

## **CONSTITUTIONAL AND LEGAL PRIORITIES OF SOCIO-ECONOMIC DEVELOPMENT OF RUSSIA**

Nowadays an increasing number of Russian scientists support the idea about the connection between socio-economic development and the constitutional and legal development of Russia.

In general it is possible to single out three basic groups of problems regulated by the constitution and directly related to the socio-economic development of the country. Firstly, property rights, their structure and guarantees. Secondly, citizens' social and economic rights and guarantees. Thirdly, the regulation of fiscal problems. All these three groups somehow reflect the connection between the rights and opportunities of the state and the individual, and in some cases they directly define the economic role of the state, its opportunities and the limits of intervention by the authorities in the economic process.

The analysis of the Russian Federation's (RF) Constitution's provisions proves that the following principles are reflected in them: the protection of life and property, society, territorial integrity and the federalist structure, the stability of the economic system, i.e. the functioning principles of market democracy particular to the democratic constitution<sup>1</sup>.

In the RF Constitution the main principles have been stated. They unite the population living in a country and, according to some authors, they underlie the Russian national ideal; they are freedom and equity, the civil rights of a human being, his (her) welfare and social responsibility<sup>2</sup>.

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1 See: B. May Конституционное регулирование социально-экономических отношений // *Voprosy ekonomiki*. 1999 No.4 p. 4.

2 See: Full text of Dmitry Medvedev's speech at II Civil Forum in Moscow on January 22, 2008 // *Rossiiskaya gazeta*. January 24, 2008. p. 2.

As stated in the literature on constitutional law, the RF Constitution provided the political, economic and social integrity of Russia<sup>3</sup>, and thus it “continues to achieve its target”, “its democratic potential is far from being exhausted”<sup>4</sup>.

The analysis of the RF Constitution proves that its acceptance created a basis for strengthening of market democracy in Russia. The suggestions to change the Fundamental Law that appear periodically should be recognized as untimely; they can damage the constitutional and legal stability of the Russian economy.

According to V.A. Mau, the specification of actual constitutional norms, if necessary, can be made by using other means (amendments to federal constitutional laws, decrees and decisions of the Constitutional Court of the Russian Federation)<sup>5</sup>.

At the same time the constitutional and legal regulation of Russian economy is not limited to rules of the RF Constitution; it is specified in the provisions of legislative acts. As a result, the accuracy and validity of the general principles fixed in the Fundamental Law does not automatically optimise the Russian constitutional economy as a whole. Some provisions of the federal acts (especially when applied in practice), definitely require correction as they do not correspond to the principles of a constitutional economy determined by the Fundamental Law. In my opinion, to perfect the direction of the constitutional economy, what should be considered are the main issues of constitutional and legal order of the separate subsystems of the Russian economic system (like the subsystems of ownership, tax, budgetary, bank and currency).

**Regulation of ownership rights is a key element of constitutional regulation** of social and economic processes in developed countries. Part 2 of Article 8 of the RF Constitution says that private, state, municipal and other kinds of ownership in the Russian Federation are recognized and protected equally. Meanwhile, recognition and protection are impossible without assigning each object of a property right to its appropriate subject; this is not fully provided for at the moment.

Nowadays, all rights to immovable property are fixed in the Unified State Register. Some of them – due to the fact that they appeared before the Federal law No.122-ФЗ of 21.07.1997 - were signed. Article 6 (2) of the given law states that registration of such rights is necessary only if transactions concern different objects which are part of the same property right, and may also be made upon request by the

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3 В.Д. Зорькин Выступление на конференции, посвященной десятилетию Конституции Российской Федерации // The Constitution of the Russian Federation: stability and development of society/ Executive editor В.Н. Топорин Moscow: Yurist, 2004. p. 21.

4 Б.Н. Топорнин Выступление на конференции, посвященной десятилетию Конституции Российской Федерации // The Constitution of the Russian Federation: stability and development of society/ Executive editor В.Н. Топорин. Moscow: Yurist, 2004. pp. 47 - 48.

5 See: В. Мау Экономическая реформа: сквозь призму конституции и политики / Editor N. Gayamova. Moscow, 1999. p. 237.

holders of the title deed. Thus the legislator does not encourage such an aspiration in legal owners without considering that the absence of a record of a title deed in the Unified Register causes economic uncertainty; taking into account the volume of unregistered rights, it has a negative effect on the economic development of the country as a whole. One of the stimuli could be the full abolition of state fees for the initial registration of rights that appeared before the Federal law No.122- Φ3 of 21.07.1997.

Other rights are not registered in the Unified Register due to the fact that subjects of such rights were not formed. It refers to land plots, the formation of which is not actively carried out by the authorized bodies mostly due to its extremely complicated procedure<sup>6</sup>. Such a state of affairs has a negative effect on the economic development of the country, not only for the above reasons, but also because the rate of land tax revenue appears to be far from optimal.

