

**THE PROBLEMS CONCERNING REALIZATION OF POWERS
BY THE SUBJECTS OF THE RUSSIAN FEDERATION (BY THE
EXAMPLE OF THE REPUBLIC OF TATARSTAN)**

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Abstract: This paper discusses conceptual and applied issues regarding the agreements between the federal centre and the subjects of the Russian Federation on the division of jurisdiction and powers. The paper reveals the historical background and reasons for the emergence of this legal institution, its consolidation in the Constitution of the Russian Federation and the Constitution of Tatarstan, the evolution of current domestic legislation, as well as the practice of applying the above institution. It is indicated that the distinction between objects of jurisdiction and authority is an integral element of the principle of federalism, which is one of the foundations of the state system of the Russian Federation. Also, the paper provides an extensive historical retrospective of the evolution

of state and legal relations between the Russian Federation and the Republic of Tatarstan. In many ways, it was the experience of these relationships that influenced the development of the legal framework for regulating the issue of the current study. The accumulated experience of the functioning of state authorities on the basis of such agreements is evaluated, and an opinion is expressed on maintaining the potential of this legal institution for improving federal relations. In addition, an opinion is expressed on the need to develop the correct and competent use of this mechanism, which will allow the best qualities of the domestic constitutional model to show and open up additional growth opportunities for individual regions.

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Keywords: federalism, federal relations, division of jurisdiction and powers, contractual relations, implementation of legal norms, legal status of constituent entities of the Russian Federation.

1. Introduction

One of the foundations of the constitutional system in Russia is the principle of federalism. According to part 3, Article 5 of the Constitution of the Russian Federation, the federal structure of the Russian state includes, along with other signs, the division of jurisdiction and powers between the state authorities of the Russian Federation and state authorities of its constituent entities. At the same time, the Constitution of the Russian Federation enshrines a number of guarantees designed to ensure the subjects of the Russian Federation exercise their powers as much as possible within the framework of the constitutional concept of Russian federalism. These guarantees can be found in all chapters of the Russian Constitution, but now we will concentrate on those contained in the provisions included in the mentioned article of the Constitution of the Russian Federation, namely:

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- Equal rights of all subjects of the Russian Federation, regardless of their type, name, status and any other circumstances;

- The constituent entities of the Russian Federation have their own constitution (for republics within the Russian Federation) or their charters (for all other constituent entities of the Russian Federation) and legislation;

- The unity of the state power system, which ensures organizational and functional coherence of the federal and regional levels of government;

- Equal rights and self-determination of peoples in the Russian Federation, which also serves as a guideline for understanding the competence of state authorities, including the constituent entities of the Russian Federation.

In addition, the equal rights of all the constituent entities of the Russian Federation to each other and in relations with federal state authorities are separately stipulated (part 4, article 5 of the Constitution of the Russian Federation). In essence, this rule is a special case in relation to the general principle of equal rights for all subjects of the Russian Federation (part 1 of the

same article). However, despite the obvious semantic duplication of these legal provisions, the constitutional legislator, nevertheless, took such a step, realizing how important the sphere of relations between the federal centre and the subjects of the federation is. Without any exaggeration, it can be argued that the quality and conflict-free nature of these relations largely determine the maturity and development of Russian federalism, as well as the established system of checks [1] and balances, which allows for more effective interaction between the branches of state power. That is why the additional certainty and a kind of safety net in this matter, within the meaning of these constitutional norms, is by no means superfluous.

2. Methods

By the way, the authors of the Russian Constitution quite often used a similar method of legal technique. They did the same thing, for example, when creating norms prohibiting discrimination in all kinds of its manifestations. For example, article 19 of the Constitution of the Russian Federation twice in a row establishes the inadmissibility of discrimination on the

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grounds of social, racial, national, linguistic and religious affiliation (part 2). The same applies to the double prohibition of discrimination on the basis of gender (parts 2 and 3).

In both of the above cases (both with respect to federal relations and with regard to anti-discrimination standards, from the point of linguistics, this is a tautology, an unreasonable repetition of the same semantic construction, but from the point of view of jurisprudence, it is a completely justified additional measure aimed at more guaranteed to achieve the desired result namely, to prevent any discriminatory manifestations, especially where the existing legal experience suggests the presence of “bottlenecks”. And here it is hardly possible to reproach the constitutional legislator for taking special care of the additional protection of the rights and freedoms of man and citizen, in addition to protecting his/her inviolability and property [2], even if it does not fit into some canons of stylistically linguistic grace.

