

Asymmetry of Federation: Identification Criteria

Alsu M. Khurmatullina*

Kazan Federal University, Department of Constitutional and Administrative Law, 420008, Kazan, 18 Kremlyovskaya St.

Aleksandr F. Malyi

Kazan Federal University, Department of Constitutional and Administrative Law, 420008, Kazan, 18 Kremlyovskaya St.

Abstract

The paper raises contemporary issues and peculiarities of building relationships between constituent entities with a center in asymmetric federal states. The authors have identified and revealed the criteria for determining the asymmetry of regions. Particular attention is focused on the problem of the different status of the constituent entities of the Russian Federation. The Constitution of the Russian Federation proclaims the equality of constituent entities of the Russian Federation, which implies their symmetry. At the same time, there are different views on the presence of the same set of powers among the constituent entities in the Russian Federation, which does not allow us to affirm with certainty that they have equal status. The unconditional definition of the Federation as a symmetrical is rather a statement of the fact of consolidating the principle of equality in the Constitution than the result of an analysis of the real state of things. The results of the research are based on the use of the following methods: the universal dialectical method of scientific cognition, as well as general scientific ones based on it (description, analysis, synthesis, induction, deduction, comparison, analogy, generalization) and private scientific (comparative legal, system-structural and formal-legal).

Keywords: Asymmetry; Federal state; Legal status; Rights and obligations; Treaties; Constitution.



CC BY: [Creative Commons Attribution License 4.0](https://creativecommons.org/licenses/by/4.0/)

1. Introduction

The issue of asymmetrical relationships within federations has attracted considerable attention from scholars and there is a burgeoning literature on this subject (L'Heureux-Dube, 2001). An American scholar, Charles D. Tarlton, wrote an insightful essay in which he pointed out that when we turn our attention away from formal constitutional-legal relationships, then it is clear that cultural, economic, social and political factors in combination have in all federations produced asymmetrical variations in the power and influence of different constituent units, and that these affect the degree of harmony or disunity (Tarlton, 1965). Investigating the notion of "asymmetric federation", it can be noted that the problem of asymmetry is characteristic of many federal states - Canada, India, Belgium, Switzerland, including the Russian Federation. As noted by Ronald L. Watts, de jure asymmetry may refer to relations among full-fledged constituent units, to differences between full-fledged constituent units and peripheral constituent units (e.g. territories, federacies and associated states), and may be transitional (i.e. eventual uniformity achieved at 'varying speeds') or permanent (i.e. viewed as 'variable geometry') (Forsey, 1974; Umnova, 2012; Veliyev, 2016; Zorkin, 2011).

The question of the asymmetry of constituent entities in a federal state is based on the existence of legal uncertainty in both the constitutional and legislative regulation of federative relations, which is reflected in theory. At present, there are no pronounced differences in the regulation of rights and obligations of the constituent entities of Russia, while in other federations, for example, Canada, there are many signs that indicate its asymmetry. So, according to Articles 69 - 80 and 88 of the Constitutional Act of 1867, the Legislative Body of Quebec, unlike in the English-speaking constituent entities, consists of two chambers, in Art. 133 it is established that in Quebec courts, and in the legislature, in federal courts and in Parliament, citizens are entitled to speak in French (Bondar and Dzhagaryan, 2013; Burgess, 2006; Keating, 2001; Muir, 2015; Watts, 1998). In this way, bilingualism was officially confirmed (Aalen, 2002).

Sometimes the manifestation of asymmetry is seen in the differences in the economic development of constituent entities (donor constituent entities and subsidized entities), features of geographical location, different names (republics, territories, regions, and autonomous entities). Such approaches point to the uncertainty of the criteria that could serve as a common yardstick. It is obvious that in each branch of science there should be some evaluation parameters.

2. Methods

The method of comparative legal analysis allowed us to identify the criteria for determining the symmetry (asymmetry) of federal states.

The use of the systemic and structural method of cognition made it possible to identify ways of interaction between the constituent entities of the Federation with each other, and the constituent entities with the Federation.

The formal legal method of research was used to determine the content of such concepts as "legal status", "symmetry", "asymmetry", etc.

3. Results

The legal status content for a constituent entity in a federal state is one of the main criteria for the symmetry (asymmetry) of federal states. Rights and duties are an important element of the legal status of a constituent entity in a federal state. Comparison of legal status allows the features of constituent entities in a federal state to show, to identify differences in the content of elements of this status. It was this comparison that led to the conclusion that due to the presence of geographic, geopolitical, political and other peculiarities in constituent entities of the Federation, they objectively cannot have equal status. The consolidation in the constitutional legislation of the possibility to change the constitutional status of a constituent entity gives grounds to conclude that there are differences in status.

4. Discussions

The Constitution of the Russian Federation preserves norms that allow the Federation to be assessed as asymmetric, since they imply the acquisition by the constituent entities of the Russian Federation of specific powers that distinguish them from among others. One of the possible manifestations of asymmetry is the conclusion of contracts with individual constituent entities of the Russian Federation (which is stipulated in Art. 11 of the Constitution). The availability of such an opportunity gives the constituent entities of the Russian Federation the hope of receiving preferences in a special settlement of their relations with federal bodies of state power.