Therefore, the situation within the public domain is unacceptable. The process of its differentiation has already been performed for more than 15 years and it is still far from finished. We believe that public and territorial formations cannot effectively realize their power by without having an economic basis.

Moreover, the instability in the legal status of public property complicates the landuse/ownership restrictions stipulated by the legislation. The land can be registered as the property of the citizens of the Russian Federation and municipal bodies. The public bodies, having no guarantees that they would be able to get any property in future, are forced to give up what they currently hold. It is obvious that such a situation does not promote economic stability and even widens the development gap between regions. By necessity, one concurs with G.A. Gadzhiev's<sup>7</sup> opinion that the requirements (of the Federal law No.95-Φ3 of July 4, 2003 "On the amendments and additions to the Federal law "On the general principles of organization of legislative (representative) and executive public authorities of the Russian Federation" and the Federal law No.131- Φ3 of October 6, 2003 "On the general principles of organization of local government in the Russian Federation" mentioned above) contradict the principles stated in Part 2 of Article 8 and in Part 1 of Article 132 of the RF Constitution.

Thus it can be argued that it is necessary to complete the formation of both private and public property in Russia with a view of improving the constitutional economy.

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6 See: Е. Зверева Формирование земельного участка как объекта гражданского оборота // *Korporativny yurist*. 2005. No. 2.

7 See: Г.А. Гаджиев Конституционные основы современного права собственности // *Zhurnal rossiiskogo prava*. 2006. No.12.

Tax calculation and collection is one of sovereign features of any state, therefore the **constitutional regulation of the tax system** plays a very important role in state and legal policy.

Article 57 of the RF Constitution establishes a duty for everyone to pay taxes and dues stipulated by law.

Meanwhile, the analysis of law-enforcement practice shows that there are no due guarantees to fulfil a given duty. Such a situation is caused, in my opinion, by a number of factors.

First of all, legislation on taxes and dues is characterized by extreme complexity<sup>8</sup>. Although this problem is not unique to Russian legislation<sup>9</sup>, it is aggravated by the fact that the Tax Code of the Russian Federation is subject to groundless and frequent changes. This disorients the taxpayers and does not allow them to perform their tax obligations according to currently applicable norms. It also causes further complication of the legislation concerning the establishment of special rules for a transitional period.

The introduction of a restriction on the number of changes in tax legislation within one year would eliminate the defect mentioned above and improve the quality of legal methodology for drafting adopted bills.

Secondly, the tax base of some taxes (in particular, land tax and tax on the property of physical persons and organizations) is not fully fledged due to the reasons described in the previous paragraph. Tax authorities do not have the information on much of the real estate which should be levied with the above taxes.

Accordingly, it is impossible to support efforts to introduce a real estate tax in the near future as, in my opinion, it is necessary first of all to achieve an effective administration of the current taxes. In particular, the minimum that could be achieved would be the completion of remaining work on existing land legislation provisions (the identification of land ownership rights, land surveying, registration of land rights, etc.)<sup>10</sup>.

A change to the taxes and dues system under the current conditions will inevitably entail an even greater reduction in tax payments.

Moreover, the tax system in Russia does not encourage the payment of taxes. The local authorities dealing with the public and solving their pressing problems

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8 See e.g.: Д.Б. Будников Проблемы налоговой реформы в России на современном этапе развития государственности // *Nalogi*. 2006. No. 2.

9 See e.g.: А.П. Кузнецов Ответственность за налоговые деликты по законодательству США // *Finansovoe pravo*. 2005. No. 6.

10 See: А.А. Артемьев, Л.И. Гончаренко Обсуждение проблем и перспектив введения в России налога на недвижимость // *Vash nalogovyy advokat*. 2007. No. 4.

are directly responsible for only two taxes: land tax and tax on the property of physical persons. These two types of taxes, according to V.S. Mokry, cannot become instrumental in the revenue structure of local budgets<sup>11</sup>. These taxes are secondary in the process of fiscal redistribution of public resources and do not cover most of the expenditure of municipal bodies. The revenue from these kinds of taxes in 2006 comprised only about 13% of the general income of local budgets<sup>12</sup>.

Local authorities have more information on local conditions and preferences than national government and even regional authorities. It means that they make better decisions on the most pressing issues for the population<sup>13</sup>. “Local government should be absolutely self-sufficient”<sup>14</sup> in performing all its functions. Thus it is obvious that the resulting balance sheets are not sufficient to provide the elected authority closest to the local electorate with fiscal autonomy.

The increase in number of local taxes is made possible by establishing new taxes or redistributing those that are already provided by the RF Tax Code for citizens of the Russian Federation, for utilisation by a local authority.

