The Constitutionality of Civil Law Norms

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1. Concepts such as the right of private ownership, freedom of economic activity, unfair competition, monopolization, the free flow of goods, services and financial funds, entrepreneurship, ownership, intellectual property, the right to privacy of one’s personal and family life, protection of honor and reputation were first used in the 1993 Constitution of the Russian Federation (RF).

All of these concepts are genetically connected to civil law. A number of constitutional norms and principles reproduce the norms of civil law and vice versa: the norms of the RF Civil Code (hereinafter “the Code”) often reproduce constitutional provisions. The constitutional guarantee of the right to private property, found in Article 35(3), of the RF Constitution, is regulated in greater detail by the norms of Articles 279-283 of the Code. The norms of Article 1(2), para.2, of the Code are close in their legal content to the norm contained in Article 55(3) of the RF Constitution.

Of course, while these norms are similar in nature, to some extent homogeneous, they are not identical. A constitutional norm always takes priority in the hierarchy of legal norms. Constitutional norms, as opposed to norms from specific branches of law, are always distinguished by a greater degree of legal weight, i.e., a greater density of legal content (which allows for a variety of legal interpretations, taking into account a change of circumstances or the subjective understanding of the law). Constitutional norms predetermine the content of branch norms of a similar nature, often correcting such norms in the process of applying the law.

The constitutional principle of freedom of economic activity established in the fundamental constitutional principles (Art.8, RF Constitution) forms the basis of a series of norms in Chapter 2 of the Constitution guaranteeing rights essential to a society in which a market economy functions. These include such fundamental rights as:

1) The right to choose a type of activity or occupation—the freedom to be an entrepreneur, or give or receive loans (Art.37, RF Constitution);
2) The right to freedom of movement, to choose one’s place of domicile—freedom of the labor market (Art.27);
3) The right of association for joint economic activity—freedom of choice of organizational or legal form of business, and of formation thereof on the basis of various business structures (Art.34(1));
(4) The right to own property, to possess, use and dispose of such property both as a single person as well as together with others, the freedom to possess, use and dispose of land and other natural resources—the freedom to own real estate (Arts.34 and 35) and freedom of the land market (Art.36(2));

(5) Freedom of contract—the freedom to conclude civil law and other transactions (Art.35(2));

(6) The right to protection against unlawful competition (Art.34(2)); the freedom to engage in any entrepreneurial activity and other economic activity not prohibited by law in accordance with the principle that “all which is not prohibited by law is permitted” (Art.34(1)).

The constitutional principle of freedom of movement of goods, services, and financial funds (Art.8(1)) is also extremely important as it ensures a stable regime of economic circulation. The new Russian Civil Code and other new civil legislation are gradually developing and complementing this constitutional principle, guaranteeing stable economic circulation on the legal branch level. In essence, norms on charter capital, the performance of obligations, and liability for violation of one’s obligations serve precisely this aim.

The fundamental economic rights, proclaimed in Chapter 2 of the Constitution, are both of a public law and private law nature. From our point of view, these should not be considered simply as norms of either a state (public) or a civil (private) law nature.

In their public law aspect, constitutional norms regarding fundamental economic rights ensure the protection of private property and freedom of entrepreneurship as economic and social institutes that form the material basis for a certain degree of organization of state power. The private law content of such norms ensures the protection of the rights of specific owners and entrepreneurs.

The complex nature of fundamental economic rights— their dual, public and private law aspects—determine the particular nature of their action. Demonstrating their public law content, norms providing for fundamental economic rights act in the field of relations between the state and individuals. When such norms display their private law content, they actively combine with civil law norms to act in the field of private relations.

This way, the system of private law norms is more extensive than the system of civil law legal norms. In addition to civil law norms, the system of private law norms includes the following: