



Constitutional Framework of Free Economy in Theory and Practice of the Republic of Serbia

Slobodan Petrović¹ 

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Constitution;
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Entrepreneurship;
State;
Mixed economy



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Abstract: *One of the key elements of any democratic society in the world is economic freedom. Today, there is almost no democratic state where the economy is entirely state-owned or completely free of state legislation. However, we can conclude that today, the so-called “mixed economies” still prevail, which are characterized on the one hand by private companies, and on the other hand, by state control of the economy. In such economies, in the interaction of producers and consumers on the free market, the freedom of the economy guaranteed by the constitution is achieved. In this case, the state does not determine the price of products.*

The freedom of the economy guaranteed by the constitution contrasts with the economy based on central state planning.

1. INTRODUCTION

From the aspect of constitutional law, there are two dominant views regarding the notion of a free economy.

The first, social democratic, emphasizes that equality and social welfare are critical factors in a free economy. This approach entails state ownership of the dominant poles of the national economy (telecommunications, all modes of transport, provision of public services, water supply, etc.).

The other one, liberal, believes that the essence of a free economy is precisely an independent market, which is not under state control and is privately owned.

Today, in the 21st century, there is no state in which the economy is organized according to a liberal concept, no matter how ideologically perfect it may sound. Nowadays, the so-called mixed economies take dominance over other types of economies. Such economies operate very successfully on the free market. Today, the price and marketability of the product are determined by the consumer mass or consumers of certain content. Therefore, the free economy is the opposite of an economy based on central state planning (Marković, 2016, p.500).

The liberal doctrine implies that there are two fundamental elements of a free economy.

The first is the right to private property; the second is the freedom of competition. What is known and accepted in the world legal doctrine is that “the property of the so-called sacred right” has been one of the basic human rights since the Declaration of the Rights of Man and the Citizen, wherever it was and whoever owned it.

Free will is the truth; it belongs to the objective, worldly spirit - the path of freedom, it is the path of world history in which the spirit is alienated and by the alienation of self-knowledge (Tadić, 2007, p.44).

¹ Faculty of Social Sciences Belgrade, University of Business Academy Novi Sad, Bulevar umetnosti 2A, Belgrade, Serbia

The Declaration of the Rights of Man and Citizens also contains a not so liberal or ethical element regarding the property. It prescribes that property rights are not absolute but that “public interest” stands above them. Hence, the constitutions provide for the possibility of expropriation when it is in the public interest.

2. LIMITATION OF FREE COMPETITION AS A CONSTITUTIONAL CATEGORY

Constitutional law implies that free competition is not unlimited either because it suffers at least two crucial restrictions.

The first is the protection of producers and traders. The second is established in the protection of society in order to avoid the possibility of abuse of free competition. In favor of the above, we have data from the preamble of the Constitution of the French Republic from 1946, which states decisively: “Every good, and every company whose use has or acquires the character of a national public service or de facto monopoly, must become the property of the community.” This protects the state from the abuse of free trade guaranteed by the Constitution and protects the interests of society (the state as a class organization).

The essence of the socio-economic system, embodied in the notions of property, is different, and the forms can be similar or even identical (Jovičić, 2006, p.299).

Today, the Constitution is a single written act of the highest legal force. In some countries (Canada, Germany, Israel), the Constitution consists of several acts of constitutional significance that, together, make up the Constitution. In contrast, in some other countries, the Constitution is passed and changed as an ordinary law (Mitrovic, 2010, p.408).

From all the above, we can conclude that man is born a free being, but this generic freedom is not absolute; the moment a man becomes part of society (organized system of government), he loses his freedom, i.e. it becomes limited.

It is also concluded that there is a restriction of free competition as a constitutional category because the practice still denies the theory on the example of the Constitution of France from 1946. In a purely positive-legal sense, freedom is everything that law does not prohibit (Mitrović, 2010. p.535).

Lawyers dealing with constitutional law classify freedom as a category of protection of goods through constitutionally prescribed laws and sets of norms as rules of conduct. Thus, any restrictions automatically annul the freedom. So, in this part of the paper, freedom as a category can be discussed.

3. THE ELEMENTS OF THE FREE ECONOMY IN THE REPUBLIC OF SERBIA

The complete concept of the economic system has been established in the Constitution of the Republic of Serbia since 2006 (Marković, 2016, p. 501).

According to the Constitution of the Republic of Serbia (Article 82, paragraph 1), “economic regulation in the Republic of Serbia is based on a market economy, open and free market, free-

dom of entrepreneurship, independence of economic entities and equality of private and other forms of ownership” (Constitution of the Republic of Serbia).

Based on everything stated in Article 82, paragraph 1, we conclude that the basic feature of the economy of the Republic of Serbia is a “profit-based economy”. Thus, the elements of a free economy are: 1) equality of private and other forms of property; 2) free market; 3) freedom of entrepreneurship; 4) independence of economic entities.

The Constitution of the Republic of Serbia recognizes three forms of ownership: private property, cooperative property and public property. The Constitution of the Republic of Serbia allows competition of property, leaving it to the market to determine which forms of the property will exist in economic reality (Marković, 2016, p.502). The basis of a free economic order is precisely the free market. According to the Constitution of the Republic of Serbia (Article 82, paragraph 2), the free market means that the Republic of Serbia is a single economic area with a single market of goods, labor, and capital and services (Constitution of the Republic of Serbia). If competition is limited, this fact annuls the existence of a free market, which is not typical of developed democracies.

