subsections, while the fifth section is the largest and includes nine subsections" (Djordjevic: 2010:30). As for the number of articles, two sections comprise 60% of the total number – the section related to the organization of government (68 articles) and the section on human and minority rights and freedoms (64 articles). As for the organization of the economic system, the third section, comprising 15 articles "Economic system and public finances" regulates this area of social life. This section is subdivided into two systematic units that the authors, using the freedom of academic expression, named as subsections: "Economic system" and "Public finances". Reviewing the structural composition of the constitutional text, one can get the impression that the scope of constitutional norms that regulate economic system is not very wide.

These arguments referring to the restrictive position of economic themes in the structure of the constitutional text are further elaborated and explained by reading the first section of the Constitution related to constitutional principles. Modern Serbian legislators did not deem it important to define and present their principle normative position related to the economic sphere. Such legislators' attitude can be even considered to be "acquired habit" since they actually continued to rely on the same methodological and nomotechnical approach that had been used by the legislators back in 1990. Yet, the comparative analysis have shown that the legislators from neighboring countries have taken a different direction and introduced economic issues within the introductory part of constitutional principles. Thus, for example,

the provision from Art. 2.4.1 of the Republic of Croatia Constitution prescribes that "the Croatian Parliament and people shall directly decide on the regulation of economic, legal and political relations in the Republic of Croatia" ("National Journal" no. 76/2010). Or, for example, the constitution of the Republic of Macedonia regulates the fundamental values of its constitutional order in its introductory provisions which, among other values, include "the legal protection of property" (Official Gazette of RM no. 52/91, 1/92, 31/98, 91/2001, 107/05).

Analyzing the legislators' stand towards society's economic problems, it is also interesting to note that the field of the organization of economic system and public finances is considered to be the part of the constitutional matter whose possible change is not the subject to be decided at a referendum. Probably the reasons for this assumption should be sought in the legislators' opinion that these issues are not considered to be suitable to be the subject of the populations' comprehension and direct vote. Or yet, such assumption can also lead us to conclude that this law is "too important to be left to lawyers to decide on, since it affects the destiny of all individuals, organizations and the state as a whole" (Popov, Stankovic, 2007:38).

Let's go back to the analysis of the part of the text of Serbian Constitution that regulates human rights and freedoms dividing them into individual, political, economic, social, cultural and ecological rights and freedoms. Once again, the legislators did not systematically classify them in the constitutional text, but they rather become obvious during the application of constitutional law. We can only discern just a trace of a partial systematization based on the order of the articles in this second section of the Constitution. Thus, at the beginning of this section there are the articles that regulate personal rights and freedoms, followed by the articles that include political rights and freedoms, then, economic and social rights and freedoms, and finally, at the very end, those that deal with cultural and environmental rights and freedoms.

Before presenting the normative analysis of the provisions of the Republic of Serbia Constitution that regulate economic rights and freedoms, we would like to point to an interesting fact from the global constitutional map. Thanks to updated Internet resources, we can easily and rapidly Google out the constitutional texts of almost all countries in the world, either in full, or their partial contents. In this way we can explore the structural composition of these texts and discover that 82 constitutions include separate normative sections that regulate economic rights and freedoms, which constitutes almost one half of all global constitutions (www.constituteproject.org). Of course, we would like to underline that this fact is sourced out from the informative material which needs to be further elaborated and scientifically supported. It would be unprofessional to draw serious conclusions on the presence of economic issues in global constitutional texts on the basis of Internet data. However, the systematization presented on the above mentioned Internet site was made based on the availability of separate structural composition of constitutional sections, subsections and articles related to various rights and freedoms, and within these separate structural units there are those that include constitutional provisions regulating economic rights and freedoms.

