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THE CONCEPTION

OF “CONSTITUTIONAL ECONOMY” AND ITS DEVELOPMENT BY MEANS OF THE RULING OF THE CONSTITUTIONAL COURT OF RUSSIA

LA CONCEPCIÓN DE LA “ECONOMÍA CONSTITUCIONAL” Y SU DESARROLLO A TRAVÉS DE LA RESOLUCIÓN DEL TRIBUNAL CONSTITUCIONAL DE RUSIA

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ABSTRACT

The paper deals with the development of the conception of “constitutional economy”. The author demonstrate how the ruling of The Constitutional Court of Russian Federation influences to this process through disclosing the constitutional content of economic rights, and defining the limits within which the legislator can regulate economic questions, and therefore, the state can interfere in the economy.

Keywords: Constitutional economy, Constitutional Court, legal regulation, economic rights, economic constitution.

RESUMEN

El artículo trata sobre el desarrollo de la concepción de la “economía constitucional”. El autor demuestra cómo el fallo del Tribunal Constitucional de la Federación de Rusia influye en este proceso al divulgar el contenido constitucional de los derechos económicos y definir los límites dentro de los cuales el legislador puede regular las cuestiones económicas y, por lo tanto, el Estado puede interferir en la economía.

Palabras clave: Economía constitucional, Corte Constitucional, regulación legal, derechos económicos, constitución económica.

INTRODUCTION

In recent times, more and more often we can hear about the impact of the Constitutional Court of the RF on the formation of the conception of economic development of state through expansion of the constitutional contents of economic rights, determination of the borders within the framework of which the legislator can regulate economic issues, and, therefore, the state, intervene in the economy. The Constitutional Court of the RF stands on guard of the fundamental principles of the constitutional system, among which are: the common economic space, freedom of entrepreneurial activity, private and other forms of ownership, etc. The agency of constitutional justice is able to influence the development of the conception of “constitutional economy” in general through its decisions.

DEVELOPMENT

The conception of “constitutional economy” recently began to take off in Russia; it was often substituted by the concept of “economic constitution” as distinct from the majority of the European states, where the independent theory separate from the concept of the constitution is being developed. In the first place, it is necessary to find out if there is any difference between the said concepts. It appears that “economic constitution” shall be understood only as the whole body of constitutional norms determining the content and development of economic relations. “Constitutional economy” is the correspondence of feasible economic relations to the norms of constitutional text (and sometimes in view of the abstract nature of the constitutional norms, to the principles, fundamental principles of the constitutional system). It appears that “economic constitution” primarily aims at determination of the possible impact of state on the economy, leverage, mechanisms of influence of the state, the agencies thereof on the economic sphere, its development and improvement. Obviously, the impact of the state cannot be boundless, therefore, at the same time it is necessary to limit the state impact on the economic life of the country, set the limits on the state regulation of economic sphere. The impact on the economic relations is being made by the state through declaration of certain economic and neighboring rights. Therefore, it is very important to find a legitimate balance of consolidation of economic rights and freedoms, limitation if necessary and simultaneously the forms of protection thereof. At that, in practice, the economy always develops within the framework of the specified constitutional coordinates. Therefore, if the economy develops within the framework of the legal sphere, it is “constitutional”. If the illegal mechanisms and means are intrinsic to it, it can be recognized as “unconstitutional”.

The Constitution of the RF has determined a new path of development of the state in general and the strategy of economic and social development in particular. The role of the Constitutional Court of the RF consists in manifestation, interpretation and specification of the constitutional fundamental principles of the conception of economic development of the country.

The Constitution of the Russian Federation is a fairly abstract act where certain provisions, including those determining the fundamental principles of the constitutional system, do not reveal the contents of a particular principle. The Constitutional Court of the RF is a sole agency which has the right to interpret the Constitution of the RF. The Constitutional Court specifies the normative contents of particular constitutional provisions, resolves conflicts between the norms of acts of different legal force, reveals the constitutional-law meaning of norms of the current legislation. On considering various cases of organization of authority in the state, on the issues of constitutional understanding of fundamental human rights and freedoms, ensuring guarantees, means of protection thereof, the Constitutional Court establishes new conceptual approaches to the understanding of fundamental constitutional principles of organization of public authority and the society itself.

