

A BRIEF HISTORICAL AND LEGAL ESSAY ON “ECONOMIC CONSTITUTIONS”

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This article explores constitutional regulation as it relates to the foundation of economic relations. The proper norms and divisions of the basic laws (constitutions) of states are analyzed from the historical and legal point of view: the authors develop an idea of “economic constitutions.” This conception is based on the ideas of American and European economists and lawyers, including the works of the Nobel-prize winner James Buchanan, the author of the conception of “constitutional economy.” The analysis of the individual, the most obvious norms of “economic constitutions” is made in their evolution. The common regularities of formation, development, and functioning of “economic constitutions” are researched. “Economic constitutions” are considered as the immanent legal expression of material conditions of life of communities. The research is based on the criteria of the correspondence of “economic constitutions” with the demands of social economic development of state organized communities. The genesis of “economic constitutions” of the USA, France, Germany and other states, for example, Latin American states are researched. Special attention is paid to “economic constitutions” of socialist and postsocialist states, especially to the “economic constitution” of the Russian Federation. The peculiarities in the development of the newest “economic constitutions” based on the basic laws of Finland and Switzerland are revealed. The authors develop an idea that “economic constitutions” are not limited to the questions of the influence of a state on an economy and of the determination of the borders of state regulation. Economic rights and freedoms, questions of interrelations of labor and capital, financial system, taxation, etc. are considered as the components of “economic constitutions.” Taken into account is that modern international standards are refused from the secondary role of the social economic rights of mankind. The conclusion is made about the interrelationship of the progress of “economic constitutions” and social

economic rights in the information society that are able to ensure the fundamentally new level of a direct democracy in the management of a state.

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Introduction

The constitutional regulation of the fundamental economic relations in modern states is an almost universal phenomenon which used to be denoted by the dominant legal term "economic constitution." Although known, that there is no special document as an "economic constitution" in different states, this scientific abstraction is employed instead of the cumbersome construction of the "constitutional legal norms and institutions regulating the basis of economic relations, economic rights and freedoms and other, state legal phenomena directly related to the economy." This legal term is approved and meets in general the educational needs.¹

The value of "economic constitutions" is determined by the importance of the juridical establishment of the economic phenomena and the economy as a whole at the highest legal level. On the one hand, "economic constitutions" create the model of business, the national market of goods and services, the system of production and distribution of wealth, etc. and, on the other hand, relay potential and constructive opportunities of the legal solution to economic social problems. They bring historical experience of economic development in legal form producing new paths for the constitutional modernization of the economy.

Economic issues were at the center of attention since the earliest evidence of an emerging constitutionalism. It is enough to remember the Great March Ordinance 1357 (Grande ordonnance de 1357) that presented a plan of reforms for the state management of France with the ideas of limiting finance privileges of the executive power, control over taxes and a budget process. Likewise, the British Magna Carta 1215 (Magna Carta Libertatum) which proclaimed mainly civil liberties of economic

¹ In European legal science the term "economic constitution" has become permanent. At the same time economists use the term "constitutional economy." See Чиркин В.Е. О терминах "экономическая конституция" и "конституционная экономика", а также о российской и западной науке (отклик на статью Г.Н. Андреевой) [Veniamin E. Chirkin, *On the Terms of "Economic Constitution" and "Constitutional Economics", and Also About Russian and Western Science (Response to an Article by G.N. Andreeva)*] (Jul. 20, 2018), available at <http://отрасли-права.пф/article/21429>; James M. Buchanan, *The Logical Foundations of Constitutional Liberty* 377 (Indianapolis: Liberty Fund, 1999); Francesco de Cecco, *State Aid and the European Economic Constitution* 13–14 (Oxford: Hart, 2012); Wolf Sauter, *The Economic Constitution of the European Union*, 4(1) Columbia Journal of European Law 27, 30 (1998).

character,² the Instrument of Government of the time of O. Cromwell's protectorate 1653, according to which the Lord-protector was provided with broad tax powers (until Parliament was convened).

In many modern "economic constitutions" which are logically separated from the basic laws (constitutions) of the states in the world community; the number of economic norms is reflected differently. In some countries, only the basic economic principle of freedom of ownership (usually private) is codified. In others, the economic character provisions are described in detail (the complex system of institutions regulating economic life of the state are constructed).

Developed by European and American lawyers the concept of "economic constitutions" maintains a totality of constitutional norms in the area of creating material conditions of life, as well as the problem of introducing into daily economic practice mechanisms for the protection of economic interests of not only current but also future generations.³ It seems that under this concept by using a progressive approach and also the methods: theoretical, comparative, historical-comparative and others it is possible to discover and research the development of the common regularities of economic constitutions. We believe that these include objective stable tendencies of formation, development and the functioning of an economy's constitutional regulation.

For legal and historical development of the problem the following assertion is a matter of principle. Constitutional legal determination (in other words – constitution) of the basic material conditions of life is an objective reality of any society at a certain high level of historical development. If F. Lassalle is true that a real constitution of a state is the correlation of forces actually existing in a given country,⁴ then it is also correct that constitutions are formed under the influence of an economic factor. Thus, an "economic constitution" is an immanent legal expression of the material conditions of a society's life.

The idea of entailing (certain accompaniment) of the legal norms and economic phenomena in the system of constitutional law is not reduced only to the questions of the management of the state's influence on the economy, to the establishment of the borders in state's regulation. The "economic constitutions" also include economic rights and freedoms, questions of relations between labor and capital, financial system, taxation, etc.

It is important to mention that terminology used in national legal systems at different historical stages can reflect different aspects of constitutional and economic phenomenon. Moreover, legal concepts used in constitutions of the states for the

² Edward A. Freeman, *The Growth of the English Constitution from the Earliest Times* 57, 66–68 (London: Macmillan, 1909).

³ At the present moment the most famous one has become the conception of "constitutional economy" of the American economist, Nobel-prize winner J. Buchanan. See Buchanan 1999, at 372, 377–395.

⁴ Ferdinand Lassalle, *On the Essence of Constitutions*, 3(1) Fourth International 25 (1942).

definition of economic phenomena within different historical periods can have different meaning.⁵ Besides this, the practice of constitutional courts and constitutional legal customs can also essentially interpret the economic-constitutional reality.⁶

The “economic constitutions” are the product of the specific historical era, they reflect the peculiarities of scientific and technological development of society in a certain period. The contents of “economic constitutions” as a legal set of fundamental legal norms directly depends on the development of the material conditions of life. However, this does not influence their passivity: constitutions influence actively on the economic sphere of society.⁷

A broad view on the relationship between constitutions and economies means that all legal norms are in their organic unity related with the economic system and are correlated with its regularities – they are transformed under the influence of the system and transform the system themselves. A narrow legal view on the problem is restricted by the consideration of the sections and norms of constitutions (basic laws) which directly regulate economic relations. This last thesis is better to be verified.

Obviously, the analysis of the foregoing subject area within the journal article proposes the research of only the most obvious norms that represent the “economic constitutions.”⁸ It is also clear that the analysis of the subject area is limited by the capacity restraints of the journal’s articles, that is why it is proposed to consider the most obvious examples of “economic constitutions” in the dynamic historical process. However, if “the history of human rights shows a clear dimension of progress,”⁹ the most mature constitutional-legal content for the consolidation of the rights and freedoms in an economic sphere was generated by the New Time. It was the time of the beginnings of mechanized production, of the first accumulation of capital and the exploitation of hired labor by that capital. The result was the declaration by capital owners and employees about their rights. The New Time gives us an example of the genesis of “economic constitutions.”