If we get back to modern Serbian Constitution, it should be noted that the ownership rights are in the center of property rights and that this Constitution guarantees peaceful and unrestricted enjoyment of these rights, but only if they are obtained in accordance with law. This means that ownership and other property rights that were obtained in an

illegal way are not the subject of constitutional protection. The Constitution also foresees the possibility of restricting, even confiscating property rights, but these situations may only occur if they are strictly in public interest, also defined by law, and accompanied by fair compensation, not below the market value. The purpose of such restriction or confiscation of property rights must be regulated by law, which is also the case with the public interest, which limits the state's executive authority. Of course, we are here discussing some of the exceptions from general constitutional norms guaranteeing property rights. One of the exceptions also refers to the restriction of models of utilization and management of property. Relativization of property rights is also encountered in exceptional cases related to forced payment of taxes and other debts or fines, but these restrictions can be only regulated by the principal law, and not some other subordinate laws and acts. Thus, for example, criminal law foresees restriction or termination of property rights as a result of illegal acts of the citizens who are the subject of certain criminal sanctions.

CONCLUSION

The analysis of the constitutional framework of economic system in Serbia was conducted out of purely theoretical reasons, but also based on the investigation of the existing situation in this field. In other words, can we say that the regime of existing Constitution satisfy the normative requirements in function of progressive development, or not? Therefore, the existing data related to public opinion on the way how this Constitution regulates these subjects are of particular importance. We believe that there is a rational justification for the view of the citizens and the elite that "the constitution does not fully guarantee social and economic rights of citizens", as well as that the constitution should better regulate "antimonopoly and free competition" (Jelinčić, Ilić, 2013:107,109). In this sense, it is necessary to continue the analysis of existing constitutional solutions where scientists and professionals will insist on redefining the existing constitutional rules of economic "game" whereas we are fully aware that constitution should not "impose itself as an obstacle but should allow... unobstructed economic and business transactions and efficient use of available resources" (Madžar, 2013:33). We believe that a part of the response to the issue related to the absence of constitutional rules that regulate economic matter lies in the specific historic background. We are here referring to turbulent and oscillatory changes of social order that have burdened Serbian society from its beginning as a modern state. The processes of intensive and radical changes of founding structure of social order adversely affected social and economic tissue of this state throughout the entire 20th century which has destabilized the efforts directed to the establishment of a consistent economic order. In the conditions of transitional turmoil, it is the constitution which is expected to contribute to the consolidation of regulatory mechanism which would secure a stable development. Therefore, our concluding remarks are directed towards the needs to start revising those constitutional solutions which inadequately regulated the problems of economic system. Here we are particularly underling those constitutional mechanisms which could provide additional depolitization of market economy in order to prevent further "tycoonization" of Serbian economic area. Such an approach would additionally provide a revision-oriented view directed towards upgrading of social and economic rights and liberties which is bound to happen since it is preconditioned by the needs for harmonizing social relations as a whole.

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EKONOMSKO UREDJENJE U STRUKTURI USTAVA REPUBLIKE SRBIJE

Problematika odnosa prava i ekonomije predstavlja jedno od onih pitanja, koje sličnim intenzitetom istraživačke pažnje privlači i pravnu i ekonomsku nauku. Multidisciplinarnost istaknutog odnosa prisutna je, kako u formalnim okvirima pravnog i ekonomskog poretka, tako i u akademskim oblastima njihovih proučavanja. Moć međusobnih uticaja prava i ekonomije dostiže svoje uočljive domete naročito kada se realizuje kroz primarni pravni dokument državnog poretka. Naravno, reč je o ustavu, pa će autori nastojati da istraživački napor usmere u pravcu analize postojeće ustavne regulative u Republici Srbiji, polazeći od činjenice da je reč o relativno novom aktu, čija se egzistencija postepeno približava prvoj deceniji. Svakako da se već iz naslova rada osnovano može pretpostaviti da se akcenat te istraživačke pažnje pomera ka ekonomskim dimenzijama Ustava Republike Srbije iz 2006. godine.

Ključne reči: *ekonomsko uredjenje, pravo, ustavna materija, Ustav Republike Srbije.*