

## **ABSTRACT**

**Prykhodko O.V. Public-private partnership within the framework of Constitutional Economics.** – Qualification scholarly paper: a manuscript.

Thesis submitted for obtaining the Doctor of Philosophy Degree in Law, Speciality 081 – Law. – Scientific Research Institute of State Building and Local Government of National Academy of Law Sciences of Ukraine; V. N. Karazin Kharkiv National University, Ministry of Education and Science of Ukraine, Kharkiv, 2021.

Within this dissertation, a complex analysis of the concepts of constitutional economy, which was created and developed from the economic theory, theory of property rights, as well as the theory of public choice, has been carried out. Its interdisciplinary approach combined with fundamentalism formed the basis for the interest of industry lawyers, judges, and constitutionalists. Constitutional economics is similar to the economic constitution, but differs from the latter by a special, broader subject and method.

It is stated that the constitutional economy can be addressed in different areas, in particular as a scientific field and as a phenomenon of objective reality. As a scientific field, constitutional economics emerged and developed as a manifestation of the new constitutionalism of the late twentieth century, which drew attention to radical changes in the scientific discourse directed towards the undisputed interdisciplinary, combining completely unrelated scientific disciplines and approaches. It has its own object, subject, special analytical methodology, as well as a purpose. At the same time, constitutional economics is a certain phenomenon of reality, which has its own subjects that form the mechanisms of public-private partnership.

The dissertation established that the legal doctrine of constitutional economics is in a state of genesis. Specialists from different countries are involved in its development in order to outline ways to rethink traditional institutions of constitutional law. Whilst in the field of economics we can refer to the existence of certain national institutes dedicated to constitutional economics as a scientific field,



it is in the field of law that experts in many national jurisdictions have not yet reached consensus on the issue. One of the reasons is the fundamental interdisciplinarity of constitutional economics, evidenced, in particular, by the elements of its composition.

It is established that the purpose of constitutional economics is to assess the relevance of state-legal policy to the values and principles fixed in national constitutions. In particular, this means to assess the level of balance between private and public interest and the proportionality of state intervention in the real economy.

The dissertation establishes the requirement to distinguish between two basic economic systems: liberal and social. The liberal economic system is based on individualism and private interest. For the social system, the prevailing value is collectivity and public interest. The analysis showed that both ideas – liberal and social - are organic and natural. It has been proved that the division of existing types of economic models and their constitutional and legal consolidation in the form of constitutional norms, relevant economic and legal strategies and policies into two groups - liberal or social, is of practical and scientific significance.

It is proposed to consider the concept of liberal economic model as the quintessence of pragmatic utilitarianism, common sense, centuries of experience and achievements of philosophical, political, economic and legal thought of the 17<sup>th</sup> and 18<sup>th</sup> centuries. The legitimacy of this doctrine is almost absolute, as is the concept of Rule of Law, which is ontologically related to the human being. That is why the liberal economic model has been relevant in recent centuries and still has its supporters today among scientists and politicians, as well as among ordinary entrepreneurs and citizens.

The dissertation analysed various constitutions as legal models of economy. It was found that from the point of view of constitutional modeling of economic policies and practices, such as legal qualification, modern constitutions possess signs of syntheticity and hybridity, under the influence of globalization and integration processes. Their differentiation and systematization are based on the



results of a careful analysis of each national model from the point of view of constitutional economics.

The dissertation proves that at the current stage of human development it is important to assess the effectiveness of the implementation of such large-scale restrictions that occurred in 2020-2021, from the perspective of economic and social risks. After all, the constitutionality of any measures cannot be determined only from the perspective of the value of a general humanitarian nature. The economic component should be given a more significant role than it is currently allotted. On such a scale, guaranteeing or restricting the economic rights of individuals and legal entities can become either a real legal prevention or a cause of short and long-term social conflicts. The methods of constitutional economics as a direction of the new constitutionalism are appropriate and useful for further improvement of the general legal doctrine and development of effective legal tools for ensuring public order.

The dissertation proves the necessity of further understanding and refinement of the composition of constitutional economics, particularly relating to such concepts as democratic constitutionalism, the Western-centric constitutional paradigm, and the constitutional democracy of socialist type. This dissertation studies the systemic unity of the constitutional text, the dynamism of legislation governing various areas of economic relations, court practices and the state of interaction between public and private actors of economic relations. This study allowed the author to place Ukraine within a transitional economic model and its constitutional and legal system - to the transitional democratic constitutionalism of liberal type.

It is noted that the essence of constitutional economics can be revealed through the interactions of its subjects. The content and nature of these interactions reflects the specifics of the economic, political, and legal system of each country.

The study highlights the important role of the state as the key subject of public-private partnership in economics. Within the framework of the constitution, the state establishes the basic principles of its economic model, defines approaches



to property, entrepreneurship, competition and economic human rights and freedoms. The Constitution of Ukraine is an example of a fundamental state document, which fixes basic economic principles, declarative economic norms, a register of guaranteed economic rights and freedoms, responsibilities of citizens in economic relations, as well as a list of economic issues that can be regulated only by legislation. It is demonstrated that the state actively participates in economic relations at three levels: a) through a system of bodies that exercise regulatory influence; b) through a system of bodies that ensure control of public finances, protection of the rule of law, property, and security; c) through state-owned enterprises that are direct participants in economic relations.

The place of the legal system is determined in the aspect of constitutional economics and public-private partnership. The influence of courts on economic relations on the example of Ukraine should be divided into several groups: practice of the Constitutional Court of Ukraine, which results in official interpretations of the constitutional text, as well as the examination of regulations for their constitutionality; resolution of legal disputes between subjects of private law; and the resolution of public law litigations.

The dissertation offers author's definition of interaction of public and private subjects of economic relations. It is a relation implying mutual influence for the purpose of maintenance of economic growth, as well as the guarantee and maintenance of economic constitutional rights and freedoms. The following examples of interaction of subjects of private and public law aim to influence the economy of Ukraine: public-private partnership; creation of advisory bodies and working groups under authority; conducting consultations with the public in preparation for draft regulations; lobbying.

The dissertation analyses and provides specific examples of government interference in the sphere of economic rights and freedoms and entrepreneurial activity whilst respecting constitutional guarantees, which have become relevant in recent years in connection with the Covid-19 pandemic. In this regard, the author analysed the doctrine of public order, identified a new scientific approach, which



consistsof distinguishing two equivalent categories: material and immaterial public order. The author formulates her approach to the determination of balance between the guarantee of constitutional human rights and freedoms and state interests from the standpoint of the constitutional economics.

The author studies reasons and historical preconditions for the global emergence of public-private partnerships, as well their purpose. The author identifies key features of the Ukrainian legislation regulating the procedures and content of public-private partnership with specific attention paid to the shortcomings and unresolved issues that require further improvement of relevant legal framework.

**Key words:** constitutional economics, public-private partnership, liberal economic model, social economic model, democratic constitutionalism, subjects of public law and subjects of private law of economic partnership.