



THE 19TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Economic Freedom as a Fundamental Economic Right in the Light of the Integration Process of the Republic of Moldova into the European Union

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Abstracts: The new exigencies of social development have generated an increased concern for economic human rights, reflected in the desire to join economic communities and the imperative of consistency between the democratic principles of the Member States and the economic, social and political principles of the candidate countries. Economic activity, comprising the sum of all actions taken by people to satisfy their needs, influenced both by changes in their needs and by the availability of resources, is the catalyst for accession to these economic communities. Economic freedom, representing the ability of particular subjects to carry out their economic activities within a framework that allows them to act autonomously and make decisions about resource use, production, trade and investment without excessive intervention by government or other external agents, is the legal foundation of prosperous economic activity.

Keywords: fundamental economic rights; economic freedom; economic communities; integration process; economic growth; economic processes; economic activity; market economy; European integration; constitutional regulation

1. Introduction

The transition process to a market economy, peculiar to countries such as the Republic of Moldova, is a complex process that faces significant challenges and unforeseeable consequences related to social costs. This process requires in-depth economic and social changes. In the Republic of Moldova, these difficulties have been exacerbated by the global economic crisis, which has led to a decline in the national currency's purchasing power, income and consumption of the population, with direct consequences on crucial sectors for the population's well-being, such as the health system, education, culture and respect for a state based on the rule of law.

Human economic rights are one of the core and most complex components of law, present in every legal system. Their origin and belonging can be traced back to the period when the first differences in the distribution of material resources began to emerge, and throughout human history these rights have remained fundamental, influencing the evolution of economic and social processes in society. The institutions governing human economic rights have had the role of regulating conflicts of interest and ensuring balance and justice in specific historical circumstances.

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An essential requirement for candidate countries in the process of European integration was and is to adjust their domestic legislation in line with the fundamental principles of human rights, as originally defined in legal standards and the practice of international bodies. However, significant discrepancies in the concepts and methods of regulating economic human rights between the various legal systems are a major obstacle to the creation of an integrated economic and humanitarian area and to the development of cross-border processes, which are becoming increasingly imminent under the influence of globalisation. In Europe, therefore, there has been a need to develop single standards in the field of legal regulation of economic rights within the Council of Europe and the European Union, using international legal means and embracing the most advanced practices of national legal systems.

During the second half of the 20th century, the concept of economic rights transcended national borders and, being enshrined in international legal documents, brought even greater attention to them. Today, through efforts to establish unified international standards in the field of economic rights, legal systems around the world are moving closer together. A unified economic rights regime not only improves economic relations between different legal jurisdictions and internationalises economic circulation, but also contributes to wider objectives such as the formation of a common humanitarian framework with standard legal values and protection mechanisms. In this context, economic rights become fundamental and essential for the progress of society at global level.

2. Results and Discussions

Economic freedom is a pillar of a functioning market economy, increased economic growth and social welfare. Terminologically, the term ‘economic freedom’ should not create misconceptions, suggesting that it is a freedom associated with the first generations of rights (the term generations of rights being analysed as categories used to classify and understand the evolution and diversification of human rights over time) (Baescu & Turcan, 2019, p. 6). These generations of rights reflect the evolution of the concept of human rights and reflect the different needs and expectations of human society in different historical periods and are grouped into the following generations: the first generation-civil and political rights, the second generation-economic, social and cultural rights and the third generation-solidarity and community rights. In fact, the concept of economic freedom emerged in the context of the second generation of human rights, but without having the explicit legal status of a right in this generation. However, the alternative name under which it is known in the doctrine, namely “the right to free economic initiative”, specifies this nexus.

Economic freedom is intrinsic to a market economy and refers to the ability of each individual to initiate and carry out profit-making activities. It is the fundamental right of every person to engage in economic activity without restriction, with the state guaranteeing non-discriminatory access to economic initiative and protecting the exercise of this right (Preduca, 2011, p. 200).

In its complexity and diversity, human activity is focused on the material realisation of essential goals that arise from the needs of the individual and society as a whole. As beings endowed with reason and creativity, humans are motivated by the desire to satisfy these needs, to seek the path to their fulfilment in interaction with the world around them. As social beings, our needs are infinite and ever-changing, leading to a continuous evolution in the way we use available resources to satisfy them. However, resources are limited and thus humans are constantly faced with the challenge of choosing the most efficient ways of using them to best meet society’s changing needs.

Economic freedom can be traced back to the endeavours of the petite bourgeoisie, and later the bourgeoisie, to acquire the right to a free market and to assert the principle of freedom in the political sphere. This movement was encouraged and influenced by the physiocratic school and English political economy. Economic freedom became a political symbol in the struggle against the privileged elites and was used as a tool to challenge existing social and economic structures (Fourier, 1992, p. 3).

Economic freedom is a multifaceted notion, deeply shaped by economic theories and political doctrines. An illustration of the social effectiveness of economic freedom and free initiative is the idea that, by pursuing their own interests, individuals indirectly contribute to promoting the general or collective good.

Economic freedom is a highly complex concept, involving a number of essential conditions to be achieved in practice. These prerequisites include: the need for a functioning market economy; recognition and protection of the right of individuals to initiate and conduct economic activities; its compatibility with social benefits; ensuring and respecting the right to property; the existence of an adequate financial and financial control system; the adoption of and respect for balanced national budgets and their efficient management; respect for the principle of equality and the right of everyone to legally use their resources and capabilities for economic activities; the promotion of fair competition and the fight against monopolies; and the maintenance and improvement of productivity to meet the requirements of the economic market (Iancu, 2007, p. 271).

After the signing of the European Union Association Agreement, both the extent and the limits of economic freedom at national level have to be established in relation to European Union law, as it applies within the market, which is no longer restricted at national level, but is defined as an “area without internal borders”, where goods, individuals, capital and services move freely between Member States, similar to the no internal border controls of a nation.

In this context, it is clear that the principle of economic freedom is reflected in the Charter of Fundamental Rights of the European Union of 12.12.2007¹, which asserts that the freedom to conduct commercial activities is recognised under Union law and national laws and practices. This freedom is supported by the case law of the Court of Justice of the European Union, which has confirmed the right to undertake or pursue an economic or commercial activity in accordance with European Union law, requiring each Member State to regulate in its national law the way in which this economic activity is carried out.

It is important to acknowledge that, in the specific context of the market economy, the role of the state is no longer to control exclusively all aspects of the economy, but to establish a general framework which facilitates the activity of economic agents in an appropriate economic, social and political environment. This implies adopting regulations that are restrictive but remain within the limits necessary to protect the legitimate rights and interests of all involved parties. Free access to economic activity does not mean the removal of restrictions, but, on the contrary, it means setting limits to the exercise of economic freedom by prohibiting actions that are unlawful or harmful to society or to others.

Therefore, it is important to emphasize that economic freedom cannot be considered absolute, as it must respect the fundamental values protected by the Constitution of the Republic of Moldova, according to Article 1, paragraph (3) (Baeşu & Ţurcan, 2019, p. 135). Nevertheless, an analysis of the constitutional framework of some European countries shows that economic freedom can also be restricted under

¹ Carta Drepturilor Fundamentale a Uniunii Europene, adoptată la Nisa pe 7 decembrie 2000/ The Charter of Fundamental Rights of the European Union, adopted in Nice on 7 December 2000. <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF> (citat la 20.02.2024).

certain conditions. For example, according to Croatian constitutional rules, the exercise of entrepreneurial freedom and property rights can be restricted only under exceptional circumstances, by law, in order to protect the interests and security of the Republic of Croatia, the environment and public health¹.

The right to free exercise of entrepreneurial activity may also be restricted and only for the purpose of protecting public health, environment, natural resources, cultural heritage, as well as national security and defence in Montenegro², and in the Republic of Serbia, the right to carry out entrepreneurial activities, in turn, may be limited by law in order to protect public health, the environment and natural resources and to ensure state security³.

From a comparative point of view in the Slovenian Constitution, it is forbidden to conduct commercial activities in a way that harms the public interest, and unfair competition practices and practices that restrict competition contrary to the law are prohibited⁴. Monopoly-oriented economic activity and unfair competition are prohibited in Armenia⁵, and the Albanian Constitution stipulates that limitations on economic freedom can only be imposed by law in order to protect important public interests⁶. Thus, although the right to economic freedom is not explicitly reflected in the Constitution of the Republic of Moldova, in the constitutions of other European countries, and not only, this right is clearly and explicitly regulated.

By way of general conclusion, it can be noted that the content of economic freedom is broader than simply starting an economic activity, as it implies carrying out these activities in a fair competitive environment, free from discriminatory barriers and anti-competitive, abusive or unfair practices. Freedom of trade is essential in a market economy and is embodied in the free participation of traders in the exchange of goods and services, and competition implies fair competition between traders, offering consumers a variety of choices. Also, on the European path, in order to create favourable conditions for the exploitation of all factors of production, the state of the Republic of Moldova must promote a fair competition policy, which facilitates the free movement of goods and stimulates the initiative of trade participants, while ensuring the protective function of the market economy, because in essence, the market economy is a system in which economic activity is carried out according to supply and demand, and goods and services reach consumers through the market. Thus, in order to ensure freedom of trade, it is necessary to have a framework of economic discipline to which all economic agents must adhere, and it is the role of the legislator to establish appropriate sanctions for non-compliance with the established rules.

Exercise of the right to have free access to an economic activity involves two essential aspects: the first is that the person concerned must be free to express his or her will and to participate autonomously in economic life, and the second is that there must be a general framework of economic activities in which the person can take part. The first dimension of economic freedom as a fundamental right refers to the freedom of the individual to engage in economic activities as an abstract capacity of the individual to be

¹ Constituția Republicii Croația din 22.12.1991/Constitution of the Republic of Croatia of 22.12.1991. https://www.constituteproject.org/constitution/Croatia_2010?lang=en (citat la 17.02.2024).

² Constituția Muntenegro din 22.10.2007, art. 59/Constitution of Montenegro of 22.10.2007, art. 59. https://www.constituteproject.org/constitution/Montenegro_2007?lang=en (citat la 17.03.2024).

³ Constituția Republicii Serbia din 29.10.2006, art. 83./ Constitution of the Republic of Serbia of 29.10.2006, art. 83. https://www.constituteproject.org/constitution/Serbia2_006?lang=en (citat la 17.02.2024).

⁴ Constituția Republicii Slovenia din 23.06.1991, art. 174/ Constitution of the Republic of Slovenia of 23.06.1991, art. 174. https://www.constituteproject.org/constitution/Slovenia_2013?lang=en (citat la 17.02.2024).

⁵ Constituția Armeniei/ Constitution of Armenia. www.president.am/ru/constitution/, art. 33.1. (citat la 30.11.2015).

⁶ Constituția Republicii Albania din 21.10.1998/ Constitution of the Republic of Albania of 21.10.1998 https://www.constituteproject.org/constitution/Albania_2012?lang=en (citat la 17.02.2024).

an actor in the economic sphere. The second dimension of the free exercise of access to an economic activity is the existence of an environment in which there is a variety of commercial activities, and the state has a duty to ensure the diversity and independence of these activities from the public sphere.

Guaranteeing and respecting economic freedom become essential conditions for building a state based on the rule of law and for the recognition of the Republic of Moldova as a democratic state at international level. These fundamental concepts support the idea that the individual requires a system of legal guarantees to ensure that his or her rights are guaranteed and respected by the state, and this is achieved through the institution of human rights.

The state mechanism for ensuring individual economic freedom involves a complex system of elements, emphasising its rule of law and democratic character. This mechanism implies the creation and implementation of normative acts in accordance with the social reality, their implementation within the limits of legality, the counteraction of legal violations by means and procedures in accordance with the law and the provision of real guarantees for the protection and defence of individual rights and freedoms.

The institution of the restraint of individual economic freedom encompasses the acceptable legal limits of the state's influence on the individual, especially in the application of legal constraints. This is a crucial guarantee for the respect of the legal status of the individual in a state governed by the rule of law.

Referring back to human economic rights, we can firmly state that they are fundamental rights of the individual, rooted in the earliest manifestations of human behaviour. This evolution begins with the analysis of the original traditions, customs, written testimonies or archaeological traces linked to humanity, crossing the period of the Middle Ages and developing significantly thanks to the important contribution of the legal phenomenon in the 17th-18th centuries. Human economic rights then took on a full legal form in the post-World War II period, being included in the vast majority of the world's constitutions.

The process of constitutionalisation of human economic rights in the international law system began more than two hundred years ago, and the consolidation of explicit tendencies towards the extension of fundamental rights and freedoms, which would later be recognised as having constitutional value, took place a century later.

In the context of the regulation of human economic rights in international conventions, it can be seen that these rights have been recognised and enshrined in a considerable number of international instruments, both universal and regional. These conventions have provided a significant impetus for the promotion of economic human rights through the national legislation of each state.

Economic human rights, playing a fundamental role in the economic system of the state and, therefore, as an essential element of the social system, are in a close mutual relationship with the constitutional regime. Political and state stability become possible only in the presence of constant social calm, which can only be achieved when the majority of members of social groups feel economically satisfied. In turn, the difficulty in achieving and maintaining this social calm becomes apparent when the economic state of significant groups of the population does not allow them to meet their economic needs and, consequently, the state economy does not offer them prospects for a decent future.

Human economic rights, as public liberties, are only relevant when there is a sphere of individual autonomy, an area reserved for the individual, protected by the public authorities. The relationship between human economic rights and public power is evolving from a total domination of the state over the individual towards a liberal principle of non-interference by the state. This principle aims both to

ensure the general interest and to create an appropriate legal framework for guaranteeing and securing economic rights.

The process of constitutionalisation of human economic rights involves giving these rights the character of a constitutional provision. This can only be achieved by establishing them in a fundamental law, which is imposed in the hierarchy of legal norms of the state, constituted in a pyramid system.

3. Conclusions

The general obligation to protect human rights includes both the prevention of human rights violations and their repression and remedy. In doctrine and judicial practice, the nature of the obligation to prevent human rights violations is approached with caution, as an overly broad interpretation of this obligation could lead to attributing state responsibility for the “risk” of violating guaranteed rights.

Economic freedom, considered a public freedom, exists only when the individual enjoys a sphere of autonomy, an area reserved and protected by the public authorities. The relationship between human economic rights and public power evolves from a total domination of the state over the individual to a liberal principle of non-interference by the state. This principle aims to ensure both the general interest and the creation of an appropriate legal framework to guarantee and secure economic rights.

The constitutionalisation of economic freedom is a complex process, involving three systems of activity: legislating in the Basic Law, applying constitutional rules and constitutional justice to ensure supremacy. The first two can generate contradictions between state laws and the Constitution, and the latter is designed to resolve these contradictions by eliminating unconstitutional legal norms and ensuring an interpretation that underlines the supremacy of the Constitution by influencing lower norms or covering unlegislated areas.

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