As taxation practice in Russia shows, the increase in number of taxes causes problems in exercising control over the observance of payment terms and conditions for the territorial bodies of the RF Federal Tax Service<sup>15</sup>. Accordingly, it is more logical to amend Article 15 of the RF Tax Code by increasing the number of local taxes and dues through redistribution, i.e. to exclude some tax payments from the category of federal and regional taxes, and to ringfence these kinds of taxes for municipal bodies.

**The Budget as the centralized fund of financial resources is an integral part of the functioning of any public authority that objectively needs such resources.**

Recently the federal budget in Russia has been approved with a planned surplus that increases from year to year. In the Federal law “On the federal budget for the year 2008” the surplus is an enormous sum: 1.16 trillion rubles. Certainly, the stabilisation of surplus monetary funds in the economy is an important macroeconomic task. But

11 В.С. Мокрый О финансовом обеспечении местного самоуправления в условиях проведения реформы федеративных отношений и местного самоуправления и основных направлениях совершенствования межбюджетных отношений // Gosudarstvennaya vlast i mestnoe samoupravlenie. 2005. No. 12.

12 Силуанов А.Г. Обеспечение сбалансированности местных бюджетов в условиях реализации Федерального закона от 6 октября 2003 г. № 131-ФЗ / Report by A.G. Siluanov at the round-table of the Council of Federation Committee on local government issues [www-document] // Official web-site of the Ministry of Finance of Russia // URL: <http://www1.minfin.ru/rms/doklad261006.ppt> (August 30, 2007).

13 See В. Назаров О возможности зачисления части налога на прибыль в бюджеты муниципальных образований [www-document] // URL: <http://www.iet.ru/publication.php?folder-id=44&category-id=90&publication-id=237158> – Official web-site of the Institute of Economics of transitional period // (January 20, 2008).

14 See: Full text of Dmitry Medvedev's speech at II Civil Forum in Moscow on January 22, 2008 // Rossiiskaya gazeta. January 24, 2008. p. 2.

15 See: Н.В. Герасименко Правовое регулирование деятельности органов местного самоуправления в бюджетно-налоговой сфере // Zakonodatelstvo i ekonomika. 2003. No. 4.

it is impossible to agree that a lack of a developed infrastructure and a poor state of fixed assets substantially restrains the growth of manufacturing in modern Russia. At the same time, the absence of infrastructure is one of the constraints for investment in the country<sup>16</sup>. Expenditure of budgetary revenue for infrastructure development does not lead to growth in inflation according to the laws of economics.

Moreover, due to the consistency principle of budgetary legislation, such a surplus from one source inevitably means a deficiency in others. The “others” are the budgets of municipal bodies which are subsidised and where the lack of resources is particularly obvious.

Thus the restriction of the rate of surplus in the budget (which should be stated in the RF Fiscal Code) and the establishment of rules in its application seems to be more rational.

I would also like to offer an opinion on the recent practice of the adoption of a Federal law on budgeting for a planning period (of three years).

The introduction of long-term financial planning should be perceived as a positive aspect of Russian budgetary policy. Drawing up a three-year budget as a financial plan allows the control over the accumulation of funds, to manage cash flows more rationally, and to finance the achievement of social objectives in due course.

At the same time the approval of such a long-term financial plan in the form of a normative legal act - a Federal law - is not considered to correspond exactly to the requirements of legal drafting methodology.

Such a federal law turns out to be subject to frequent correction and actually lacks one of the main features of a normative act - namely, standard setting. For example, the Federal law for 2007 on the federal budget was changed by four acts in that year alone; the Federal law “On the federal budget for 2008 and for the scheduled period of 2009 and 2010” has already been changed too.

Therefore, according to a legal point of view, it is more reasonable to keep “a three-year budget” on an economic level and to approve a budget for the current fiscal year by federal law.

Social processes which took place at the beginning of the 1990s led to the establishment **of the essentially new basis of the state banking system**, which was an improvement. The legislator developed and introduced a two-tier banking system where an independent central bank is on a higher level and it has a high degree of authority, the exercise of which essentially influences the whole financial

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<sup>16</sup> See: А.В. Пушкин Правовой режим иностранных инвестиций в Российской Федерации. Moscow, 2007. p. 63.

system of the country. “Centralized control of the monetary and credit system of the Russian Federation is one of the key elements of its statehood. At the same time it is impossible to regard legal regulation of the banking system and the system of the Bank of Russia as perfect, and in this, in connection with their organization and functioning, provoke more questions than answers”<sup>17</sup>.

This serious theoretical problem (to law-enforcement practice, and also causes conflict) raises uncertainty as to the legal status of the Bank of Russia.

According to the official charter of the Central Bank of the Russian Federation, the Bank of Russia acts as a special public establishment and possesses the exclusive right to issue money and to organize money circulation; it is not the public authority but its powers (by their legal nature) refer to public authority functions, as their fulfilment presupposes the enactment of state coercion measures<sup>18</sup>.

