COMMENTARIES

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ON THE PROSPECTS FOR THE DEVELOPMENT OF RUSSIAN ECONOMIC LAW

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Abstract: The article examines the issues of interaction between law and economics through the prism of the formation of Russian economic law. The historical aspect is highlighted: the analysis of the pre-revolutionary legal doctrine and scientific sources during the Soviet development of the state. In the late XIX early XX centuries a general critical attitude to the Marxist idea of the primacy of the economic basis was formed. It was accompanied by the same skepticism about extreme liberalism, which advocates minimal government interference in the objective laws of economic development. Attention is drawn to the fact that during the Soviet period, by explaining a new branch economic law attempts were made to determine the limits of state influence on economic relations. In modern Russian law, in view of the constitutional consolidation of the canons of a market economy, a change of guidelines has taken place. New concepts have appeared economic constitution, constitutional economics, and economic analysis of law. There is an involvement of efficiency criteria in the evaluation process of the implementation of public power. The article also investigates the thesis about the formation of a new mega-branch of law economic law, which covers almost all aspects of the regulation of the national economy. Highlighted its positive (defining precise guidelines in the interaction of law and economics) and negative aspects (leveling the criteria for differentiation of branches of law).

Key words: economics, law, economic constitution, constitutional economics, economic analysis of law, economic law.

Introduction

Law and economics have been a hot topic for centuries, attracting the attention of both lawyers and economists. However, the viewpoint on the relationship between the two elements often differ between the representatives of the two sciences. Economists (mostly representing the Western traditions) advocate a certain isolation of the economy, developing according to its natural laws. An indirect confirmation of this viewpoint is that the phrase *economic law* is seen as the jus of economics. It does not refer to those adopted by Parliament, but to those under which economic processes develop. In this connection, the laws of demand, the laws of supply, and some others are distinguished, within the framework of which economists are trained to evaluate the emerging social relations. The term *natural (free) market economy rules* is also used[1].

Since *economic law* takes the form of objective rules, economists regard the state as one of the social regulators. The term *free economy* explains its essence by its name. The political implications are seen in the justification of the "night watchman" concept, where public institutions are given the role of guardian of property rights and monopolist of violence. The task of economists is seen as the formation of recommendations for the correct adherence to the laws of economics. This primacy arouses natural jealousy of the legal corporation. For our country, the accusations of snobbery also have a historical background. The Soviet political model was built on the old economic order overthrow, where the dictatorship of the proletariat was to rid the new society of the vestiges of bourgeois ownership of the means of production.

The adoption of the Russian Constitution in 1993 marked a complete transition from an administrative-command system (which applied to all types of social relations) to democratic values as manifested in the following Foundations of the Constitutional System:

— the proclamation of the Russian Federation as a legal, democratic state;
— the construction of public authority according to the principle of its division into legislative, executive and judicial branches;
— the guarantee of the private property right and its equal protection (along with state and municipal property);
— the consolidation of principle of supporting competition and freedom of economic activity.

The vector changing led to an interest in the search for a constitutional basis for the development of the Russian economy, resulting in the formation of a new concept of an economic constitution and the justification of such a new branch as

[1] *Wu B.* Consumption and Management. Chandos Publishing, 2011. 510 p.

the economic law. The first theses were more of a slogan, without elaboration of scientific arguments or consolidation of the unity of terminology. Now, at the end of the first anniversary period (the 25th anniversary of the Russian Constitution was celebrated in 2018, but without any excessive pomp and festivities), it is possible to already present the identified problems and prospects of Russian economic law, highlighting some of the results of the discussion that took place throughout the past period of the new genesis of Russian statehood.

1. Economics and law in Pre-Revolutionary Times

The mutual influence of economics and law was considered in prerevolutionary legal literature. At the end of the 19th century, Marxist doctrine was no secret in the Russian Empire. Its main thesis about the subordinate role of law was recognised as having its substantiation. G. F. Shershenevich noted: "When it is meant to establish the importance of the economic factor in the formation of law, when it is stated that law develops under the condition of economic relations, it cannot be objected from the point of view of historical reality. The history of law provides ample evidence for such a position of affairs[1]. In doing so, the author presents such examples, among which the struggle for a new status of women occupies a special place. According to the scholar, this transformation is due to the increasing economic independence of the "weaker sex". Similarly, in the criminal law, the emerging institutions are in most cases driven by economic interests formed as a result of the increasing complexity of economic processes. However, G. F. Shershenevich emphasised the one-sidedness of such a view of law-making. The economics should not be seen as the sole force, ignoring the ideological factor and the conscientiousness of law-making.

In the same vein, I. A. Pokrovsky concluded: Law serves different values, and one cannot choose one of them and reject the others[2]. Yu.S. Gambarov spoke more critically, pointing to the proponents of the "economic support of law" who were representatives of the social direction and apologists for "economic materialism". Regarding Marxists, Yu. S. Gambarov specified that their main peculiarity consist in an attempt at a general methodology: "all social being and all separate manifestations of this being, such as law and state, are conditioned and determined in the last instance only by the movement of economic relations"[3]. Rejecting relations

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[1] *Shershenevich G.F.* [Obshchaya teoriya prava] General Theory of Law. Volumes I–II. Moscow: The Bashmakovs' Edition, 1910.

[2] *Pokrovsky I.A.* [Osnovnye problem grazhdanskogo prava. Petrograd, yuridicheskiy knizhnyy sklad] Basic Problems of Civil Law. Petrograd: Pravo Law Book Warehouse, 1917.

[3] *Gambarov Yu.S.* [Grazhdanskoe pravo. Obshchaya chast'] Civil law. The General Part. St. Petersburg, 1911.

of subordination, Yu. S. Gambarov pointed to "interdependence and solidarity", taking into account not only the doctrine of K. Marx, but also R. Stammler[1] (who understood law and economics not as separate quantities, but as two inseparable sides: "There can be no talk about economic laws outside the social life regulated by law"). B. N. Chicherin's ideas are similar: "The right determines the formal side of man's external freedom, and economic activity gives it its content"[2]. G. V. Mikhailovsky, reviewing the theses of materialists, commented them as the loss of "the solid ground of science" and "replacement of it with a party program" (predicting the appearance of socialist geometry, logic, botany)[3]. M. Kovalevsky stressed that neither economics, nor law, nor morals, in their one-sidedness, "can give us a starting point for reasoning that sets out to determine the conditions of progressive movement of human societies"[4].