1. The New Time

The beginning constitutionalism of the New Time symbolizes the decision of King Charles I of England to convoke Parliament (in 1640) as a sign of the political victory of the newly emerging economic hegemony – the third class. The progressive

⁵ Осаке К. Сравнительное правоведение в схемах: общая и особенная части [Christopher Osakwe, *The Comparative Jurisprudence in Schemes: The Common and Special Parts*] 23–25 (Moscow: Delo, 2002).

⁶ The practice of economic courts is an object to special studies.

⁷ Michael Bogdan, *Comparative Law 70* (Deventer: Kluwer; Stockholm: Norstedts Juridik; Oslo: TANO, 1994).

⁸ The norms of “economic constitutions” have spatial and time borders given by the specific historical conditions.

⁹ Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* 12 (Berkeley: University of California Press, 2008).

bourgeois relationships were associated with industrial achievements in engineering and technology (mechanization of factory production, the development of textile mills, industry, domestic and foreign trade) that ensured mass transition from a manual to a machine labor, from a textile mill to a factory.¹⁰ It was a conflict between the new productive forces and stagnating feudal industrial relations (with the feudal social institutes) that created the revolutionary constitutionalism in England.

Movement to the constitutionalism and liquidation of illegal feudal relations was of economic character.¹¹ Developed by Parliament and adopted on 22 November 1641 the Grand Remonstrance was a long list of abuses committed by the King during his sole reign. The document demonstrates that the bourgeoisie considered everything that restricted freedom of ownership (the initial point of the constitutional regulation) and enterprise.

The adoption of the Bill of Rights in 1689 meant an undoubted success in the struggle with the King's tyranny. This act became one of the first documents, which legally established economic independence of the bourgeoisie, in particular the collecting of fees in favor and at disposal of the Crown was forbidden. In addition, among the priority tasks that required legal confirmation, the bourgeoisie considered voting for public expenditures as their organic right. The first steps of creating the basis of the modern bourgeois constitutionalism included a variety of measures, from acquisition of ownership rights on the basis of expropriation¹² to the inalienable right of Parliament to form a budget (right of purse).¹³

The Declaration of Independence of the USA of 1776 and later the first in the world written American Constitution of 1787 proposed primarily to establish economic, trade and financial independence. "No taxation without representation" was the slogan used as the main claim of the colonists in North America to the English Crown and to the colonial administration and was widely spread during the struggle of the North American colonies with the English monarchy for independence. The Founding Fathers of the USA tried to establish such rules of living that would transform the confederation into a "perfect union" in order to create the movement toward "common prosperity."

However, aspiration to this "prosperity" took into account technological features of production – the necessity of slavery for the extensive agricultural plantations of the South (mainly cotton). A slave was a means of production and the fact of slavery was recorded in several articles in the text of the Constitution of the USA: the

¹⁰ *The Industrial Revolution, 1700–1914* 187 (C.M. Cipolla (ed.), New York: Barnes & Noble, 1976).

¹¹ Christopher Hill, *The English Revolution 1640–1689* 14–18 (3rd ed., London: Lawrence & Wishart, 1955).

¹² Julian Hoppit, *Compulsion, Compensation and Property Rights in Britain, 1688–1833*, 210(1) *Past & Present* 93 (2011).

¹³ Mark Goldie, *The Bill of Rights, 1689 and 1998*, 48(9) *History Today* 10 (1998); Geoffrey Lock, *The 1689 Bill of Rights*, 37(4) *Political Studies* 540 (1989).

importation of slaves (Sec. 9 of Art. I), the prohibition of assisting the escape of “those who must be in service or work,” the obligation to return them (Sec. 2 of Art. IV), etc. Liberation of slaves became one of the main purposes of the war between those not interested in slavery, the industrial North, and the agrarian South which only came to an end in 1862.¹⁴

In the first Constitution the importance of economic decisions of representative government was specially emphasized.¹⁵ According to Sec. 8 of Article 1 of the Constitution of the USA, the Congress had also a power to lay and collect taxes, fees, duties in order to pay the debts; to borrow money on the credit of the U.S.; to regulate commerce; to uniform laws on the subject of bankruptcies throughout the U.S.; to coin money, to regulate the value thereof and of foreign coin and to fix the standard of weights and measures. Considerable attention in the Constitution (including recent amendments) was paid to economic issues: taxation, financial and property management, currency and others.¹⁶

At the same time only the right of property was described among economic rights in the U.S. Constitution. In particular, the Fifth Amendment establishes that no person shall be deprived of property without due process of law. The American doctrine of constitutional law traditionally does not consider economic rights as fundamental. However, that does not mean the absence of a legal constitutional regulation of the economic area.¹⁷

For all its progressive value adopted in the late 18th century the Constitution of the USA has acted for more than 200 years, but even with the famous 27 amendments, it could not literally save the adequacy of the further progress of the productive forces and production relations. However, the principles outlined in the document are still relevant.

Stably developing social economic institutions require special constant interpretation of constitutional provisions which is allowed in the courts in the USA. For this reason, the Supreme Court of the USA has an enormous role in the

¹⁴ The Emancipation Proclamation was adopted (1862 and 1863). The Thirteenth Amendment (Amendment XIII) to the U.S. Constitution prohibiting slavery was adopted by Congress on 31 January 1865. Much later the trade clause served as the constitutional basis for some anti-discrimination laws. In case *Katzenbach v. McClung* (1964) the federal prohibition on racial discrimination in private restaurants was found to be an unconstitutional one because such discrimination, among other things, restricted the movement of black citizens in commercial matters and therefore affected interstate trade. See the website of the Supreme Court of the United States (Jul. 20, 2018), available at <https://supreme.justia.com/cases/federal/us/379/294/case.html>.

¹⁵ *The Strange Survival of Liberal England: Political Leaders, Moral Values and the Reception of Economic Debate* 212–247 (D. Tanner & E.H.H. Green (eds.), Cambridge: Cambridge University Press, 2006).

¹⁶ Constitution of the USA (Jul. 20, 2018), available at <http://www.americasfreedom.com/us-constitution/article1.html>.

¹⁷ The economic rights received more detailed regulation in the legislation of states, but as constitutional rights they were raised only in fragments.

modernization of the economic basis of the constitutional system and economic rights, and in bringing modern economic relationships in accordance with the letter and spirit of the developing by precedents Constitution. For example, an extensive interpretation of the constitutional provision on the assumption of the ability of expropriation of property for public needs allowed the judicial practice to refuse recognition of the absolute nature of the right of private property. Thus, in the 1950s and 1960s the Supreme Court of the USA recognized the possibility of the restriction of monopolization within the framework of state regulation of the economy. Thus, this practice of the U.S. Supreme Court embodies a juridical mechanism of “adjusting” economy and law for the effective development of society.¹⁸

The ideas of limitation of absolutism, of legal protection of personal rights and property formed the basis of the first written European constitutions – the Polish Constitution of 3 May 1791, officially named “Government Act” (*Ustawa Rządowa z dnia 3 maja*).

Bourgeois principles of the Polish Constitution had a limited character, thus in the act dominated the norms that reflected the interests of landed szlachta (gentry).¹⁹ The Constitution protected the basic privileges and liberties of feudal lords (even the privileges written in the times of the Henrician Articles of 1573).

An important role in the empowerment of the petty bourgeoisie played a right of ennoblement: the Constitution enshrines the right of the wealthy citizens who were landholders to acquire the status of the feudal aristocracy and to pass onto the nobility receiving the corresponding privileges. For example, the second section (“II. The Lander Nobility”) was as follows:

recognize all the nobles equal among themselves... in relation to equal enjoyment of privileges and prerogatives belonging to the gentry class. First of all the enjoyment of the right of personal integrity, the right of personal liberty and the right of ownership of land and chattels, as they served each in ancient times, so we want them to be preserved sacred and inviolable in the future, and solemnly promise that we will not allow any changes or exceptions in the law on personal integrity and private property.²⁰

These innovations served to introduce bourgeois elements into the structure of social relations. However, it was an evidence of the preservation of a social basis and at the same time a type of ownership of the feudal mode of production, which meant the process of merging the growing bourgeoisie with the feudal lords, which

¹⁸ Peter Irons, *A People's History of the Supreme Court* 101 (New York: Penguin Books, 2006).