The powers of the Constitutional Court of the RF, in accordance with Federal Constitutional Law on the Court, are mainly aimed at protection of fundamental principles of the constitutional system, fundamental human rights and freedoms, ensuring the supremacy and direct effect of the Constitution of the RF on the entire territory of the state.

The term “fundamental principles of the constitutional system” is rather new for the Russian constitutional law. The Constitution of the Russian Federation, adopted by a nation-wide vote on December 12, 1993, consolidating the fundamental political, ideological, economic, social public relations, thereby determined the fundamental principles of the structure of the state and society. Therefore, the fundamental principles of the economic system of the Russian Federation are a constitutive element of the constitutional legislation regulating the living environment both of the state itself and the civil society. Moreover, the constitutional norms, establishing the economic fundamentals, give rise to the development of numerous branches of law, such as civil, entrepreneurial, financial, tax, labor, land law, etc.

The Constitution of the RF do not contains independent chapter concerned with the economic fundamentals (as in a number of states); however, it consolidates the list of principles determining the fundamental principles of

economic system, fundamental economic rights; establishes economic functions of the agencies of state authority, and also the fundamental principles of functioning of certain agencies directly related to the execution of economic policy. The Constitution of 1993 changes the essence of relations of the state and economy, transferring the state from the subject administering the entire economy into the subject which only regulates economic relations and only within the strict framework determined by the Constitution. At present, the most important task is the creation of conditions for development of the fundamental principles of an economic system, market relations, but at the same time it is necessary to establish certain limits for state interference into the economy.

The Constitution of 1993 consolidates a lot of principles regulating market relations: common economic space; freedom of economic activity, variety and equality of various forms of ownership; support of competition and limitation of monopolistic activity.

The Constitutional Court of the RF continually returned to the issue of analysis of the relevant principles. For instance, the Ruling of July 20, 1999 established that “the legislator does not have the right to voluntarily determine the contents of regulation of the ownership right, the relations of the ownership right shall be regulated in accordance with the principles of the legal state on the basis of juridical equality and justice”.

In the Ruling of November 22, 2000 the Court noted that the federal legislator, acting within the framework of the powers thereof and determining the procedure of management of federal property, has the right to determine the volume and the limits of execution of the ownership right to the federal property. Moreover, the Constitutional Court formulated its legal stance, in accordance with which not only the right of private ownership but also the ownership right of the subjects (components) of Russia and municipal formations can be limited only by the federal law and only if this limitation is necessary for protection of the constitutional values and if such a limitation is proportionate, i.e., corresponds to the constitutionally-protected purposes for the sake of which it is introduced, and only if the limitations are appropriate to the socially necessary result (Rulings of the Constitutional Court of the Russian Federation of February 18, 2000 No. 3P, of June 22, 2010, No. 14P, of July 13, 2010, No. 16P, etc.).

A little later in the Ruling of May 31, 2005, the Court added that the ownership right, the designation of which as a guaranteed subjective right protected by the Constitution of the RF consists in providing for a certain level of freedom in economic sphere to its owners, can be limited by

the federal law in as much as it is necessary for the purpose of protecting fundamental principles of the constitutional system, morality, health, rights and legitimate interests of other persons, for ensuring the defense of the country and the security of the state (Art. 55, p. 3; Art. 71, p. “c” of the Constitution of the RF), i.e. taking into consideration the fundamental constitutional values.

The Constitutional Court often reveals the implication of the constitutional provisions. Thus, in the Ruling of February 23, 1999, the Court determined that the meaning of provisions of Art. 8 and the concretization thereof in Art. 34 and 35 of the Constitution of the RF about freedom in economic sphere implies the constitutional recognition of freedom of contract as one of the human freedoms guaranteed by the state which is declared by the Civil Code as one of the fundamental principles of civil legislation.

The principles declared in Art. 8 of the Constitution of the RF are revealed in the subsequent articles of the fundamental law. Declaring the freedom of economic activity, the state undertakes the task to create conditions for formation and development of the market economy, the fundamental principles of which are the right of private ownership, freedom of ownership and contract, fair competition and prevention of monopolization.