A lecture by N. A. Gredeskul on the relationship between law and economics[5], which criticised the Marxist approach (which was popular in Russia in the early twentieth century), received a certain publicity. The outward attractiveness of this doctrine is linked to the justification of bourgeois vices and the natural transition to a socialist order based on the socialisation of the means of production. Thus, N. A. Gredeskul states K. Marx's desire to describe the existing formation and to present a hypothetical picture, the reality of which cannot be accepted as inevitable. In any case, N. A. Gredeskul does not recognize the objectivity of Marxism in the strict subordination of law to economics: "The lines of law and legal aspirations go, as we now see with obviousness in any case, not above the economics, but in its very depth, or even under the economics". Citing historical examples, the Russian scientist adds that law amendments do not always coincide with changes in the economics: "There is an undoubted dependence of law on economics, the dependence of economics on law is also undoubted... Law and economics are closely interwoven, they form as if one common fabric, and what in this fabric forms the basis or skeleton, what is a skeleton supporting the whole figure, so to speak, is a big question. It is quite possible that it is law and not economics". N. A. Gredeskul's con-

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[1] *Stammler R.* Economy and Law According to the Materialist Conception of History. 2 volumes. SPb., 1907.

[2] *Chicherin B. N.* [Kurs gosudarstvennoy nauki] A Course in State Science. Volumes I-III. Moscow, the printing house of the partnership I. N. Kushnerev and Co., 1894.

[3] *Mikhailovsky G. V.* [Ocherki filosofii prava] Essays on the Philosophy of Law. Vol. I. Tomsk, V. M. Posokhin's bookshop edition, 1914.

[4] *Kovalevsky M.* [O zadachakh shkoly obshchestvennykh nauk] On the tasks of the school of social sciences. 1902.

[5] *Gredeskul N. A.* [Pravo I ekonomika] Law and Economics // Law. 1906. No. 40 / https://naukaprava.ru/catalog/435/936/3448/33081?view=1

clusion: Law, in its social significance and in its social role, is undoubtedly broader than economics.

Russian legal scholarship at the time was showing the dangers of the new liberal doctrine embodied by A. Smith and B. Constant, who rejected the possible harmony between individual rights and state intervention. The new thesis of bourgeois society, "Laissez-faire", which demanded a minimalist state, marked a phase in the priority of individualism. It continued by demanding that the state do only protect human rights. The economic trend narrowed the function of the state to the protection of property rights (and nothing more)[1]. A. Antonovich was categorically against such a statement, believing that there was a contradiction in attitudes and a contradiction of interests between the individual and society. This is the reason for the emergence of police law (in pre-revolutionary times this name was used for administrative law). Thus, for example, price regulation does not detract from scientific laws of exaggerated private and public wealth. A. Antonovich also emphasized: "There are some items of property, the use of which is particularly detrimental to granting unconditional freedom to private interests" (giving the example of forest management)[2].

Thus, pre-revolutionary Russian legal science investigated the issues of interaction between law and economics. It must be admitted that this issue was not among the most topical. At the same time, the general critical attitude towards the Marxist idea of the primacy of the economic basis was accompanied by the same skepticism towards the extreme liberalism that preached minimal state intervention in the objective laws of economic development. The possible conflict of private and public interests necessitated state intervention. Given the historical period, this was the rationale for the emergence and development of administrative (police) law.

2. Establishment of Soviet Economic Law

The October Revolution of 1917 marked the proclamation of the dominance of Marxist ideology (the same ideology that was criticized by Russian legal scholars), which was confirmed in the first constitutional source of the young Soviet state. It turns out that the Marxists, having gained power, in the first place abandoned their thesis the primacy of the economy. Using legal means, they began to remake it under their ideological canons. The Constitution of the RSFSR of 1918 set the main task: "the destruction of all exploitation of man by man, the complete abolition of the divi-

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[1] *Pokrovsky P.* [Bentam i ego vremya] Bentam and his time. Petrograd, printing house of A.E. Collins, 1916.

[2] *Antonovich A.* [Politseyskoe pravo i politicheskaya ekonomiya] Police Law and Political Economy. Kiev: University Printing House, 1883.

sion of society into classes, the ruthless suppression of exploiters, the establishment of the socialist organization of society and the victory of socialism in all countries".

Thus, in Soviet constitutional law, economic issues were of paramount importance. Subsequent constitutional acts continued this tradition. Article 4 of the USSR Constitution (approved by the Decree of the Eighth All-Union Congress of Soviets of December 5, 1936) proclaimed: "The economic basis of the USSR is the socialist system of economy and the socialist property on instruments and means of production established as a result of the liquidation of the capitalist economic system, abolition of private property on instruments and means of production and abolition of human exploitation by man".

In the Constitution of the USSR (1977) and the Constitution of the RSFSR (1978), a special Chapter 2 "The Economic System" had already appeared, according to which (Article 10) the basis of the economic system of the RSFSR was socialist ownership of the means of production in the form of state (national) and collective farm and cooperative ownership. It was stipulated that the State would protect socialist property and create the conditions for its multiplication. In addition, it was stipulated: "No one has the right to use socialist property for personal gain or other mercenary ends. The source of growth of social wealth and welfare of the people and every Soviet person (Article 14) was declared to be the free from exploitation labour of the Soviet people: "Socially useful labour and its results determine a person's position in society. The State, combining material and moral incentives, encouraging innovation, creative attitude to work, contributed to making labour the first necessity in life of every Soviet man". Controlled economy was envisaged.

The rejection of bourgeois private law influenced the general pattern of interaction between law and economics. A formula was developed for economic law, a revolutionary branch ("a form of economic policy of the proletarian dictatorship") designed to regulate property relations in the transitional period from capitalism to communism, where socialist property was considered the "core" (due to which it was opposed to "bourgeois civil law")[1]. P.I. Stuchka pointed out that certain "vestiges of the past" may persist in Soviet law ("habitual to our old lawyers, the 'commissars' of the legal worldview under the Soviet institutions"). However, even the emergence of the Civil Code is a forced measure, "Soviet law is not eternal", "and it is dying out together with the state as a right based on class coercion"[2].

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[1] *Rubinstein B.M.* [Sovetskoe khozyaystvennoe pravo: Ucehbnik dlya slushateley pravovykh shkol i vuzov] Soviet Economic Law: Textbook for students of law schools and universities. Leningrad Branch of the Communist Academy. Institute of Soviet Construction and Law. Moscow: Soviet Legislation State Publishing House, 1935. 182 p. / https://naukaprava.ru/catalog/435/1108/2871/19863?view=1

[2] *Stuchka P.I.* [Sotsialisticheskoe khozyaystvo i sovetskoe pravo] Socialist Economy and Soviet Law // Revolution and Law. 1927. No. 1.