¹⁹ Jerzy Lukowski, *Recasting Utopia: Montesquieu, Rousseau and the Polish Constitution of 3 May 1791*, 37(1) *The Historical Journal* 65 (1994).

²⁰ Constitution of 3 May 1791 (Jul. 20, 2018), available at http://www3.lrs.lt/pdf/konstitucija_angliska_1.pdf.

was common for the period of transition from feudalism to capitalism.²¹ Despite their progressive potential the bourgeois principles of the Polish Constitution have not weakened the dominant position of feudal social economic relations.

2. The Transition to an Industrial Society

The French Constitution of 1791 became an interim result of the Great French Revolution and was on the contrary of the radical modernistic character, not in the last place caused by economic contradictions.

Stagnation of feudal relations led to the revolutionary events and to the adoption of a number of legislative acts of the constitutional character in a period since 1789 to 1791. Shortly after the fall of the Bastille, on 4–11 August 1789 the revolutionary Constituent Assembly formulated the principles of the French new law,²² also passed a decree “About Abolition of Feudal Rights and Privileges.” The most important among the adopted acts was the Declaration of the Rights of the Man and of the Citizen of 26 August 1789 that along with the other norms approved the right of private property as a natural right and proclaimed the right of property as an inviolable and sacred one and established common principles of tax system.

Although the French Constitution of 1791 was partly a compromise (for example, it contained very important antifederal provisions, but the monarchical system of government was preserved and the issue of slavery in the colonies was not solved), it introduced a new emerging in the past two years a revolutionary political legal order.

Title V “On the State Taxes” of the French Constitution of 1791 developed the principle of separation of powers by established rules, according to which state taxes were discussed and set annually by the legislative body; as the executive power directed and observed the collection of taxes and for these purposes was able to make all arrangements. The French Constitution of 1791 also included in its legislative structure the Declaration of rights of a man and a citizen which established that property as an inviolable and sacred right. Nevertheless, it went too far on the declaration and protection of constitutional social economic rights: according to the Le Chapelier Law on the prohibition of trade unions and a right to strike (adopted on 14 June 1791) the social lack of rights of workers and farm-laborers remained.

Worldwide large-scale development of bourgeois relations falls on the 19th century for many countries it was a time of assertion of their independence, for some of them it was a time of progressive development of their economies.

²¹ *Constitution and Reform in Eighteenth-Century Poland: The Constitution of 3 May 1791* 78, 175–202 (S. Fiszman (ed.), Bloomington: Indiana University Press, 1997).

²² Michael P. Fitzsimmons, *The Committee of the Constitution and the Remaking of France, 1789–1791*, 4(1) French History 23 (1990).

Therefore, the beginning of the 19th century became a time of release of Latin American countries from colonial dependence from Spain and Portugal. The specific character of formation and development of economy in these countries determined the features for the first stage of the state political construction and the heterogeneity of the social structure. If in some states, the upper bourgeoisie and industrial workers were the significant social power (for example, in Argentina, Brazil, Mexico, Chile), in the others feudal relations preserved (for example, in Honduras, Paraguay). Special features of social relations reflected in the first constitutional documents of Latin American countries.

The first Constitutions of the Latin American states, despite the early period of formation, experienced to a great extent of influence the leading ideas of the bourgeois republicanism of that time. The Constitution of Venezuela of 1811, the Constitution of Argentina of 1819 (the Constitution of the United Provinces of South America), and the Constitution of Mexico of 1824 contained many articles devoted to the bourgeois rights. However, the inclusion of the norms on progressive economic rights and freedoms in the texts of these constitutions often had a character of blind copying, because in none of the Latin American states which were proclaimed republics after the wars of independence were radical changes of social economic structure of society achieved.

The Constitution of Mexico (Constitución Federal de los Estados Unidos Mexicanos) proclaimed the formal equality of all the citizens, including mestizos and Indians, and even prescribed in general outline that the local authorities to take measures in order to improve the position of "natural born" citizen (Indians) and their rapprochement with "the other citizens." The Constitution stated that the lands owned by Indians would be assigned to them by the right of ownership. The Constitution abolished privileges of nobility, military and the church.²³ Slavery was forbidden in Mexico, although it was not prescribed constitutionally. The written decree on the abolition of slavery which was promulgated several years after the Constitution on 15 September 1829 read:

Slavery is abolished in the Republic. That is why those who until this day were considered as slaves are free. When the circumstances of the Treasury allow, the compensation to the slave-owners in accordance with the conditions defined by law will be provided.²⁴

An attempt to solve difficult economic contradictions of Latin American society with the help of political measures took place in Bolivia.

²³ Federal Constitution of the United Mexican States (1824) (Jul. 20, 2018), available at <https://tarltonapps.law.utexas.edu/constitutions/mexican1824>.

²⁴ Kevin C. Julius, *The Abolitionist Decade, 1829–1838: A Year-by-Year History of Early Events in the Antislavery Movement* 39–54 (Jefferson: McFarland, 2004).

Profitable geographic position of the country, legendary wealth, contrary to the hopes of the victorious fighters for independence, did not lead it out from the beginnings of economic depression, despite the fact that by the end of the 18th century during the colonial period Bolivia (then Mountain Peru) was an economically progressive and mainly an export oriented country. To the opinion of the drafters of the Constitution, the inclusion of the democratic principles in its text could allow the government to use strong (presidential lifetime) power for progressive social economic reforms in order to curb the arbitrariness of the latifundios without the risk of formation of tyranny or anarchy. However, the real power in Bolivia as in the other Latin American republics belonged to the landlords, landowners and clerics. The Constitution of Bolivia of 1826, which is called "a romantic paradigm of the perfect order," did not have real influence on the state of society. The social economic prosperity was not achieved by simple centralization of power; and after the uprising in the army the Bolivian Constitution of 1826 was abolished in 1829.

3. Consolidation of the Achievements of Industrialization

The 19th century became a time of the progressive development of economic institutions, first of all for the states of the European continent: this period was marked by industrial and agricultural revolutions. Railways, steamships, the telegraph and by the turn of the century the telephone produced a revolution in the means of communication and connection. The effect of the industrial modernization and economic success reflected in the corresponding changes of the social stratification: new social classes appeared instead of the old ones. At the turn of the 18th and 19th centuries enormous changes occurred in the North of Europe.

The Constitution of Sweden of 1809 provided "the ancient right of the Swedish people to establish taxes." If the legislative power was not a function of only representation but was shared equally between the king and the mission, the establishment of taxes was assigned in the whole to the general Riksdag (unicameral four class (nobility, clergy, townspeople, peasants) representative and legislative body). However, many economic issues in the Constitution remained unsolved, as well as the connected social class questions. The main focus was on equalization of privileges and a form of representation.

It is important to mention that the process of equalization of classes and privileges, which began already in the 18th century, did move forward. All the classes formally received a right to occupy and also public important post. Moreover, the nobility was deprived of the exclusive right to possess the most economically profitable lands (which were free from several taxes) and the nobles together with the clergy and the burghers were forced to agree to some concessions in matters of taxation. Despite the consolidation of social innovations, the Constitution did not eliminate the significant features of the class system: the worked lands were subject to different taxes; social

groups which were very important not only economically but also had acquired political weight (e.g. landowners, not related to peasants, big manufacturers, owners of factories, quite numerous workers) were not represented in the legislative body.

The Constitution of Norway of 1814 unlike the Swedish Constitution did not limit the legislative rights of Parliament. The only legislative body of the state recognized was Storting – the national representative body, to whom the legislative, “permitting” and checking power belonged. According to Article 19 of the Norwegian Constitution the King “guarantees that property... of the state is used and managed in order determined by Storting and with the greatest benefit for the community.”

According to Article 17 the resolutions passed by the King on the matters of trade, customs, crafts, industry and other sectors of economy, and also the police which were not supposed to contradict the Constitution and the laws, established by Storting, were temporary and needed subsequent approval of Storting. Parliament was provided with considerable financial right: to impose taxes and other duties, to determine credits for the state’s needs, the King’s and members’ of Royal family civil list, to set salaries of public servants, to take loans, to check public expenditure. The restriction on freedom of trade and industry was forbidden. The right of an owner to obtain the full compensation from the Treasury for the confiscation of property for state needs was established (Arts. 101, 105, 108 of the Norwegian Constitution).²⁵

An example of the specific legal constitutional fixation of the new economic relations gives the political history of one of the provinces of the Netherlands – Holland. After reaching in the beginning of the 18th century the peak of international and marine power Holland is gradually losing its position as the largest commercial and financial center in Northern Europe.

At the end of the century the struggle deepened between those who supported the strengthening of the central authority and supporters of the change of the form of government on a more democratic basis. The supporters of democracy were mainly the industrial bourgeoisie and the opposition nobility. For legalization of their intentions the latter needed the sympathy of the burghers, peasants and catholic priesthood. Democratic ideas formed under the influence of the French and English representatives of the Enlightenment: they came out for the proclamation and protection of the sovereign rights of the people,²⁶ for the stimulation of the domestic economy, the abolition of monopolies, and the reorganization of the East India company, etc.

In 1795 the state was declared the independent Batavian Republic. Then for the first time in the history of the Holland a conservative version of the Constitution was proposed (it was prepared mainly by the representatives from the large bourgeoisie

²⁵ Constitution of the Kingdom of Norway (Jul. 20, 2018), available at <http://www.constitution.org/cons/norway/dok-bn.html>.

²⁶ For the restriction of the powers of the center, the establishment of a government of the people’s representative Assembly, freedom of press, implementation of a democratic reform in the management system, the establishment of a system of control over managers, the creation of groups of civil police.

and did not solve important social economic purposes). In 1798 a more radical Constitution was elaborated: it abolished noble titles and privileges, brought civil equality and other changes in the interest of the middle class (the introduction of the central government; the consolidation of the legislative power by the bicameral National Assembly but the executive power by the Directoria consisted of the five electoral members; the redistribution of power in the interest of local states; communal local government; freedom of speech and press, etc.); the remainder of feudalism was liquidated. The next reactionary revolution prevented to carry out bourgeois democratic reforms.

With the coming to power of Napoleon Bonaparte the semi-feudal relations were restored in the country and in 1806 the "Kingdom of Holland" headed by Louis Bonaparte was formed instead of the Republic. The collapse of Napoleon's Empire led to the restoration to Holland the status of an independent state in the form of a kingdom with an absolute monarch at the head.²⁷

The Constitution of Belgium of 1831 adopted after the declaration of independence from the Netherlands was also of bourgeois democratic character. Its modernizing economic content was expressed also in the abolition of feudal classes and privileges that impeded economic development of the country. The right of property was protected in a proper way: property was inviolable, no one would be deprived of his property except for public benefit in cases in an order established by law for fair and full compensation (Art. 16). Punishment such as the confiscation of property was prohibited (Art. 17). However, as most constitutions of the period the bourgeois democratic struggle for the rights of new social members which tried to strengthen their positions (bourgeoisie, clergy) the Belgian Constitution was not consistent. Proclaiming that all the powers emanated from the people (Art. 25) the Belgian Constitution at the same time established a high property census, in that essence proletariat and petty bourgeoisie were kept out of the possibility to participate in elections of representative bodies.

4. In the Conditions of the National Liberation Movement

In 1848–1849 Central and Eastern Europe experienced tremendous political upheaval. In Paris, Vienna, Berlin, Rome and other European capitals revolutionary performances occurred which promoted the approval of capitalism as the dominant world economic system. The period of general worsening of social struggle coincided with the rapid rise of national liberation movements influenced vitally on the formation and the development of principles and norms of "economic constitutions."

²⁷ Martijn van der Burg, *Transforming the Dutch Republic into the Kingdom of Holland: The Netherlands Between Republicanism and Monarchy (1795–1815)*, 17(2) *European Review of History* 151 (2010).

The logical consequence of the national liberation movements was a process of constituting a new economic order. Thus, in Romania shortly after the unification of two Romanian principalities (Moldavia and Wallachia) the process of state structuring was completed by the adoption of the Constitution of Romania of 1866. The Constitution proclaimed the inviolability of private property, bourgeois democratic freedoms (individual freedom, freedom of religion, of conscience, freedom of press, freedom of assembly, inviolability of home, etc.). At the same time, it guaranteed the dominance of both the great landowners and bourgeoisie: the Chamber of Deputies and the Senate were elected during the rank elections according to the social, property and educational census. The attempt to create a liberal political regime did not make it a democratic one for the economic active population in the whole: the persons of non-Christian confession could not receive citizenship despite the existing property census.²⁸

The 1848 Piedmontese Statute became the constitution of a united Italy, retaking independence from Austria. The Statute established the form of government as a constitutional monarchy (according to Article 2 the State was ruled by a representative Government), the King was declared the head of state power.²⁹ In practice these rules were explained as the function of the representative body to control the activities of the government. Such an explanation of the functions for representatives became possible because of the limitation of the king's rights in financial areas: he needed to receive consent of the chambers to levy taxes.

The Tarnovo Constitution of 1879 resulted because of the liberation of Bulgaria from the feudal Turkish occupation. This created the conditions for bourgeois development in the country. In the adopted text of the constitution the equality of the citizens before the law was established, titles and other differences were prohibited; the Constitution guaranteed the inviolability of a person and property and also freedom of press, assembly and communities. A unicameral Parliament whose deputies were inviolable was empowered to elaborate laws, to approve the budget annually and to control the government.

"Economic constitutions" developed rapidly in the beginning of the 20th century. In our opinion such activity had two main reasons. The first one is rooted in the deep qualitative changes in the industrial sphere, the development of production, technological reequipment, the growth of capitals and considerable quantitative increase in hired labor. The second reason relates to the situation when the new industrial foundation became the basis for the development of capitalistic relations.

²⁸ *Dicționar de istorie a României [Dictionary of Romanian History]* 88–89 (S. Stoica (ed.), Bucharest: Meronia, 2007).

²⁹ According to the Statute the legislative power was exercised by the king and two chambers – the Chamber of Deputies (for election as a deputy a high property qualification was established) and the Senate (its members were appointed by the king from among the representatives of the higher bureaucracy). The majority of the population was deprived of the right to vote.

Broad sections of population became involved in economic relations of the organizing of state revenues and their distribution between the participants of public production. Accordingly, the new economic realities demanded the establishment of a modern law order. Many states were involved in the process, including those which distinguished geographically to a considerable extent.

Thus, the basic law of Australia (consisting of several documents) was approved by the population of Australian colonies at the referendums in 1898–1900 and was consolidated by the Constitutional Act of Australian Union in 1900. It contains the basic tax rules, procedures, allocation of assignments, etc. (Arts. 53–55 about different types of taxes), finance and trade (Ch. IV “Finance and Trade”). Interestingly, the Constitution does not regulate basic economic rights.