Part 1, Art. 34 of the Constitution shows freedom of economic activity as the right of each person to free use of his/her abilities and property for entrepreneurial activity and any other economic activity not prohibited by law. The Constitutional Court in its Ruling of November 12, 2003, limited the opportunities of the federal legislator who, implementing its powers with regard to regulation of entrepreneurial activity, has the right to determine the procedure and conditions of execution thereof and, proceeding from the specifics of manufacturing or turnover of particular types of products as objects of civil rights, to determine additional requirements and also limitations which, however, shall correspond to the constitutional criteria. “Regulating, by means of civil legislation, the entrepreneurial activity of commercial organizations, including joint-stock companies, the federal legislator shall be obliged to take into consideration that possible limitations, imposed by the federal law, of the rights of possession, use and disposal of property, of the freedom of entrepreneurial activity and freedom of contracts, proceeding from general principles of the law, shall correspond to the requirements of justice, be appropriate, proportionate, coherent and necessary for protection of constitutionally significant values”. In accordance with p. 2, Art. 34, the economic activity aimed at monopolization and unfair competition shall be prohibited.

For instance, in the Ruling of December 20, 2010, the Constitutional Court acknowledged that creation of a privileged legal regime for the subjects of small and medium-sized businesses corresponds to the legal purposes and values protected by Art. 8, 34 and 35 of the Constitution of the RF. At the same time, the guarantees of rights of local self-government consolidated in Art. 12, 130-133 of the Constitution of the RF taken in conjunction with Art. 17 (p.3), 19 (pp. 1 and 2) and 55 (pp. 2 and 3) do not allow such a procedure of providing privileges to the said subjects, when the local self-government contrary to the legitimate interests thereof, falling under the protection of Art. 55 (p.3) of the Constitution of the RF and Art. 50 of Federal Law "On General Principles of Organization of Local Self-government in the Russian Federation", would lose the objects of public ownership necessary for executing municipal functions and powers.

By virtue of the constitutional principles of the rule-of-law state and immunity of property (Art. 1 (p.1), 35, 55 (pp.2 and 3) of the Constitution of the Russian Federation), the decisions on possibility of compulsory privatization of objects of municipal property, leased by the subjects of small and medium-sized businesses, shall be taken in accordance with the due legal procedure and under effective judicial control, which allows to evaluate the designated use of the property determined by the municipal legal acts, the planned use of the objects of municipal ownership to the privatization of which the subjects of small and medium sized businesses have the priority right, the grounds for arising of municipal right to such property, the consequences of alienation of municipal property for the owner thereof and correspondence of the property to the provisions of legislation on the composition of objects of municipal property; these decisions also allow to determine if the agencies of local self-government undertook actions to use the objects in future in order to execute functions imposed upon a municipal formation. Otherwise, the balance of constitutionally protected values would be violated.

Art. 37 of the Constitution of the RF guarantees the right to a free choice of occupation and activities. Revealing the contents of the mentioned norm, the Constitutional Court stipulates that the constitutional right to freely dispose of one's own abilities to labor, to choose occupation and profession does not imply the right of a citizen to occupy a certain position or perform certain work in accordance with the type of activity or profession, chosen by the citizen, and the obligation of any person to provide the citizen with the said work or position. All the above mentioned issues shall be solved within the framework of an

employment contract, and this is when the freedom of labor in employment relations is manifested.

The economic rights also include other rights named in the Constitution, for instance, the right to freedom of movement, the right to choose the place of residence and living (Art. 27 of the Constitution of the RF). "The constitutional rights and freedoms are guaranteed to the citizen regardless of his/her place of residence, including the presence or absence of living accommodation for permanent or temporary living". The right of ownership, including the ownership of real estate and land (Art. 35 and 36), produces a material impact on the implementation of economic rights. With regard to the said right, the Constitutional Court several times addressed the issue of possibility of reduction/ limitation thereof. "The possibility of redistribution of ownership right is balanced by the principle of immunity of private property. The said principle can be inferred from the whole body of constitutional provisions and includes constitutional guarantees of private owners with the possibility of free use of the property belonging to them, stability of ownership relations, inadmissibility of arbitrary deprivation of property, or disproportionate limitation of the right of ownership. ... In accordance with Art. 35 (p. 3) of the Constitution of the RF, no one may be arbitrarily deprived of his or her property, except pursuant to a decision by a court of law. The term "deprived of" means the compulsory character of termination of the right of private ownership and implies the occurrence of a dispute which requires an obligatory judicial control. The compulsory alienation of property, in accordance with the general rule, can be performed only on the condition of preliminary and equivalent compensation".