E. B. Pashukanis (like P. I. Stuchka) defended the thesis of the Soviet law extinction: the conscious regulation of economic processes would be built on other principles such as based on historical materialism. "The problem of the law extinction is the touchstone by which we test the degree of closeness to Marxism and Leninism of this or that jurist. It is just as impossible to try to take some neutrality on this question, as it is impossible to remain neutral in the struggle for socialism, for the successes of socialist construction, which we are practically waging. Those who do not admit that the planned organizational principle is supplanting the technical one are, in fact, convinced that the relations of the commodity and capitalist economy are eternal and that their defect at the present moment is only a certain abnormality which will be eliminated in the future"[1].

Another quotation, devoted to the analysis of the regulation of the economics in the post-revolutionary period, is telling: "The market element, the capitalist elements, is opposed by the proletarian state, which, relying on the most important economic levers of regulation and acting by market methods through its economic bodies and cooperative organizations, must seize the turnover of goods, direct it through those channels which will strengthen the link between town and country, ensure the restoration of industry and thereby strengthen the base of socialist construction"[2]. This was "Lenin's ingenious plan"[3] to break the old economic order by such means of superstructures as law and state. The justification consisted in the fact that in the bourgeois economy the "spontaneous laws of economic development" ruled, the proletarian revolution gave a new recipe: "politics cannot but take precedence over economics", and thus "the politics of the proletarian dictatorship determine the course of our development, the laws of the construction of a classless socialist society"[4]. F. I. Wolfson added: "In the economic field, the importance and weight of the state is more and more increasing. The state, the bearer of power, is becoming the main economic agent. New legal forms are being created, which, in his opinion, will be the last page in the history of the state[5]. A. G. Goykhbarg took

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[1] *Pashukanis E. B.* [Ekonomika i pravovoe regulirovanie] Economics and Legal Regulation // Revolution and Law. 1929. No. 4–5.

[2] *Amfiteatrov G. N., Gintsburg L.* [Upravlenie khozyaystvom I khozyaystvennoe pravo za 15 let proletarskoy diktatury] of Economy and Economic Law Management in 15 Years of Proletarian Dictatorship / 15 Years of Soviet Construction. 1932 / https://naukaprava.ru/catalog/435/1108/5139/37212?view=1

[3] *Gintsburg L.* [Khozyaystvennoe stroitel'stvo pervogo goda proletarskoy diktatury (k voprosu ob istokakh sovetskogo khozyaystvennogo prava)] // Soviet State. 1932. No. 9–10. P. 79–102.

[4] *Rubinstein B. M.* [Sovetskoe khozyaystvennoe pravo] Soviet Economic Law. M., 1935. 182 p. / https://naukaprava.ru/catalog/435/1108/2871/19863?view=1

[5] *Volfson F. I.* [Khozyaystvennoe pravo pervogo desyatiletiya] Economic law of the first decade // Soviet Law. 1927. No. 6. P. 22–32.

stand on the Leninist ideas of aversion to all private things in law, proposing a new branch of economic law, arising just by merging the public and private principles (the author called the lawyers with the opposite view "the most backward") in the regulation of economic activity. In this way, economic law must incorporate both administrative and civil law [1].

The fate of many of these authors is natural for that time. In 1937–1938, representatives of economic law were accused of "sabotage on the legal front in the form of propaganda of economic law and the resulting erroneous restructuring of the system of Soviet law"[2]. At the First All-Union Conference of Legal Scholars in 1938 (chaired by A. Ya. Vyshinsky) confirmed the abolition of economic law. Many scientists were repressed.

A certain prosperity of advocates of economic law took place in the mid-60s of the last century. The pioneer was V. S. Tadevosyan, who put forward a proposal to revise the system of Soviet law and recognize a new branch of law (arguing also that civil law "was created by the bourgeoisie to regulate private property relations")[3]. For several years, there was a heated debate in Soviet legal science about the expediency of the innovation. Its proponents pointed to the existence of an economic-organizational function of the Soviet state, which was covered in an economic policy. The legal form of its implementation should become economic law[4]. The concept of a branch of economic law is largely associated with Academician Vladimir Viktorovich Laptev (Institute of State and Law, Russian Academy of Sciences). He highlighted the fundamental homogeneity of economic relations arising in connection with the management and implementation of economic activities[5].

A scientific team headed by V. V. Laptev developed a draft of the Commercial Code of the USSR (which could significantly improve the image of the industry), but which did not become law. S. S. Zankovsky noted: "The economic legislation in the USSR was represented almost exclusively by by-laws, and the adoption of the Code as an act of supreme legal force was contrary to this tradition, which

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[1] *Goykhbarg A. G.* [Khozyaystvennoe pravo RSFSR] Economic Law of the RSFSR. Vol. 1. Civil Code. Moscow, Petrograd, 1923. 216 p.

[2] *Loffe O. S.* [O khozyaystvennom prave (teoriya i praktika)] On economic law (theory and practice) // Leningradsky juridical journal. 2005. No. 2. P. 179.

[3] *Tadevosyan V. S.* [Nekotorye voprosy sistemy sovetskogo prava] Some Issues of the System of Soviet Law // Soviet State and Law. 1956. No. 8. P. 99–108.

[4] *Laptev V. V.* [O sovetskom khozyaistvennom prave] On Soviet Economic Law // Soviet State and Law. 1959. No. 4. P. 70–87.

[5] *Laptev V. V.* [Predmet i Sistema khozyaystvennogo prava] The Subject and System of Economic Law. M., 1969. 176 p.

allowed the authorities to manage the economics in a "manual" mode. The directors of Soviet enterprises accepted the idea of the Code positively, simply because it protected them from arbitrary action by superior bodies, but they were not a force in the USSR that could really influence the government[1]. S. S. Zankovsky singles out a significant element of V. V. Laptev's ideas, which is the search for "a compromise between administrative law and civil law", which has not lost its relevance in modern Russia, and has acquired "a new expression through the commonality of state regulation and business, public and private legal relations in business"[2].

The new idea was opposed by civil lawyers, who saw some encroachment on the basics of civil law and insisted on following the classical canons of defining a branch on the basis of the specifics of the subject and method. O. S. Ioffe pointed to the inadmissibility of constructing a branch division of law based on the differentiation of state functions, moreover, he added: "But it would be no less a mistake, a mistake of a voluntaristic, subjectivistic nature to build a doctrine about the system of law without taking into consideration the nature of social relations underlying its various branches or the nature of economic laws that regulate these relations. And this is precisely the main methodological flaw in the theory of economic law"[3].

In any case, discussions on the formation of economic law generated comprehension of the role of the state in regulating economic relations, classification of functions of public authorities in the sphere of economics, conclusions about the essence of public administration and limits of its impact on civil legal relations. Omitting ideological elements, it must be admitted that Soviet science, turned off from the mainstream of scientific development (remember, it was at that time that the Nobel Prize in Economics was awarded to representatives of the Western world), tried to fill the gap that had appeared (at least in such a refined form). All this time legal science was fed by socialist dogma, far removed from real economic processes. However, by the end of the 1980s, due to scientific discussion, those canons were being born which gave their "exit" in the period of systemic reforms of the early 1990s. R. O. Khalfina noted: "Ignoring the requirements of objective economic laws in the process of legal regulation led to the fact (as F. Engels predicted) that the

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[1] *Zankovsky S. S.* [Khozyaystvennoe pravo akademika V.V. Lapteva: retrospektiva, ukhodyashchaya v budushchee] Economic Law of Academician V.V. Laptev: a retrospective going into the future / [Tvorcheskoye nasledie akademika V.V. Lapteva i sovremennost'] Creative heritage of Academician V.V. Laptev and Modernity / Editors in Chief: A. G. Lisitsyn-Svetlanov, member of the Russian Academy of Sciences; N. I. Mikhailov, Doctor of Law, Professor; S. S. Zankovsky, Doctor of Law, Professor. M., 2014. 256 p. / http://igpran.ru/public/books/Pamyati_V.V.Lapteva.pdf

[2] *Zankovsky S. S.* Op. cit.

[3] *Loffe O. S.* [Pravovoe regulirovanie khozyaystvennoy deyatel'nosti v SSSR] Legal Regulation of Economic Activity in the USSR. L., 1959. 48 p.

objective economic law eventually worked its way in, but in a perverted form and with great losses"[1]. Let us omit the reference to F. Engels (the edition was carried out in 1989), but R. O. Khalfina formulated practical recommendations on the improvement of legislation, which not only have not lost their relevance, but are repeated in modern science (on the adoption of fundamental laws on the role of the state in regulating the economy).

3. Economic Constitution, Constitutional Economics and Economic Analysis of Law in Modern Russia

The adoption of the Russian Constitution in 1993 completed the transition from an administrative-command to a market economy model. The foundations of the constitutional order proclaimed freedom of economic activity, support for competition and protection of private property. At the same time, the Russian Constitution refused to enshrine the economic system without defining the constitutional guidelines for the development of the national economics. The notion of a market economy as the basis for building the country's economics was not enshrined either. Even a cursory analysis of the constitutions of Western European countries, where many ideas of solidarism can be found, reveals the deficiencies of such silence:

1. Part 1 of Section 128 of the Spanish Constitution declares: "The entire wealth of the country in its different forms, irrespective of ownership, shall be subordinated to the general interest".

2. Article 14 of the Constitution of the Principality of Liechtenstein states: "The supreme function of the State is to promote the general welfare of the People" and Article 20 of the Dutch Constitution establishes the duty of public authorities to take care of the equitable distribution of wealth.

3. Article 80 of the Constitution of the Portuguese Republic provides for the principle of democratic planning of economic and social development.

4. Article 14 of the Basic Law of the Federal Republic of Germany has become a classic: "Property entails obligations. Its use shall also serve the public good".

Many more examples from foreign constitutions can be cited, but on the other part, the paucity of the Russian Basic Law predetermined the search for synthetic provisions elaborating its brief norms. The decisions of the Constitutional Court of the Russian Federation, formulating the principles of regulation of economic relations, became particularly important. A concept of an "economic constitution" was developed, but with different contents. The most common approach is related

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[1] *Khalfina R. O.* [Pravovoe gosudarstvo i ekonomika] Legal State and Economics / Socialist Legal State. Problems and Judgments. M., 1989. P. 121–132 / https://naukaprava.ru/catalog/435/1108/551684/62802?view=1

to the allocation of a set of constitutional norms regulating relations in the sphere of economy[1].

There is also an original idea of presenting the Civil Code of Russia as an economic constitution of the country, voiced by the Private Law Research Centre under the President of the Russian Federation named after S. S. Alexeev. S. S. Alekseev together with P. V. Krasheninnikov coined the term: "A kind of super-task in our economic and legal life should be recognized as giving to the Civil Code of the Russian Federation its original meaning of the "economic constitution of the country"[2]. In September 2006 the idea was given an "official hue" in the person of D. A. Medvedev (as First Deputy Prime Minister), who presented Part IV of the Civil Code in the State Duma: "The Civil Code is the economic constitution of the country and it should be stable. Foreign experience, the example of Germany, France show that the most stable there are the Civil Codes. Their constitutions were changed more often than their Civil Codes"[3]. Such a turn of phrase is also popular in the CIS countries: it was cited by M. K. Suleimenov, Director of the Private Law Research Institute of the Republic of Kazakhstan in relation to the Civil Code of the Republic of Kazakhstan[4].

However, this message did not find support in the academic community. The arguments are varied: 1) the Civil Code of the Russian Federation "cannot act as the law with supreme legal force in relation to other laws"[5]; 2) adoption of other codes and laws regulating economic relations reduced the role and importance of the Civil Code of the Russian Federation[6]; 3) there is no such special

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[1] Constitutional Legislation of the Russian Federation / Under the editorship of Yu. A. Tikhomirov. M.: Gorodets, 1999. P. 331; *Doroshenko E. N.* [Konstitutsionno-pravovoe regulirovanie ekonomicheskikh otnosheniy] Constitutional and Legal Regulation of Economic Relations / Thesis abstract. … Candidate of Juridical Sciences. M., 2004. 32 p.

[2] *Alekseev S. S., Krasheninnikov P.* Economic Constitution // Nezavisimaya Gazeta. July 27, 2000 / https://www.ng.ru/ideas/2000-07-27/8_constitution.html

[3] *Shkel T.* Code with Intelligence // Rossiyskaya Gazeta. September 21, 2006 / https://rg.ru/2006/09/21/gr-kodeks.html

[4] *Suleimenov M. K.* [Kak sozdavalsya Grazhdanskiy kodeks Respubliki Kazakhstan] How the Civil Code of the Republic of Kazakhstan was created // Jurist. 2012. No. 1. P. 14–21.

[5] *Mozolin V. P., Barenboim P. D.* [Grazhdanskiy kodeks kak "ekonomicheskaya konstitutsiya strany?"] The Civil Code as the 'economic constitution of the country'? // Legislation and Economics. 2009. No. 4.

[6] *Andreev V. K.* [Mozhno li Grazhdanskiy kodeks Rossiyskoy Federatsii nazvat' ekonomicheskoy konstitutsiey] Can the Civil Code of the Russian Federation be called an economic constitution? (Razmyshleniya o zakonotvorchestve v oblasti ekonomiki) (Reflections on lawmaking in the field of economics) // Russian judge. 2003. No. 8; *Filippova S. Yu*. [Grazhdanskiy kodeks Rossiyskoy Federatsii: peremeny. Kakim byt' Grazhdanskomy Kodeksu?] The Civil Code of the Russian Federation: changes. What should the Civil Code be? // Bulletin of Moscow University. Series 11. Pravo. 2016. No. 2. P. 23–42.

constitution in the world, the terminology distorts the reality[1]. By the way, an indirect argument is also the position of the Constitutional Court of the Russian Federation stressing that no federal law has greater legal force than other federal laws (see e.g: Ruling of the Constitutional Court of the Russian Federation of November 5, 1999 No. 182-O "On the request of the Moscow Arbitration Court to check the constitutionality of paragraphs 1 and 4 of part four of Article 20 of the Federal Law "On Banks and Banking Activities"[2]). At the same time, a general view of the idea of an "economic constitution" has emerged as the basis of an interdisciplinary view of the set of legal norms aimed at regulating economic relations. This is a certain message, forcing jurisprudence to expand "its sectoral" specificity of economic issues, which needs additional support (to go beyond "pure" jurisprudence, to involve the knowledge of such related sciences as sociology, economics, psychology, etc.)[3].

Such related term as constitutional economics has also developed in the Russian legal literature. It is understood as a "studying the principles of optimal combination of economic expediency with the achieved level of constitutional development reflected in the norms of constitutional law regulating economic and political activities in the state" scientific trend[4]. One of the main tasks of constitutional economics is the analysis of the interaction of economics and state, law and economy, and the development of managerial decisions aimed at ensuring the effective functioning of the economics in the interests of citizens and the state[5]. The team of authors of one thematic monograph stated: "Constitutional economics is concerned precisely with the study of constitutional and legal institutions and values in their interaction with economic processes and is more of a legal discipline"[6].

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[1] *Chirkin V.E.* [O terminakh "ekonomicheskaya konstitutsiya" i "konstitutsionnaya ekonomika", a takzhe o rossiyskoy i zapadnoy nauke (otklik na stat'yu G.N. Andreevoy)] On the terms "economic constitution" and "constitutional economy", as well as on Russian and Western science (response to the article by G. N. Andreeva) // Constitutional and Municipal Law. 2016. No. 3. P. 11–13.

[2] Official Gazette of the Russian Federation. 1999. No. 52. Article 6460.

[3] *Andreeva G.N.* [K voprosu o ponyatii ekonomicheskoy konstitutsii] On the Notion of an Economic Constitution // Constitutional and Municipal Law. 2010. No. 7. P. 9–13; *Andreeva G.N.* [O kontseptsii ekonomicheskoy konstitutsii] On the Concept of Economic Constitution // Constitutional and Municipal Law. 2006. No. 1.

[4] Constitutional Economics / Editor-in-Chief G.A. Gadzhiev. M.: Yustitsinform, 2010. 256 p. / http://www.philosophicalclub.ru/content/docs/p5.pdf

[5] *Pavlikov S.G., Avdijskij V.I.* [O sootnoshenii ekonomiki i prava i tendentsiyakh konstitutsionno-pravovogo regulirovaniya ekonomicheskikh otnosheniy] On the ratio of economy and law and trends of constitutional-legal regulation of economic relations // State and Law. 2014. No. 11. P. 35–42.

[6] Constitutional Economics / Editor-in-Chief G.A. Gadzhiev. M.: Yustitsinform, 2010.

The ideological basis of the proposed concepts is the economic analysis of law, tested by Western democracies, where some of the first researchers were G. Calabresi, J. Buchanan[1] and G. S. Becker[2] (the founder of the theory of "human capital"). G. S. Becker applied economic approaches (while excluding the purely egoistic message of greed for profit) to many social institutions and phenomena (including family, marriage, crime). Despite this, his theory of "human capital" has been criticised rather harshly for the possibility of a utilitarian approach to man and spiritual values. Man is transformed exclusively into an economic unit, like a machine, capable of giving away material values. In Germany in 2004, the rejection of Becker's ideas led to the professional community of linguists calling for the word *Humankapital* to be removed from the German lexicon[3].

The idea was completed by R. A. Posner[4], who prepared a voluminous handbook, which presents the economic analysis of the law as one of the promising directions: 1) it offers a neutral point of view on divisive legal issues; "economists do not take sides, they argue exclusively for efficiency"; 2) the economic approach often resolves divisive controversies[5]. Thomas S. Uhlen adds: "A large number of legal decisions are in fact like market choices"[6].

In Russia, this approach has its supporters. A. G. Karapetov notes: "The key role of positive economic analysis of law is to develop predictive models of the real regulatory impact of certain proposed legal norms on human behaviour"[7]. However, there are more economists than lawyers. A. V. Shmakov points out: "The greatest difficulty in the perception of the economic approach by lawyers has been "legal positivism". Any decision of the legislator is taken as a given. The correctness of the law is not discussed, only the problems of its application are discussed. In this connection, the alternative thinking of the economist, who perceives the law only

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[1] *Brennan J., Buchanan J.* The Reason of Rules. Constitutional Political Economy. Vol. 9 of the Ethical Economics Series: Studies in Ethics, Culture, and Philosophy of Economics / Ed. by A. P. Zaostrovtsev. SPb: Economic School, 2005. 272 p.

[2] *Becker Gary S.* Investment in Human Capital: A Theoretical Analysis Reviewed // Journal of Political Economy. 1962. Vol. 70. № 5. Pp. 9–49; *Becker Gary S.* Human behaviour. An economic approach. M., 2003.

[3] Why do we call it human capital? World Economic Forum / https://www.weforum.org/agenda/2016/06/why-do-we-call-it-human-capital/

[4] *Pozner R. A.* [Ekonomicheskiy analiz prava] Economic Analysis of Law. 2 volumes. SPb., 2004.