Adopted in 1901 the monarchical Constitution of Serbia proclaimed that every Serbian national has to pay taxes to the State. No one could be released from taxation except in the cases provided by law. The King and members of the Royal Family did not pay taxes (Ch. VIII “State Finances”, Art. 88). The Constitution adopted a national representative body (two chamber parliament), empowered to examine beforehand and approve acts, which could limit the rights of Serbian citizens, change state laws or lead to financial expenses for the state due to the conclusion of trade agreements. In the Constitution freedom of speech, conscience and equality of all behind the law were established.

5. At the Beginning of the Machine Age

An outstanding example of law constitutional work of that period was the Constitution of Germanic state known as the Weimar Constitution, drafted by professor Hugo Preuss and adopted in Germany in 1919. In the beginning of the 20th century Germany developed rapidly and modernized industrially. The size and the speed of economic development placed Germany first place in Europe and second in the world. The political unification of Germany, military victories contributing to the technological evolution, concentration of production and development of transport was rather important to the development of the natural sciences. Nevertheless, the evolution of the economy which was stimulated by the military policy which required the intensification of capital movement combined with the events in bolshevist Russia resulted in a compromise according the economic demands of the society.

Proclamation of certain social economic rights explained as a reaction to the bolshevist revolution in Russia was the constitutional innovation of the Weimar Constitution. For example, workers, in order to protect their social and economic interests, received legal representation in working councils in enterprises and in circular working councils of certain branches of industry and imperial working councils (Art. 165). At the same time, the classic formulation of the correlation of the right of property and social interests was constituted (Art. 153):

The property obliges. The use of it must also serve the common wealth.

The Weimar Constitution pointed out the importance of the most effective and innovative means of transportation of that era – the railroad. Article 95 has the purpose to stimulate the development of this industry (increase in the length of railroads, modernization of the steam locomotive construction, reduction of costs of their exploitation) and says that

railroads which are under the supervision of the Empire must be constructed and supplied on the basis of the unified rules established by the Empire. They must be maintained in a condition ensuring safety of transportation and should be extended according to the needs of turnover...

Article 97 proclaimed the task of the Empire

to make its own property and to take in its management the waterways of the total value... Every management of the waterways has to be agreed to the accession of other inland waterways at the expense of the entrepreneurs. The same obligation is set in the relation to the connection of inland waterways with railroads.

The Constitution allowed workers to administer enterprises: Article 165 provided for the election of workers councils in enterprises and also the participation of the workers in regional and central workers councils. The Constitution obliged the state to ensure economic freedom of a person (Art. 151), freedom of trade and crafts (Art. 152).³⁰

This new tendency of the constitutional adoption of economic rights was also caused by the enormous success of the industrial production. Hydrocarbon energy takes the place of electric power as the mover of the industrial revolution, the colored metallurgy, car building, oil-refining and oil chemical production are developed. This era concentrated considerable public resources that were able to socialize liberal "economic constitutions."

The basic laws of most European states of that period included in their texts a large number of social economic rights and freedoms with reference to their material basis. Thus, free economic activity was intended to become such a basis: "No limitation can be established in the area of free economic activity except for the purposes of common wealth," – says Article 69 of the Constitution of Ireland of 1944.

Moreover, in the period between the First and the Second world wars, in a number of states (in Germany, Italy, Japan, Spain, Portugal) representatives of the reactionary part of the monopolistic capital together with the protectors of their

³⁰ Weimar Constitution (Jul. 20, 2018), available at http://www.zum.de/psm/weimar/weimar_vve.php#Sixth.

interests and the providers of the policy of revanchist background received power (also during the elections). This led to the refusal in these states of the liberal law constitutional progress and constitutionalism in the whole or to the transformation of the constitutions in fiction. If the constitutions were not abolished, they in the fact did not act, and the leading organs of the political party became the most important part in the machinery of the State receiving unlimited power in state government.

6. With the Coming of the Postwar World

“Economic constitutions” of the postwar period were extensive documents that reflected characteristics of the economy based on the serial mass production taking into consideration the development of all-round international humanitarian connections and the establishment of stable transnational relations. These new economic relations meant collective production together with the collective rights.

The Constitution of the Italian Republic of 1947 emphasized social economic rights and freedoms and their guarantees with the reflection at the same time of the individual and collective ideas.³¹

The progressive character of the Italian Constitution was ensured by the articles of the programmed character. These articles contained large democratic reforms – nationalization of monopolistic factories, overcoming of agricultural backwardness, introduction of democratic social principles (freedom of trade unions, right to work, social security, right to strike, etc.).

The difference between the Italian Constitution and the other constitutions also of bourgeois character means the mentioned above compromise features of its individual provisions. This compromise clearly demonstrates Article 3: the task of the Republic is to remove impediments of economic and social order which limit in fact freedoms and equality of citizens, prevent the real development of a person and effective participation of all working people in political, economic and social organization of the country. The study of the details in respect of the right of ownership also says about this feature of the Constitution. The Constitution promulgates two forms of ownership – public or private (Art. 42), it provides the state enough opportunities in expropriation of private property (“for common wealth”) (Art. 43) and in regulating relationships in the area of land property, establishing its size, transformation of large estates, promotion of small and medium property (Art. 44).

Adopted constitutions in European states in the period after World War II consolidated mostly a liberal, often a social liberal model of state law and order. The constitutions ensured the ideology of a social oriented economy, the equality of interests of all the subjects of social process and social role of private property.

³¹ Such a community of the opposite ideological attitudes in a single document has a simple explanation: the Constituent Assembly that elaborated the text had in its structure approximately equal representation of political forces from Christian Democrats and left parties (communists, socialists).

The basic laws of Italy (the Constitution of the Italian Republic of 1947), Germany (the basic law of Federal Republic of Germany of 1949), France (the Constitution of the French Republic of 1958) and other states, consolidated traditional European version of constitutionalism that incorporated universal values of the new economic liberalism.³²

At the same time the Constitution of the Islamic Republic of Iran of 1979 notes in its Preamble the importance of the movement for the nationalization of oil; the Constitution of the Bolivarian Republic of Venezuela of 1999 in Article 302 establishes that the state, for the reasons of national benefit, reserves the right to control oil extraction and other branches of industry, mining, services and material goods of strategic importance. The State stimulates production based on the exploitation of non-renewable natural resources for the purpose of adoption, creation and innovation in the area of technology; Article 108 of the Constitution of Iraq of 2005 says that oil and gas are the property of the public in all administrative districts, etc.

Despite the different directions of constitutional regulation of economic relationships in different states, intensification of relations between the states has clearly shown that the existing earlier state borders began to restrain especially rapidly developing economic institutions caused also by the revolutionary changes in the size of factors of economic growth and the rise of fundamental new technologies in industrial production. Microelectronics and information technologies, molecular and other nanoscale productions, bioengineering, universal automation of production and logistic processes are these spheres of modern economic activity of a man which assume system changes in the all links of the globalizing world: in society, business, policy, governmental and private entrepreneurial activity and of course in the area of their economic and legal support.

7. The Socialist Type of “Economic Constitutions”

An alternative to the capitalistic public relations, bourgeois law and economy in the 20th century was defined in the first soviet constitutions – the Constitution of the RSFSR of 1918 and the Constitution of the USSR of 1924.

Both constitutions declared the abolition of exploitation of a man by a man, propagandized nonpossession expressed in the principle “everyone receives according to his work,” proclaiming the unity of the working classes (“Proletarians of all countries, unite!”). The 1918 Constitution of the RSFSR contained a document adopted earlier as the first constitutional act of the Soviet Republic named “Declaration of Rights of the Working and Exploited People.” The Declaration formed the introductory

³² United in the European Economic Community (Treaty of Rome, 25 March 1957), and then in the European Union (Treaty of Maastricht, 7 February 1992) the countries of Western Europe motivated “by the desire to promote the economic and social progress of their peoples...” provided “their citizens with a space of freedom without internal borders.”

part of the Constitution; it defined as the main task the abolishment of every form of exploitation of a man by a man, complete elimination of division of society into classes, relentless repression of the exploiters (Ch. 2 of Art. 3). The declaration proclaimed the introduction of the universal labor service, nationalization of lands, natural resources, banks, etc.

According to the provisions of the Declaration and the Constitution in practice the system of social and economic relationships was created in the style of the Asian way of production, characterized by the concentration of masses of unskilled workers and the selection of a special stratum of managers – state party bureaucracy. Under of prohibition of private property and industrial privileges an archaic system of consumer privileges was established. That led to the division of citizens into “the best” and the others. At the same time the question of ownership of the means of production did not arise which would not contradict the proclaimed principle of economic (production) equality.

The 1936 Constitution of the USSR and the 1937 Constitution of the RSFSR, the 1977 Constitution of the USSR and the 1978 Constitution of the RSFSR of confirmed continuity of the principles of the first soviet constitutions. The state (national) and collective-farm cooperative property was established as the basis of the economic system of the RSFSR and also a fixed planned economy was formed.

The 1977 Constitution of the USSR contained was deprived of any legal support slogans as “the free development of everyone is a condition for the free development of all;” “the source of growth of social wealth, the welfare of the people and every Soviet man is free from exploitation labor of Soviet citizens.” Moreover, in their own appreciation the positive advantages of Soviet or Russian constitutional norms in the works of the native researchers were described as sharply contrasting with “the negative features of ‘bourgeois’ law.”³³

In the same style were created “economic constitutions” of the majority of the European satellites of the USSR – European states of “national” socialism, other states which for their law and political development chose the “socialist orientation.” In the state constitutions formed after World War II “socialist camp” (entered by the members of the Organization of Warsaw Pact: Albania, Bulgaria, Hungary, GDR, Poland, Romania, Czechoslovakia, named the countries of national democracy) denied economic freedom defined in its liberal spirit.³⁴

In most “national democratic” states the constitutional acts about nationalization of industry and land were published. The constitutions of “non-capitalistic orientation” (for example, Algeria, Angola, Libya in Africa, Syria, Iraq – in the middle

³³ William E. Butler, *Russia and the Law of Nations in Historical Perspective* 172 (London: Wildy, Simmonds & Hill, 2009).

³⁴ Terry Boswell & Christopher Chase-Dunn, *The Spiral of Capitalism and Socialism: Toward Global Democracy* 84–87 (Boulder: Lynne Rienner, 2000).

East, Chile (under S. Allende) – in Latin America, etc.) largely copied the socialist constitutional model of the soviet type, often worsening it because of its social economic backwardness and archaic social relations of the feudal type.

The Constitution of the People's Republic of China, the most powerful present day socialist state, was adopted in 1982 and reflected the essence of the specific character of the socialist Chinese economy. Not declined socialism the state according to different appreciations is at one of the first places among world global economies and pays much attention to its constitutional regulation.

According to the Constitution of the People's Republic of China the people rule the state, exercise management of economic and other affairs using different channels and ways by law (Art. 2). The basis of the socialist economic system of PRC is socialist public ownership of the means of production, namely public and collective property (Art. 6). The driving force of the national economy is a state economy, i.e. socialist economy with public property. The state ensures the consolidation and development of national economy (Art. 7). The Chinese state directs and assists and controls the private sector by using administrative power although, it allows the private sector to exist and develop within the limits prescribed by law.

This means that the private sector of business economic activity is a part of the socialist public economy. The state protects the lawful rights and interests of the private entrepreneurs and manages the leadership, supervision and control after the private sector of economy (Art. 11). Until the XIV Congress of the Communist Party of China (CPC) in 1992 market socialism of a Yugoslavian model was expressed as unacceptable for China. However, since the XIV Congress party documents contain words of a socialist market economy.

These changes were also reflected in the Constitution of the People's Republic of China. Until the March of 1993 before alterations were brought in Article 15 of the Constitution it contained the following norm:

The state leads a planned economy on the basis of socialist ownership. And with a help of the fully balanced economic plans... the state guarantees proportionate, harmonious development of the national economy.

Now Article 15 of the Constitution of the People's Republic of China acts in another edition:

The state carries out the socialist market economy in practice. It develops economic legislation and improves macro-control in the field of economy. The state acting in accordance with the law prohibits violation of the economic order by any organization or an individual.

A unique feature of China is that in the structure of its economic development there are both feudal and other – capitalist and socialist – elements. Thus, the

expansion of economic independence of enterprises and the liberalization of rules for the use of profits of enterprises promoted the process of industrialization and the rapid departure of yesterday's farmers in the city. At the same time the introduction of innovations into economic life was largely made by feudal methods. However significant successes in the economic area roused China's political and administrative leadership to more intensive overcome of the survivals of feudalism and socialism which impede the development of capitalist relations – the eradication of theft and corruption and the suppression of bureaucracy.

The involvement of China in international production and international division of labor led to a complex symbiosis of socialist postulates and market realities: the state implements a socialist market economy, ensuring equal legal status and development of rights of all the market players. In addition, the state protects the lawful right of citizens to inherit private property (Art. 13). Thus, the Constitution of the People's Republic of China contains many of the traditional socialist norms, but on the other hand, the constitutional model of the economy has a modernistic character, which demonstrates a great potential for transformation.³⁵

8. Modern Trends and Their Constitutional Models

The collapse of the world system of socialism in the 1990s led to the formation of a special group of basic laws. Post-socialist states took the path of instituting the interrupted tradition of liberalism, the main features of which are private property, protection of freedoms and security.³⁶ Of course, economic liberalism was corrected by social constitutional motives, which were sufficiently developed in all the leading European states by the end of the 20th century. Post-socialist constitutions were intended to help to overcome economic backwardness and to consolidate constitutionally the purpose of the improvement of conditions of citizen's lives and to increase productivity of labor.

Thus, the Constitution of the Republic of Poland of 1997 establishes a social market economy based on free economic activity and private property. Also solidarity, dialogue and cooperation of social partners are the basis of the economic system of Poland (Art. 20). Limitation of freedom of economic activity in the Republic of Poland is permissible only according to the law and for important public interest (Art. 22).

The Constitution of the Republic of Lithuania, adopted by the citizens at the referendum on 25 October 1992, contains Chapter IV named "National Economy and Labor" that proclaims that the economy of Lithuania is based on the right of private property, personal freedom of economic activity and personal initiative. The State supports social useful public economical efforts. The State regulates economic

³⁵ Jianfu Chen, *Chinese Law: Context and Transformation* 363–373 (Leiden; Boston: Martinus Nijhoff, 2008).

³⁶ *Constitutional Policy and Change in Europe* 95–102 (J.J. Hesse & N. Johnson (eds.), Oxford: Oxford University Press, 1995).

activity in such a way that it serves the common wealth of the people. Monopolization of industry and markets are forbidden by law. Freedom of fair competition is guaranteed. The State protects the interest of the consumer (Art. 46).

Latvia is the only eastern European country which restored its pre-war Constitution after the collapse of the socialist system in Eastern Europe. In 1990 the Supreme Soviet of the Latvian SSR declared the restoration of the independence of the Republic of Latvia and the resumption of action of Articles 1, 2, 3, 6 of the Constitution of 1922. The complete restoration of the Constitution happened on 6 July 1993. In 1998 the Constitution was supplemented by the section on human rights. For this reason, the social economic rights in the Constitution of Latvia are prescribed by the latest edition.