The really serious omissions in the content of constitutional norms, which create considerable problems and difficulties in their implementation in

practice, look the more contrasting against the background of such a verified approach in terms of legal technology. In particular, this concerns such a sensitive issue as federal relations in the field of division of jurisdiction and powers between two levels of government. And, perhaps, the problem No. 1 in this list, in our opinion, is the frankly awkward nature of enshrining in the constitutional act of the scope of powers provided for the constituent entities of the Russian Federation. The authors of the Russian Constitution decided not to list the specific powers of the regions and thereby rendered innocuous the meaning of Article 73, formulating it “as a residual”: everything that was not included in the powers of the Russian Federation and the sphere of joint jurisdiction (Articles 71 and 72, respectively) then belongs to the subjects of the Russian Federation. The Constitution remains silent to a perfectly reasonable question: what exactly belongs to these powers, and what exactly they are (in the image and likeness of previous jurisdiction). Such a lack of understanding the norms of a key level has obvious negative consequences in terms of the implementation of these

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constitutional provisions. This led to the proposal of individual authors to amend article 73 of the Constitution of the Russian Federation as soon as possible by enshrining it in an exhaustive list of powers of the Russian Federation constituent entities, while indicating that this gap, in principle, cannot be filled at the level of federal law [3].

3. Results And Discussion

However, this constitutional flaw has its own explanation related to the socio-political and state-legal background that accompanied the birth of the new Russian Constitution. Here is how S.M. Shakhray recalls that period regarding work together with S.S. Alekseev on the text of the Constitution: “We managed to solve this dilemma by embarking on a legal trick: we simply came up with a synonymous replacement for the concept of “limited (distributed) sovereignty” adopted in constitutional and legal science [4].

Strictly speaking, the same motivation was laid in the foundation of Article 72 of the Constitution of the Russian Federation, which led to a fairly strong growth of the objects belonging to joint jurisdiction of central and regional

government bodies. This allows the federal authorities to put under greater control the activities of the Russian regions, including their legislative field, but significantly reduces the scope for the implementation of federal relations. Despite the fact that “legislation is the main source of law” [5], federal laws themselves often do not meet the mentioned constitutional criteria of “general issues”, “coordination” and “general principles”. A direct participant in the updating of the doctrine of Russian federalism is the first President of Tatarstan, and now the State Advisor to the Republic of Tatarstan M.Sh. Shaimiev outlined this problem as follows: “First of all, this applies to laws adopted at the federal level, and especially in the areas of joint jurisdiction of state bodies of the Russian Federation and constituent entities of the Russian Federation... This problem requires permanent legislative and contractual settlements. The adoption of federal laws raises many questions when a complete and clear legislative separation of powers does not occur. There are elements of an invasion in the exclusive powers of the federal subjects... We say “federal state”

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ourselves, and we create so many parallel structures that try to control almost all issues, even which air the region breathes, and so on ”[6]. Of course, with this approach, the federal nature of relations between the federal centre and the regions is more inclined towards unitarism.

While stating this omission, it must be admitted that the Russian Constitution also contains mechanisms for its completion. These include, for example, securing the possibility of concluding agreements on the division of jurisdiction and powers between federal and regional government bodies (part 3, Article 11 of the Constitution of the Russian Federation), the permissibility of that federal executive bodies on the basis of mutual agreements would transfer a part of their powers to executive authorities of the constituent entities of the Russian Federation and vice versa (parts 2 and 3, Article 78 of the Constitution of the Russian Federation) or the interpretative potential of the Constitution Court of the Russian Federation, in particular its power to give an interpretation of the Constitution (Part 5, Article 125 of the Constitution). Each of these

mechanisms, in principle, is able to compensate for the shortcomings of constitutional legal regulation and solve the problem we have indicated.

But here new difficulties arise: these mechanisms either do not work, or they do not always work or not in full due to the scale of the problem. Consider, for example, the implementation of part 3, Article 11 of the Russian Constitution: the first agreement on the division of competence and power was concluded between the Russian Federation and the Republic of Tatarstan on February 15, 1994. The provisions of this Agreement reflected its compromise nature as a legal means of overcoming the contradictions in the view on federal relations from Moscow and Kazan that existed at that time. In it, as in the Constitution of Tatarstan dated November 6, 1992 (in its original version), there was no indication of the subjectivity of the republic within the Russian Federation. The status of Tatarstan was enshrined in Chapter 5, which, among other things, stipulated that Tatarstan “independently determines its state-legal status”, establishes equal Tatar [7] and Russian languages as its state languages, its laws shall prevail provided that they are

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consistent only with international obligations of the republic (article 59), its sovereign status, being a subject of international law associated with the Russian Federation on the basis of the Treaty on mutual delegation of authority and power (Article 61), enters into relations with other states and concludes international agreements (Article 62). Perhaps, the most resonant were the indicated provisions of Article 61, and the most controversial was the norm on associate membership with the Russian Federation.