It is understood that this division of the elements of a free economy, as the subtitle itself indicates, refers to the Republic of Serbia. While the subject of constitutional law regulation in most countries is more or less similar, the content of constitutional law in each country is somewhat different (Živković, 2018, p.8). Thus, by its legal nature, the Constitution has the highest degree of legal force, and anything contrary to the constitutional provisions would be considered a violation of the Constitution.

The libertarian spirit of the Constitution and constitutionalism originated in Europe and was embodied first in the newly formed American states (Vasić, Jovanović, Dajović, 2015, p. 266). Article 90 of the Republic of Serbia Constitution specifically prohibits actions directed against the health, safety, and privacy of consumers. Also, this same article prohibits the so-called “Dis-honest actions in the market.”

An element of economic regulation is also public finances, by which the Constitution implies the acquisition and distribution of funds for financing public needs (Marković, 2016, p. 503).

4. THE PLACE AND SIGNIFICANCE OF BUDGET IN THE CONSTITUTION OF THE REPUBLIC OF SERBIA

The Constitution obliges the Republic of Serbia and the autonomous provinces (also local self-government units) to be transparent about all revenues and expenditures. Such transactions must be shown in the budget. Of all formal laws, the budget is the most important; the name budget means an estimate of state revenues and expenditures issued in the form of laws for a certain period, usually one year (Jovanović, 2011, p.270).

The control over the execution of all budgets is performed by the State Audit Institution (Marković, 2016, p.503). According to the Constitution of the Republic of Serbia, it is the highest state body for the audit of public funds in the Republic of Serbia (Article 96, paragraph 1). Therefore, from the legal point of view, the state audit institution has the status of a state body, and it is directly responsible for its work to the National Bank of the Republic of Serbia.

From the constitutional aspect, in order to justify the principle of democratic administration, the proposal of the final account is considered by the National Assembly of the Republic of Serbia, based on the obtained opinion of the State Audit Institution. Therefore, the Law on the Budget of the Republic of Serbia is passed for each calendar year. This Law regulates general revenues and receipts, expenditures and expenditures of the budget of the Republic of Serbia, their execution, the volume of borrowing for financing deficits and specific projects and providing guarantees, public debt management, use of donations, project loans, use of revenues from sales of budget goods and services, users and rights and obligations of users of budget funds (Law on the Budget of the Republic of Serbia, Article 1).

The institution of public finances with the status of a state body is also the National Bank of Serbia, which is the central bank in the Republic of Serbia (Marković, 2016, p.503). In its work, the National Bank of the Republic of Serbia is independent, for its work is subject to the supervision of the National Assembly of the Republic of Serbia.

The National Assembly of the Republic of Serbia elects and dismisses the Governor of the National Bank, who manages it. Also, the Constitution of the Republic of Serbia stipulates that the National Assembly elects and dismisses the Board of Governors. It can be seen here that all power is left figuratively to the people who decide through their representatives in the parliament. Figuratively, however, this also calls into question the constitutional definition of the National Bank as an independent institution (Article 95, paragraph 1).

The constitutional category in the field of public finances is also the public debt, i.e. the debt of the state and public bodies (Marković, 2016, p. 503). According to the Constitution of the Republic of Serbia, the state itself can borrow, according to the conditions prescribed by the Constitution and Laws, autonomous provinces and local self-government units.

5. CONCLUSION

Per the Republic of Serbia Constitution, the state must take care of balanced and sustainable cohesion development. This is the priority of democratically determined states, including the Republic of Serbia.

With respect for the rights and freedoms proclaimed by the Constitution, every person, a citizen of the Republic of Serbia, has guaranteed freedom in carrying out their entrepreneurial activities while respecting the Law and the Constitution. Also, the Republic of Serbia has a constitutionally guaranteed obligation to treat all citizens in the same way and not discriminate in their treatment.

After the transition from the phase of “transitional property” to establishing private property, which is characteristic of all modern and legally-regulated states, property rights were returned in the Republic of Serbia to those frameworks guaranteed and proclaimed by the Charter of Human Rights.

Today, from the aspect of property law, the Republic of Serbia, both in theory and practice, represents a stable and modern state.

Although the controversial and lengthy process of restitution, which had primarily a political and then a legal character, has not yet been resolved, it still manages to meet the needs of its citizens, which is an imperative of today.

By liberating from the communist and post-communist legal heritage (state property was abolished in the form in which it was created after 1945), the Republic of Serbia manages to, with small but significant steps, practically respond to the needs of the individual, but also the needs of increasingly progressive entrepreneurship. This was further made possible thanks to the 2006 Constitution and a set of laws regulating property relations.

An increasing number of investors in our country speak in favor of stable property regulations, which can have two faces. One is that the Republic of Serbia, with its legislation, is becoming more and more equal with the members of the European Union and that it is implementing European practice in the process of e-government and application of the principle of subsidiarity. The other one is that sociologically speaking, once the number of foreign investors in the nation-state increases, the national population becomes cheap labor.

The constitutional framework of the free economy confirms the practice we are witnessing, of which we are contemporaries. An increasing number of domestic economic entities registered with the Business Registers Agency of the Republic of Serbia also testify as a parameter of the free economy guaranteed by the Constitution.

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