The Common Economic Space is ensured by free movement of goods, monetary means, work force and information. For that purpose, no customs frontiers, duties, charges, or any other barriers for free movement of goods, services, or financial means may be established on the territory of Russia (Art. 74 of the Constitution of the RF); the rule on the uniform monetary unit and execution of emission exclusively by the Central Bank of the RF is introduced; the use of the uniform principles of taxation and charges in Russia which may be established only by the federal law is provided for (Art. 75 of the Constitution of the RF).

No doubt the guarantee of implementation and defense of the above mentioned principles of development of common economic space shall be the formation of legal fundamentals of a uniform market corresponding to the needs of the state and society in the said sphere. The legislation specifying economic fundamentals is developing dynamically in the Russian Federation. At present, the

adoption of laws aimed at resolving the issues of development of economy is the primary task both at the level of the Russian Federation and at the level of the subjects of the Federation. The legislative agencies adopt normative legal acts, ensuring the support for the development of industry as a whole and its separate branches and small businesses, the use of various forms of ownership, an increase in competitive ability of enterprises, stimulation of investment and innovation activity and many other things. Unfortunately, this legislation often has lacunas, conflicts of laws, which does not allow to regulate the relevant legal relations in a proper manner. In general, the economic relations are the sum total of private and public interests. It is always difficult to regulate and find the balance in the relations where limitations of the state shall be introduced together with creation of conditions for active participation of private persons. Therefore, legislative provisions often become the subject-matter of the constitutional control.

In the first place, the Constitutional Court of the RF verifies the norms of the current legislation in economic sphere against the constitutional norms, Art. 8 of the Constitution of the RF in particular. Besides, the Constitutional Court, evaluating a particular norm as constitutional, often recognizes its interpretation by a legal practitioner as unconstitutional, i.e., the Court evaluates not only the literal meaning of the verified legal act, but also the meaning attached to it as a result of interpretation of the established practice of applying the law. Moreover, the Constitutional Court sometimes achieves the concealed potential of the Constitution, declaring that the constitutional legislator, stating the constitutional provision in a certain way, meant not only what it directly says, but has more profound contents.

In many cases considered by the Constitutional Court with regard to the analysis of the fundamental principles of the economic system, it evaluated the correspondence not only to the constitutional norms but also to the norms of international law. Thus, the Constitutional Court of the RF achieves the constitutional potential of the fundamental principles of economic system, using *inter alia* the recognized international standards in the said sphere.

Most commonly, the Constitutional Court considers, with regard to the constitutionality, the federal laws which violate (in the opinion of those who file a petition) the constitutional rights and freedoms, including the economic ones. This is due to the fact that the fundamental principles of the economic system are manifested mainly through the implementation of economic rights, as at present the state is not a single or the main subject of economic relations; these functions are exercised by a private person (a private manufacturer). In connection with the change of the

main subject of economic relations, the priorities of the state in the said sphere have changed, in particular, there aroused a need for protecting public interests, determining economic order, limiting economic freedom in the state interests. Defending public interests, the legislator often violates economic rights by providing for a limitation and sometimes reduction of particular economic rights. So, it is important to ensure protection of right of private ownership, freedom of contract, right to a free use of one's own abilities and property for entrepreneurial activity or other economic activity not prohibited by a law. The issue of taxation is not less important. All of these have been considered in the Constitutional Court of the RF many times.

Acknowledging the certain role of the legislation in the creation of relevant conditions for execution of economic rights, guarantees of implementation thereof, it is necessary to recognize a special role which the Constitutional Court plays in this sphere. Its decisions, especially in determining guarantees of economic rights, are more stable, as the legal stances developed in judicial decisions are not subject to such partial changes as the norms of laws. Moreover, quite often by virtue of the decisions of the agency of the constitutional judicial control, the legislator is placed within a certain framework of the possible regulation of particular issues. In distinction from other types of judicial proceeding where the rights of the concrete subjects are protected and, as a consequence, restored, the constitutional judicial proceeding defends the interests of an unlimited range of persons.

CONCLUSIONS

The Constitutional Court of the RF, by ensuring the legal protection of the Constitution, executing the interpretation of the fundamental law and taking into consideration the information on the economy, ensures the development of "constitutional economy".

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