Of course, the description of the legal bond between Tatarstan and Russia by the formula of associated membership raised reasonable questions as to what exactly the Tatarstan Constitution understood by this term, since such a concept had not been encountered in the theory and practice of Russian federalism. This is how B.L. Zheleznov, one of the authors of the Tatarstan Constitution, characterizes the then status provisions of Article 61 of the Basic Law: “This formula implied an attempt to consolidate fundamentally new and special relations with the Russian Federation, which go beyond the framework of the Federal Treaty, contain

features of both federal and confederate bonds, and supposedly do not destroy the integrity of the Russian Federation and, at the same time, do not violate the actual state sovereignty of the Republic of Tatarstan" [8].

It can be said that the concept of the associated membership of Tatarstan within the Russian Federation as a conscious alternative to the concept of the subject of the Russian Federation was at that time an attempt to find a legal formula for a socio-political compromise. Remembering the day parliament adopted the Constitution of the Republic of Tatarstan (November 6, 1992), B.L. Zheleznov notes: "It was already 5 o'clock in the evening, everyone was tired, and a sea of people in green bandages was raging around the building. Then Shaimiev went to the podium and proposed to record not "united", but "associated state". This produced an effect: everyone understood this word to the best of their knowledge" [9]. As a result of this amendment, the new Constitution of Tatarstan was then adopted. The domestic legal doctrine, of course, noted the legal qualification of the special status of Tatarstan as an associate member and its most advanced

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interpretation of updating federal relations in the Russian Federation [10].

As you can see, the agreement on the delimitation of the subjects of competence and (mutual) delegation of authority was initially given the character of a status legal document reflecting the new nature of relations between the Russian Federation and the Republic of Tatarstan.

The beginning of a new procedure for the division of jurisdiction and powers between the federal centre and the regions was laid in connection with the adoption of the Federal Law dated June 24, 1999 No. 119-FZ "On the principles and procedure for the division of jurisdiction and powers between the state authorities of the Russian Federation and state authorities of the federal subjects of the Russian Federation." This Federal law not only stopped the tendency to conclude new similar agreements, but, in fact, qualified most of the already concluded agreements as illegitimate. Later, in June 2001, President of the Russian Federation Vladimir Putin created the so-called "Kozak Commission" to study the question of the separation of powers between federal authorities and the

authorities of the constituent entities [11].

The next step in reforming this sphere of contractual relations was Federal Law No. 95-FZ dated July 4, 2003, which amended and supplemented the Federal Law “On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation” dated 6 October 1999, No. 184-FZ. The general meaning of the innovations was to strengthen the position of the federal centre and tighten the requirements for the division of jurisdiction and powers.

Only Tatarstan succeeded in using the new procedure for delimiting powers between federal and regional government bodies, which resulted in the Agreement approved by the Federal Law dated July 24, 2007 No. 199-FZ. After 10 years, on August 11, 2017, it ceased to be in force due to its expiration. As a result of this, currently in the Russian Federation there is no contractual relationship between the federal centre and a constituent entity of the Russian Federation on the division of jurisdiction and powers.

4. Summary

So, what now are the provisions of part 3, article 11 of the Constitution of the Russian Federation regarding agreements on the division of jurisdiction and powers, and, for example, article 26 in the Constitution of the Republic of Tatarstan, containing such a legal provision, if the practice of concluding and functioning of such agreements is completely eliminated? Does this type of contractual relationship have a legal potential and legal future, or have they completely “played back” their historical mission and retired? It is still a question of higher order norms, the constitutional space of Russia and its subjects. To answer these and similar questions, it is necessary, first of all, to determine what benefits the contractual mechanism for the differentiation of powers can bring. In our opinion, this mechanism has a future.

The history of its appearance and relevance presented here schematically as an instrument for overcoming contradictions in the sphere of federal relations testifies in favour of the fact that it may well be needed later. This tool gives some elasticity to Russian federalism, allows for precise and

accurate provision of additional powers to individual subjects of the Russian Federation or reconfiguration of the general model for the needs of such regions that are objective and justified in terms of managerial effectiveness. It is not by chance that in domestic legal science, the idea is expressed that any federal relations are contractual by their legal nature, moreover, they do not always appear as such in this form, but they are always such in essence.

Let us make such an assumption that it is too early to dismiss the contractual mechanism of the Russian federalism. On the contrary, with proper and competent use, this mechanism is an advantage of our constitutional model, which opens up (even if not on an on-going basis, but at certain points) additional legal levers for the development of those regions that can really move faster than the general “flow” of subjects of the Russian Federation.

5. Conclusions

The contractual mechanism for the delimitation of jurisdiction and authority between federal and regional government bodies has already shown its

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effectiveness as a means of harmonizing federal relations in the Russian Federation, provided it is well-founded. Its potential may well be in demand in the future.

6. Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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