An important contribution in the modern practice of the constitutional legal defense of economic rights is restitution. In the countries of Eastern Europe together with the liberalization of the economy was the return of immovable property that had been nationalized under the ideological pressure and with the material help of the USSR after World War II in the 1940s and 1950s.³⁷ Since the replacement of social economic orientation and the reorganization of economic structure took place not long ago the consequences of nationalization were overcome easily, that's why the process of restitution took place rather quietly in Bulgaria, the Czech Republic, Slovakia and other countries, although there also were limitations. In Russia, where nationalization took place much earlier (since 1917), such process had never begun.

Most of the post-socialist countries of Eastern Europe which chose the way of legal freedom in the late 20th century confirmed in 2007 their choice enshrined in the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community and became participants in the process of eurointegration which has the purpose to contribute to the balance and long economic progress for the strength of economic and social interaction of state participants of European unification. After becoming participants of the European Union, the Eastern European states also adopted the European constitutional norms on economic rights.

Thus, the EU Charter of Fundamental Rights adopted in 2001 established that the right to work may be exercised by EU citizens in any member state (Art. 15), that both property and intellectual property must be protected (Art. 17), freedom of enterprise is recognized in accordance with EU law, national law and customs (Art. 16).

Unfortunately, despite the development of electronic democracy tools, modern "economic constitutions" do not consolidate adequately the right to access the Internet.³⁸ Thus, in accordance with part 2 of Article 5a of the Greek Constitution

³⁷ Barbara Pisciotta, *The Center-Periphery Cleavage Revisited: East and Central Europe from Postcommunism to Euroscepticism*, 22(2) *Nationalism and Ethnic Politics* 193 (2016).

³⁸ A separate issue is a control of the Internet. Repeated attempts of the authorities of the U.S. to implement legal regulation of the content of Internet sites have been stopped by the courts on the basis of the First Amendment to the Constitution.

everyone has a right to participate in the information society. The assistance in access to information in electronic form, as well as its production, exchange and dissemination is the responsibility of the state; according to part 2 of Article 15 of the Transitional Constitution of Nepal of 15 January 2007

[R]adio, television, the Internet or other digital or electronic media, the press or any other media are not the subject to closure, withdrawal or cancellation of registration in connection with any publication, broadcast or publication of any material on audio, video or electronic equipment.³⁹

9. Modern Native Experience

The first constitution of postsocialist Russia – the Constitution of the Russian Federation of 1993 formed the opportunities for economic liberalism; it does not name directly the type of Russian economic system but accentuates the basis – property irrespective of its form.

In Russia, freedom of economic activity is guaranteed. Private, state, municipal and other forms of property are equally recognized and protected similarly. The principle of economic freedom is established as the basis of constitutional order: the unity of economic area, free movement of goods, services and financial resources, support of competition and free economic activity are guaranteed in the Russian Federation (part 1 of Art. 8).

In accordance with the Russian Constitution, land and other natural resources may be in private, state, municipal and other forms of ownerships (part 1 of Art. 8); protection of the unity of economic space is the constitutional norm on the prevention of the establishment of customs borders, duties, levies and other impediments to the free movement of goods, services and financial resources are prohibited in the territory of the Russian Federation (part 1 of Art. 74).

The development of the nuclear industry, “a sharp increase in the volume of scientific and technological information, the emergence of fundamentally new ways of working with it” led to a new constitutional legal rethinking of reality.⁴⁰ By the end

³⁹ The experience of the European States establishing provisions for the universal access to the Internet in their current national legislation is important. More info, see *Середа М.Ю. Закрепление права на доступ в сеть Интернет в международно-правовых актах и законодательстве зарубежных стран // Международное публичное и частное право. 2013. № 5. С. 44–47* [Mikhail Yu. Sereda, *Securing Rights of Access to the Internet in the International Instruments and Legislation of Foreign Countries*, 5 International Public and Private Law 44 (2013)] (Jul. 20, 2018), also available at <http://www.center-bereg.ru/o428.html>.

⁴⁰ Part 1 of Article 44 of the Russian Constitution reads: “Intellectual property is protected by law.” In the Strategy of scientific and technological development approved on 1 December 2016 by presidential Decree No. 642 the concept of “scientific and technological development of the Russian Federation” is used, it means the process of a qualitative change of the role of science and technology in ensuring independence and improving the competitiveness of Russia, whose goal is the ability of the state to respond to big challenges effectively.

of the 20th century and the beginning of the 21st century nuclear and information technologies received constitutional recognition. For example, Article 71 of the Russian Constitution says, that the jurisdiction of the Federation includes: federal energy systems, nuclear power, fissile materials; federal transport, communications, information and communications; activities in space.⁴¹

The Constitution of the Russian Federation distinguishes three levels of public power: federal, subjects of Federation and municipal. Each level of public power is provided with the appropriate form of ownership that is the economic basis of its independence. Relations of ownership are connected with the rights of the people living in the corresponding territory. For example, such objects of ownership as land and other natural resources are considered to be the basis of life and activities of the people inhabited the territory (part 1 of Art. 9) and for them special constitutional legal conditions of usage are established.

The active Constitution of Russian Federation is often criticized too because of the legitimation of the disputed results of a nationwide privatization of socialist property which took place in the beginning of the 1990s.⁴² By the way, the Constitution did not become the basis of denationalization and restitution of the objects of property as it was in the countries of Eastern Europe. Opinions are expressed about the insufficiency of the forms of ownership regulated by the Russian Constitution: the absence of the concept of “people’s property” deprives the people’s power of the economic basis.⁴³

It seems fair to admit that the defects and problems of the “economic constitution” of Russia discovered during more than 20 years of its action since 1993 are not so much of legal character. They are strained by the shortcomings of law enforcement practice that influences perniciously on the development of the Russian economic system, by the ineffectiveness of the judicial system, poor administration, bureaucratic intervention and corruption.

Conclusion

“Economic constitutions” are submitted to a common leading regularity that is expressed in progress. The progress of “economic constitutions” is characterized by the transition (gradual or revolutionary) from simple forms of protection of the right of ownership to a more perfect systematic and universal regulation of the material basis of society;

⁴¹ Do not forget that many modern technologies in our country were developed in the Soviet period. This fact to some extent refutes the thesis about the determinism of scientific and technological progress by liberal democracy.

⁴² William Partlett, *The Legality of Liberal Revolution*, 38(3–4) *Review of Central and East European Law* 217 (2013).

⁴³ See *Авакьян С.А. Гарантированное народовластие // Независимая газета. 16 октября 2014 г.* [Suren A. Avakyan, *Guaranteed Democracy*, *Nezavisimaya Gazeta*, 16 October 2012] (Jul. 18, 2018), available at http://www.ng.ru/ng_politics/2012-10-16/15_narodovlastie.html.