I believe that the financial and legal status of the Central Bank has a dual character. The Central Bank of the Russian Federation operates as a public authority in financial legal relations on issuance of money, servicing of budgetary accounts, public debt, management of assets of the Reserve Fund and the National Welfare Fund, and developing the basic direction of monetary and credit policy. The Bank of Russia is incorporated as a legal entity in legal relations on the maintenance of expenses for accommodation, the payment of salaries, the settlement of obligations to the Russian Federation, tax payments and the transfer of a part of its income to the budget.

This uncertainty over the legal status of the Central Bank of the Russian Federation affects the regulation of its mutual relations with public authorities. For instance, co-ordinating the basic direction of the unified state monetary and credit policy with the Government of the Russian Federation is not regulated by any relevant laws.

Moreover, the legal status of the Central Bank requires modification in view of best practice in regulation of banking relations in foreign countries. For instance, to implement the Agreement of the Basle Committee on Banking Supervision “International Convergence of Measurement of Capital and Standards of Capital: New Approaches”, the powers of the Bank of Russia require specification in regard to the following: the establishment of identified standards of capital adequacy by banks resulting from a risk assessment; the requirement for internal auditing; the establishment of public disclosure requirements - the list of which is determined

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17 See.: Я.А. Гейвандов *Центральный банк Российской Федерации: юридический статус, организация, функции и полномочия*. Moscow, 1997. p. 206.

18 See: Д. Н. Дружинин, М. Н. Тоцкий *К вопросу о правовом статусе Центрального банка Российской Федерации* // *Finansovoe pravo*. 2006 No. 6.

by the third component of the Agreement; the establishment of requirements on developing internal risk management procedures by credit organizations, etc<sup>19</sup>.

Thus, perfecting of constitutional and legal regulation of the banking system in many respects depends upon the normalisation of the legal status of the Central Bank.

According to Part 2 of Article 75 of the RF Constitution, “**protection and stability of the ruble exchange rate is the main function of the Central Bank of the Russian Federation**; this function is carried out irrespective of other public authorities”.

Currently, the Central Bank consolidates the dollar exchange rate by intervening in the exchange rate market, and consequently prevents the fixing of the ruble exchange rate.

However, there are also some theories currently in the economic arena, which rightly claim the necessity of a fixed ruble exchange rate. According to some points of view, it is enough to stop interventions on the ruble if the exchange rate would be approximately 6 rubles: 1 dollar. Thus, the Central Bank of the Russian Federation would be able to keep this exchange rate level<sup>20</sup>, which fully corresponds to the objectives stated in Part 2 of Article 75 of the RF Constitution.

The consequences of a fixed ruble exchange rate will be, according to officials of the Bank of Russia: an increase of the population’s equivalent wealth in dollars, a decrease in inflation (as an injection of ruble funds into the economy will be halted, and against the background of a cheap dollar there would be an increase in amount of imported goods, and, accordingly, a growth in competition)<sup>21</sup>.

There is an opinion that a fixed ruble exchange rate can lead to a decline in the export of Russian goods. At the same time it is necessary to take into account that the “competitiveness of goods can be provided by both cost and quality”<sup>22</sup>. A fixing of the ruble exchange rate will make manufacturers improve the quality of their products. With a cheap dollar it will be easier to provide this quality by purchasing first-rate foreign equipment at a lower price. Furthermore, Russian exports are mainly represented by raw materials, and in conditions of growth in world prices for raw materials, a fixing of the ruble exchange rate would hardly lead to losses for Russian exporters.

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19 See, e.g.: Н.Р. Чебыкина Центральный банк Российской Федерации как орган государственной власти в денежно-кредитной и банковской сферах (финансово-правовое исследование). Author’s summary for the dissertation. Cand. Sc. (Law), Omsk, 2006. p. 22.

20 See: С. Минаев Смена валют // Коммерсант – Pervy reiting. 2008. No. 1. p. 186.

21 Ibid. p. 188.

22 И.А. Николаев Единая государственная денежно-кредитная политика на 2008 год: оценка реалистичности // Finansovye i buhgalterskie konsultacii. 2007. No. 10.



In such conditions it is necessary to carefully analyze the opportunity to stop the process of fixing a high US dollar exchange rate by the Central Bank and to start the process of fixing the Russian currency rate.

## **Streszczenie**

W artykule zostały przedstawione następujące konstytucyjne zasady rozwoju finansów publicznych w Rosji w XXI w.: zasada konstytucyjnych podstaw stosunków majątkowych, zasada konstytucyjnych regulacji struktury podatkowej; zasada stanowiąca, że budżet jest kluczowym instrumentem realizacji zadań przez władze publiczne; zasada konstytucyjnych podstaw systemu bankowego.