[5] *Pozner R. A.* [Rubezhi teorii prava] Milestones of the theory of law. M., 2017. 480 p.

[6] *Uhlen Thomas S.* [Teoriya ratsional'nogo vybora v ekonomicheskom analize prava] Rational Choice Theory in Economic Analysis of Law // Bulletin of Civil Law. 2011. No. 3. P. 275–315.

[7] *Karapetov A. G.* [Ekonomicheskiy analiz prava] Economic Analysis of Law. M.: Statute, 2016. 528 p. / https://m-lawbooks.ru/wp-content/uploads/2020/02/004-kniga.pdf

as one of the options to achieve the goal, is not perceived. The law is not perceived by the economist as something immutable, and hence it becomes possible to search for ways to increase its effectiveness"[1].

Meanwhile, reference to these works (A. G. Karapetov, A. V. Shmakov) devoted to the economic analysis of law reveals the presence of systemic gaps in them. The authors attempt to make recommendations for changing the law on the basis of economic perceptions. However, a superficial glance discredits the proposals and often proves the existence of a "chasm" between economists and lawyers. In particular, A. V. Shmakov's works give the example of the surrogacy contract, where the lawyer's thinking is relegated to the categories of the past, which justifies a prohibitive approach to this reproductive practice. The economist, on the other hand, models the behaviour of possible parties to the contract by assessing the consequences of the prohibition. As a result, parents will seek alternative ways of procreating, which will lead to a reduction in the birth rate. The conclusion is striking: "Further analysis must be made on the basis of whether society needs children. If not (due to overpopulation or a large number of healthy children to adopt), then the contract should be invalidated. If they are needed, the contract must be defended"[2]. The view presented is clearly unsubstantiated. One need only turn to the scientific literature to see significant factors that will, among other things, point to the economic aspect of the problem. For example, it has been proven that children born artificially have a significant number of congenital diseases (which places an additional burden on the health care system). The surrogacy program clearly does not make a significant contribution to the demographic situation of the country[3]. At the same time, the economic cost of running each couple constantly creates a debate about the appropriateness of the claimed expenditure (when artificial insemination takes place within the framework of public funding).

A. G. Karapetov goes further, presenting his own vision of modern jurisprudence: "By and large, proposals to change positive law in its relevant fields, which

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[1] *Shmakov A. V., Epifanova N. S.* [Ekonomicheskaya teoriya prava: uchebnik i praktikum dlya bakalavriata i magistratury] Economic theory of law: textbook and practice book for undergraduate and graduate studies. M.: Urait Publishing House, 2018. 420 p. / https://mx3.urait.ru/uploads/pdf_review/E373C704-8D4E-4CFF-8995-299898FDE771.pdf

[2] *Shmakov A. V.* [Ekonomicheskiy analiz prava] Economic Analysis of Law. Novosibirsk, 2005. 136 p.

[3] See: *Romanovsky PG. B.* [Pravovoe regulirovanie vspomogatel'nykh reproduktivnykh tekhnologiy (na primere surrogatnogo materinstva)] Legal regulation of assisted reproductive technologies (by way of example of surrogacy). M.: Urlitinform, 2011. 264 p.; *Romanovsky G. B.* [Pravovaya okhrana materinstva i reproduktivnogo zdorov'ya] Legal Protection of Maternity and Reproductive Health. M.: Prospekt, 2016. 216 p.

have been put forward over all these centuries by lawyers, have been made without reliance on any more coherent theory or methodology, rather purely intuitively"[1].

Among lawyers, there are no such radical accusations against economists (let's disregard the commitment to the professional community). Rather, on the contrary, there is a real involvement in a related science, which gives rise to various studies on the applicability of economic calculations to particular legal institutions[2]. S. A. Sinitsyn emphasises that the doctrinal approach has never been limited to clarifying the literal meaning of a norm in its isolated or systematic consideration. Conversely, one should not forget the limited economic analysis of many civil institutions (in particular, non-property relations)[3]. For the purposes of this study, however, it is the general ideas determining the basic principles of legal development and their impact on the economy that are of most interest. Let us turn our attention to such a significant aspect as the involvement of efficiency criteria in the process of exercising public power. S. A. Kurochkin singles out: "Efficiency is not a legal category, but a concept from the sphere of economics... The economic approach to law is based on the concept of efficiency"[4]. D. V. Lorenz adds: "The economic efficiency of this or that variant of the legal model should be evaluated in terms of minimising costs and risks and the incentive effects for the owner and the bona fide purchaser of stolen property should also be investigated"[5].

The principle of efficiency of public authorities is only gaining "momentum" in legal science and practice, although D. N. Bakhrakh highlighted this key criterion for the organization of public administration[6] (defending it at many public forums and conferences) as early as 1996. The adoption of the Federal Law of December 29, 2006 which amended Federal Law of October 6, 1999, No. 184-FZ "On the

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[1] *Karapetov A. G.* Op. cit. P. 13.

[2] *Stepanov D. I.* [Ekonomicheskiy analiz korporativnogo prava] Economic Analysis of Corporate Law // Bulletin of Economic Justice of the Russian Federation. 2016. No. 9. P. 104–167; *Khavanova I. A.* [O teorii ekonomicheskogo analiza v nalogovom prave (kontseptual'nye osnovy)] On the theory of economic analysis in tax law (conceptual foundations) // Journal of Russian Law. 2015. No. 5. P. 111–124 and etc.

[3] *Sinitsyn S. A.* [Ekonomicheskiy analiz prava i ego mesto v tsivilisticheskoy metodologii] Economic analysis of law and its place in civilistic methodology // Law. Journal of the Higher School of Economics. 2017. No. 2. P. 4–17.

[4] *Kurochkin S. A.* [Ekonomicheskiy analiz prava kak perspektivnyy metod poiska resheniy aktual'nykh problem yurisprudentsii (na primere grazhdanskogo sudoproizvodstva)] Economic analysis of law as a promising method of finding solutions to current problems of jurisprudence (on the example of civil litigation) // Russian Law Journal. 2013. No. 2. P. 166–175.

[5] *Lorenz D. V.* [Ekonomicheskiy analiz pozitsiy Konstitutsionnoho Suda RF otnositel'no zashchity prava sobstvennosti] Economic analysis of the positions of the Constitutional Court of the Russian Federation regarding the protection of property rights // Legislation and Economics. 2016. No. 1. P. 25–31.

[6] *Bakhrakh D. N.* Administrative law. college textbook. M., 1996. P. 162.

General Principles of the Organization of the Legislative (Representative) and Executive Bodies of State Authority of the Subjects of the Russian Federation" with Article 26.3.2 "Performance Measures of the Executive Authorities of Russian Federation", should be regarded as a positive development. The legislation was followed by presidential decrees setting out the criteria for effectiveness. The list of criteria has changed over a short period, which can hardly be reconciled with the principle of legal regulation stability in such a complex issue. Thus, the following were adopted: Presidential Decree No. 825 of 28.06.2007 "On evaluating the effectiveness of the activities of the executive authorities of the constituent entities of the Russian Federation"[1] (48 indicators); Presidential Decree No. 1199 of 21.08.2012 "On Evaluating the Effectiveness of the Executive Bodies of the Constituent Entities of the Russian Federation"[2] (12 indicators); Presidential Decree No. 548 of 14.11.2017 "On Evaluating the Effectiveness of the Executive Bodies of the Constituent Entities of the Russian Federation"[3] (24 indicators); Presidential Decree No. 193 of 25.04.2019 "On Evaluating the Effectiveness of Top Officials (Heads of Top Executive Bodies of State Power) of the Constituent Entities of the Russian Federation and the Activities of Executive Bodies of the Constituent Entities of the Russian Federation"[4]. (15 indicators), currently in force.

The analysis of the performance indicators shows that with each one there is a gradual abandonment of the economic matrix in favour of the political aspects. Thus, the 2019 Presidential Decree puts the level of trust in the government at the top of the performance criteria, which can hardly be measured mathematically.

Let us draw attention to such another aspect of economic analysis of law as the proper construction of incentives. As noted in legal scholarship: "It is important to bear in mind that the economic approach is based first and foremost on the idea of creating the right incentives for potential perpetrators as well as for potential perpetrators and victims, because it is the structure of incentives that ultimately predetermines what effects the rules to society should expect"[5]. Note that there is also an expansive approach to the nature and meaning of incentives in legal theory[6].

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[1] Russian Federation Code. 2007. No. 27. Article 3256.

[2] Russian Federation Code. 2012. No. 35. Article 4774.

[3] Russian Federation Code. 2017. No. 47. Article 6963.

[4] Russian Federation Code. 2019. No. 17. Article 2078.

[5] *Shastitko A. E., Pavlova N. S.* [Pochemu ekonomicheskiy analiz] Why does economic analysis of law matter? // Law. 2018. No. 3. P. 57–66.

[6] *Malko A. V.* [Stimuly i ogranicheniya v prave] Incentives and Restrictions in Law. Revised and enlarged 2nd ed. M.: Yurist', 2004. 248 p.

Thus, the interaction between law and economy is indisputable and unquestionable. Let us refer to T. Y. Khabrieva's opinion: "Law forms a normative equivalent of economic relations and is a universal management tool capable of ensuring the solution of most of the set tasks, achievement of the required goals, and formation of the necessary balance of interests"[1]. History knows many examples of the reverse impact of law on the economy. A striking example: the main idea of Marxism-Leninism is to destroy the market order through the dictatorship of the proletariat (although everyone remembers the doctrine about the basis (economy) and the superstructure (state and law). It seems that the arguments can go on indefinitely. Moreover, it is the legal mechanisms which ensure the normal development of economic relations. Thus, security of the state (in its various manifestations) is achieved[2]. We also support G. A. Gadzhiev's opinion: "Undoubtedly, we are dealing with mutual influences, reverse influences. Probably, the very formulation of the question of what is more important the influence of economics on law or law on economics is not correct. Indeed, how useful is this intellectual tug-of-war? However, lawyers need to be clear about their objectives, be aware of the reasonable ambition of the legal concept and raise the scale of their professional ambition[3].

4. Representation of the Mega-Branch of Economic Law in Contemporary Russian Scholarship

Russian legal scholars have also substantiated a broad approach to understanding economic law as a mega-industry. This is based on large-scale geopolitical transformations that are shaping new approaches to legal regulation[4], and foreign experience[5]. Such an argument as the inadmissibility of politically partisan economic decision-

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[1] *Khabrieva T. Ya.* [Ekonomiko-pravovy analiz: metodologicheskiy podkhod] Economic and legal analysis: a methodological approach // Journal of Russian Law. 2010. No. 12. P. 5–26.

[2] *Khabrieva T. Ya.* [Pravovye problemy finansovoy bezopasnosti Rossii] Legal Problems of Russia's Financial Security // Bulletin of Economic Justice of the Russian Federation. 2016. No. 10. P. 48–54.

[3] *Gadzhiev G. A.* [Pravo I ekonomika (metodologiya)] Law and Economics (Methodology). M., 2016.

[4] *Ershov V. V., Ashmarina E. M., Saveliev V. N.* [Sovremennoe ekonomicheskoe pravo kak rezul'tat geoekonomicheskoy, geokul'turnoy, geopoliticheskoy I geotekhnologicheskoy globalizatsii] Modern economic law as a result of geo-economical, geocultural, geopolitical and geotechnological globalization // State and Law. 2018. No. 7. P. 66–72.

[5] *Ershov V. V., Ashmarina E. M., Kornev V. N.* [Ekonomicheskoe pravo: sravnitel'no-pravovoy analiz Germanii, Frantsii, Kitaya i Rossii] Economic Law: Comparative Legal Analysis of Germany, France, China and Russia // State and Law. 2014. No. 9. P. 53–64.

making is added[1]. Various excursions into social and political processes are presented. Thus, according to the authors, historical excursion showed that during the last centuries formation of legal complexes directly depended on the development of economic processes; geographical excursion showed that in such countries as Germany, France, China, from the beginning of the XXI century a consolidation of legal complexes regulating various segments of economic activities in the mega-branch called economic law takes place (a process of agglomeration is outlined in contrast to the previous division); the general theoretical approach has enabled us to surmise that the general trend towards agglomeration of legal complexes does not mean that we have to abandon national specificities and "adapt" our national legal system to the experience of others[2]. Science highlights that "economic law in Russia has already emerged de facto as a collective complex mega-branch", with the formulation of the general concept: "a set of primarily principles and norms of law contained in international and national forms of law, implemented in the state and regulating social relations arising in production and economic activity and its, management". The authors add: "The subject of Russian economic law can be characterized as economic power and dispositive relations arising in the process of implementing types (in accordance with Russian National Classifier of Types of Economic Activity) and directions (Nomenclature) of economic activities, which are regulated by principles and norms of law contained in a unified and multilevel system of international (public and private) and domestic law forms (constitutional, municipal, financial, administrative, criminal, environmental, business, etc.)[3]. At the same time, the branch of law has no clear boundaries, but includes the General and Special parts, where the "General part fixes principles of economic activity, its legal forms and methods; legal personality of parties of economic legal relations (in particular, the range and powers of state bodies controlling economic processes in the country); general provisions on control and responsibility in the area under study and other general issues concerning any institution of economic law. The Special Part, specifying the General Part, consists of sections integrated into independent subgroups, which regulate homogeneous economic relations with characteristic specifics"[4].