“economic constitutions” of separate historical stages and in separate states developed in different directions. Regression of “economic constitutions” is also possible, it is characterized by the temporary transition from complex forms of constitutional regulation of economy to more simple and less sophisticated methods for example used by the antidemocratic power to protect the illegitimate (corrupt) power ownership.⁴⁴

The regularity of the progress of “economic constitutions” is confirmed by the following tendencies:

“economic constitutions” are also the juridical legalization of institutions of control over power, the way of expansion of civil economic freedom. Such are, for example, the introduction of certain (competence and procedural) restrictions on the use of public resources, the rational combination of executive power with the budgetary and corresponding control functions of representative power, the formation of economic rights and freedoms of a man and a citizen, etc.;⁴⁵

“economic constitutions” demonstrate not only the features of the dominant method of production and the character of production relations: in the advanced communities rules of interaction of subjects in the economic sphere are formed on the basis of the rule of law (including through special courts, for example, arbitration), economic guarantee of the rights and freedoms of an individual and collective subjects of law, etc.;

“economic constitutions” indirectly react to the character of state regimes. Antidemocratic state regimes can use advanced technologies and systems of management because regularities of conformity of productive forces, productive relations and ideological superstructure including legal ones can be traced to large numbers of people in large periods of time. Thus, for example, stable interrelationships between the progress of scientific technological development, the level of life and the stage of the liberalization of “economic constitutions” do not have the character of direct dependence;

“economic constitutions” are in constant evolution: the development of economic relations – booms and crises – naturally complicates the mechanisms of constitutional legal regulation, increases the number of links between economy and constitutional legal norms, changes the level of solidarity, extends and earmarks for a special role the sphere of regulation of the “economic constitutions”, etc.;

“economic constitutions” objectively take into account the achievements of scientific and technological progress: the infrastructure of society is changing, new communication channels which in modern society become not so much as serving

⁴⁴ Tom Ginsburg & Alberto Simpser, *Constitutions in Authoritarian Regimes* 271 (Cambridge: Cambridge University Press, 2014); *The Rule of Law and Economic Reform in Russia* 55–74 (J. Sachs & K. Pistor (eds.), Boulder: Westview Press, 1997).

⁴⁵ It can be argued that these processes contributed the national identification of peoples as social economic communities, nations.

as a leading producing resource requiring constitutional and legal regulation to be introduced;

“economic constitutions” in the foreseeable future can be qualitatively transformed as the rapid development of information and other high technologies is growing: the levels of technical and technological base of production are rapidly changing (the current trend in the development of the economy on a global scale is the movement to the “fourth” industrial revolution);

“economic constitutions” are the most important resource for harmonizing the asynchronous nature of economic relations (for example, the irregular development of production sectors, regions, etc.) or inconsistency in the high technological level of production with backward production relations; the tool for taking into account the social expectations of modern society, including the functioning of democracy, the fair distribution of surplus product, etc.;⁴⁶

“economic constitutions” not only proclaim rights. Without the specific practice of their realization there is no proper understanding of the “economic constitution.” As scientists mention,

put in legal terms without state action – either by a state or the federal government – there is no constitutional issue.⁴⁷

That’s why the main element of “economic constitutions” conclude not only the legal establishment of legal rights but also their realization in practice;

“economic constitutions” can be as a self-enforcing act and an instrument for the management of profound social transformation⁴⁸ by maintaining several clauses; by interacting with other institutions of legal system (firstly, with economic courts and courts of constitutional jurisdiction) can ensure real but not declarative action of constitutional norms that regulate the economy;

“economic constitutions” ultimately depend on the level of industrial relations that determine the progress thus, the examples of constitutional reforms of economic relations (revolution “from the top”) leading to the way of technological and economics in the whole modernization are not rare;

“economic constitutions” of the leading contemporary democracies, where legal norms and juridical practice of their realization are agreed forwardly, show the new requirements to wealth, stable development, inner unity and cultural variety and bring together the principles of economic liberalism and the ideas of a social state;

⁴⁶ To ensure political and civil liberties, freedom of entrepreneurship, equality of citizens before law, independence of the court from the administration, capacity of Parliament and parliamentary control over the Executive power, mutual responsibility of the state and citizens, etc.

⁴⁷ *Constitutional Cultures* 26 (M. Wyrzykowski (ed.), Warsaw: Institute of Public Affairs, 2000).

⁴⁸ Sergey Shakhryay, *Basic Law as an Instrument for Legal and Socio-Political Transformations (Towards the 20th Anniversary of the Constitution of the Russian Federation)*, 2(1) Russian Law Journal 29 (2014).

“economic constitutions” contain innovative imperatives, which take into consideration the requirements of scientific, technological and liberal progress within the framework of international legal standards.⁴⁹ The project of “unconditional basic income” is realized or tested in many countries. The idea of which is to sever the relationship between employment and welfare,⁵⁰ to let people work less and to use more time for individual realization;

“economic constitutions” of modern developed democracies are coordinated with international legal standards. Thus, the EU Charter of Fundamental Rights in contrast to the traditional doctrine of division of human rights and freedoms on the rights of the first generation, such as civil and political rights, and the rights of the second generation, such as social and economic rights, considers the legal status of a man and a citizen of the European Unity in unity and equality.

The tendencies of the development of modern “economic constitutions” let us make the following prognoses:

“economic constitutions” in the 21st century probably would fix the synthesis of scientific achievements (for example, the invention of a quantum computer, global internet, artificial intelligence): these achievements are able to potentially provide a principally new level of a system of management/self-government of economy, society and state reflected in the next generation of “economic constitutions”;

“economic constitutions” of the 21st century reflecting the development of the particularly important high technologies would take into account the necessity of its usage within the framework of strict legal regulation for the purposes of security and defense of the whole complex of basic rights and freedoms of the peoples and individuals;⁵¹

⁴⁹ For example, the Federal Constitution of the Swiss Confederation of 1999 traditionally enshrines economic freedom, as well as the need to promote scientific activities (Art. 64), the need to create conditions for prosperity and economic security of the population of the country (Art. 94). Article 130 of the Constitution of Spain of 1978 says that public authorities shall promote modernization and development of all economic sectors in order to equalize the standard of living of all Spaniards.

⁵⁰ According to Sec. 88 of the Constitution of Finland of 1999 everyone has right to receive from the state an allowance necessary for him or her, which should be guaranteed regardless of the state budget. This is how is embodied the idea of Thomas Paine, the ideologist of the American Revolution, who founded the conception in the famous Manifesto “Agrarian justice” written in 1795: redistribution of national income to ensure a decent life “...by the energy that springs from the consciousness of justice.” See Thomas Paine, *Agrarian Justice* (1795) (Jul. 20, 2018), available at <http://www.constitution.org/tp/agjustice.htm>; Байкова Э.Р. Опыт изъятия и распределения ренты в зарубежных странах // Проблемы современной экономики. 2010. № 3. С. 70–74 [Elvira R. Baykova, *The Experience of Withdrawal and Allocation of Rents in Foreign Countries*, 3 Problems of Modern Economy 70 (2010)] (Jul. 20, 2018), available at <http://www.m-economy.ru/art.php?nArtId=3211>.

⁵¹ The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, adopted by General Assembly resolution 3384 (XXX) on 10 November 1975, warns that “scientific and technological achievements can be used to strengthen an arms race, suppress national liberation movements and deprive individuals and peoples of their human rights and fundamental freedoms.”

“economic constitutions” would help to reveal the potential of the innovative economy of the developing in the 21st century era of high technologies, create conditions for the desired “international economic order based on equity, sovereign equality, interdependence, common interests and cooperation between all states regardless of their economic and social system”;

“economic constitutions” of the 21st century would likely reflect the fact of belonging of the main means of production – computer and software – to a large number of employees. In this way “economic constitutions” can contribute to a regular global social economic modernization based on the consolidation and implementation of new universal principles of direct (information) democracy,⁵² the rejection of obsolete, cumbersome, economically meaningless state mechanism that reflects the characteristics of the class society of the departed social economic formations.

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⁵² The aim of the information theory of democracy is to optimize democratic institutions within the framework of existing political systems and the development of electronic democracy. The achievements of cybernetics, synergetics, informatics, sociology and a number of other sciences are used for this purpose. See, e.g., Lawrence K. Grossman, *Electronic Republic: Reshaping American Democracy for the Information Age* (New York: Penguin Books, 1995).

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