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[1] *Miroshnik S. V.* [Ekonomicheskoe pravo v sisteme rossiyskogo prava] Economic law in the system of Russian law // Economic and legal issues. 2016. No. 1. P. 12–14.

[2] *Ashmarina E. M., Stakhov A. I.* [Administrativno-ekonomicheskoe pravo Rossiyskoy Federatsii] Administrative-economic law of the Russian Federation // State and Law. 2018. No. 5. P. 37–43.

[3] *Ershov V. V., Ashmarina E. M., Kornev V. N.* [Ekomocheskoe pravo kak megaotrasl' rossiyskogo prava: ego predemet I sistema] Economic law as a mega-branch of Russian law: its subject and system // State and Law. 2015. No. 7. P. 5–16.

[4] *Ashmarina E. M., Ruchkina G. F.* [Ekonomicheskoe pravo Rossiyskoy Federatsii (predmet i metod, sistema i struktura, istochniki pravovogo regulirovaniya)] Economic Law of the Russian Federation (Subject and Method, System and Structure, Sources of Legal Regulation) // State and Law. 2012. No. 8. P. 57–65.

Complementing the arguments of the proponents of the mega-branch of economic law is the mention in the Arbitration Procedural Code of the Russian Federation (Article 28) of economic disputes (when describing the jurisdiction of arbitration courts). At the same time, this allows the introduction of the "economic justice" term into academic use[1]. However, the legislator does not decipher what exactly should be understood under an economic dispute, which, in its turn, makes it possible to interpret through such a more comprehensible term as an "entrepreneurial activity"[2]. It is defined in Article 1 of the Civil Code of the Russian Federation as "independent, risk-based activity aimed at systematic profitmaking from the use of property, sale of goods, performance of work or rendering of services".

We should support the research premise of singling out economic law as a science whose mission "is the systemic analysis of the optimization of the legal regulation of economic processes in their development in order to prevent negative trends"[3]. From that perspective, the economic law is called upon to formulate the basic values of the relationship between the economics, law and the state. It should determine the benchmarks and define the scale, in the framework of which such interaction takes place. In part, that will make it possible to avoid the comprehensiveness of economic law. A broad approach to the mega-industry has the right to exist, but it could overwhelm the entire classical legal structure. It is unlikely to be supported by the legal community. The canons of branch structure have undergone certain changes, but the matrix has remained the same: the key indicators are the peculiarities of the subjectology and methodology. However, the collective of authors who consistently and logically explain the departure from the basic structure of law and the transition to an interdisciplinary method of differentiation should also be supported. Moreover, the popularisation of an economic approach to legal problems has

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[1] *Ershov V. V., Ashmarina E. M., Kornev V. N.* [Ekonomicheskoe pravo i ekonomicheskoe pravosudie kak parnye kategorii. Klassifikatsiya ekonomicheskikh sporov] Economic law and economic justice as paired categories. Classification of economic disputes // State and Law. 2016. No. 8. P. 40–51.

[2] Features of arbitration proceedings: textbook / O.V. Aboznova, Y.V. Averkov, N.G. Belyaeva et al; ed. by I.V. Reshetnikova. Moscow: Yustitsiya, 2019. Arbitration series. 324 p.; *Andreeva T.K.* [Voprosy kompetentsii arbitrazhnykh sudov v novom Arbitrazhnom protsessual'nom kodekse Rossiyskoy Federatsii] Issues of competence of arbitration courts in the new Arbitration Procedural Code of the Russian Federation // Economy and Law. 2002. No. 9; Arbitration process: textbook / A.V. Absalyamov, I.G. Arsenov, E.A. Vinogradova et al. V.V. Yarkov, main editor. 4-th edition, revised edition. M.: Infotropic Media, 2010. 880 p.

[3] *Ershov V.V., Ashmarina E.M., Kornev V.N.* [Ekonomicheskoe pravo kak nauka] Economic Law as a Science // State and Law. 2016. No. 3. P. 54–65.

strategic aims in understanding the essence of law, enriches general theory and gives it a new impetus in its development.

Conclusions

This analysis leads to a number of general conclusions:

1. The complication of social relations, the development of integration processes and the change of the economic structure actualise interdisciplinary research based on the junction of sciences: law, politics and economics. The final transition to a market economy model (legally formalized in the Russian Constitution of 1993) caused a special interest in its doctrinal foundations. The synthesis gave birth to such a new direction as economic law.

2. The limits of state influence on economic relations are only relevant in a market economy. Socialist principles are based on the rejection of private law principles, where the public authority becomes not only a regulator but also a participant in the economic process. The Soviet state showed the consequences of a total command and control system, expressed not only in economic but also in political bankruptcy. That is why economic law is experiencing a certain prosperity in contemporary Russia.

3. A number of terms are used in legal science to reflect the interaction of economics and law at the institutional level. *Economic constitution* is a concept reflecting the essence of legal regulation of economic relations, but used not as a legal category, but as a catch phrase caused to emphasise its meaning. *Constitutional economics* is a scientific trend designed to correlate the content of constitutional norms and their reflection in the economic life of the country, the forms of interaction between the economy and law at the constitutional level. *Economic analysis of law* is an economic approach to the study of legal norms and institutions.

4. The formation of a new mega-branch of economic law in contemporary Russia should be considered premature. It would seem that the formulation of the question in this way is misleading. The model of economic analysis of law (used to a greater extent in Western democracies) shows that the impact of law and economics can be seen at different levels and in nearly all of the classical branches of law. Even the evaluation of criminal behaviour is carried out, among other things, by means of material indicators. For example, a financial assessment of a terrorist act (distinguishing between "costly" acts such as the attack on the World Trade Centre buildings on 11 September 2001 and "low-budget" ones, such as the use of trucks by a lone terrorist) is becoming popular abroad. Transferring such an approach to the structure of the law would lead to economic law absorbing all existing branches of law to a greater or lesser extent, and thus negating the criteria for differentiating branches of law.

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