When comparing constituent entities of the Russian Federation and searching for justifications for the conclusion about the symmetry or asymmetry of the federal system of Russia, its status characteristic, including several elements, including rights and obligations, is often chosen as a criterion.

If we turn to the assessments of the constituent entities of the Russian Federation from the point of view of establishing their equality, we can find a sufficiently integral doctrinal approach, according to which the criterion for such an assessment is the content of their legal status. For example, the consolidation in the Russian Constitution of 1993 of the provision on the equality of constituent entities of the Russian Federation (Part 1, Article 5) suggests a conclusion about the symmetry of the Federation. However, the norms in it that indicate the "specialty" of a number of RF constituent entities, the existence of special rights (introduction of a state language), and the possibilities for special legal regulation (autonomous territories within a region), necessitate the use of wording that "circumvents" the content of established terms in order to justify the symmetry of the Federation. Example could be using the concept of "legal form of a constituent entity in the Russian Federation".

The construction of the "constitutional legal form of a constituent entity in the Russian Federation" makes it possible to talk not about the status of constituent entities of the Russian Federation, but about the features of forms, compare not status, but forms, which allows creating a specific elemental set of characteristics for the constituent entities of the Russian Federation (Umnova, 2012). At the same time, the norms objectively present in the Constitution of the Russian Federation, which confirm the existence of features in the constitutional and legal status of the constituent entities of the Russian Federation, call for their evaluation. It can be a simple statement resulting from the content of the constitutional principle. For example, it could be the following: "The features of the various constituent entities of the Russian Federation reflected in their constitutional and legal status ... does not mean that the Federation in our country is asymmetric, since the" symmetry "of the Federation is determined by the constitutional principle of equality of rights of all constituent entities of the Russian Federation among themselves and in relations with federal authorities (Liverovsky, 2002).

With such a conclusion, it would be possible to agree unconditionally if to stay at the position of recognizing any federation as symmetrical, the constituent entities of which have significant features of their legal status. But the very concept of "asymmetry" implies the lack of proportionality. Symmetry is "proper relation, proportionality in the arrangement of parts of any object on both sides from the middle, or center". The question arises, what proper relation, or proportionality should be discussed when comparing the legal status of the constituent entities of the Russian Federation?

The Constitution of the Russian Federation provides the key to an answer to this question. Article 5, part 1, deals with the equality of constituent entities of the Russian Federation, i.e. with equality of their rights and equal scope of their rights. To this, we must add an equal amount of responsibilities, enshrined in the Constitution and federal laws.

The constitutional legislator uses the formula "the status of the constituent entity of the Russian Federation" (Part 5 of Art.66). The possibility of changing the constitutional status of the constituent entity indicates the existence of differences in their status. Otherwise, there is no point in talking about changing the status, and when asserting that all constituent entities of the Russian Federation have equal status, the constitutional norm loses its meaning.

Let's pay attention to such component of the legal status as the carrier's rights (rights and obligations).

Many researchers define the category of "rights and obligations" as an important element, as an integral part of the legal status belonging to a subject of law.

We should agree with this conclusion, since a change in the legal status of any object is possible only through the use of legal instruments. If we say, for example, about changing the border of a territorial formation, then this is possible only in the process of using legal procedures by the authorized body (bodies). The authorized body has the right, which is an integral part of its legal status. But this right can be transferred to another authorized entity and

then there will be a reduction in the right of one and the extension of the rights of the other. The former subject of the right will no longer be able to perform the functions that previously belonged to it, what leads to a change in its legal status.

The status of a constituent entity is manifested through its static and dynamic characteristics. The status is fixed in the constitutional legislation, and the dynamics is manifested in the process of implementing constitutional provisions. Such implementation is possible if there is a set of rights and possibilities, and comparison of possibilities involves comparison of their volumes. Establishment of equal opportunities enshrined in the rule of law lies in the term "equality" itself.

The constitutional construction "equal constituent entities of the Russian Federation" gives a message to the comparison of rights, and the identification of status features also involves a comparison of the powers of constituent entities of the Russian Federation.

A.A. Liverovsky correctly notes: "The principle - "equality of constituent entities of the Russian Federation" should be a guidance for the federal legislator in determining the rights and obligations of all constituent entities of the Russian Federation. "Rights and obligations" are an obligatory element of their status" (Liverovsky, 2002).

5. Summary

A convincing argument in favor of the conclusion about the asymmetry of the Federation is the provisions of Federal Law No. 131-FZ "On general principles of organization of legislative (representative) and executive state power bodies of the constituent entities of the Russian Federation", which allow for the withdrawal of powers from an autonomous okrug (district) in favor of a region (Keating, 2001). The norm of the Law is formulated with a clear infringement of the right of an autonomous okrug (district) to defend its rights.

In accordance with Part 3 of Article 26.6 of Law No. 131-FZ, a significant part of the powers exercised by the bodies of state power of an autonomous okrug (district) can be transferred to the state power bodies of the region into which the autonomous district is included. The condition for such redistribution of powers is the absence of a special federal law or an agreement between the state authorities of the region and the autonomous region. If the relationship between a region and a district should be regulated by a treaty, but it is not available (for example, the region refuses to conclude it), then the whole group of district authorities is exercised by the regional authorities on its territory. Moreover, the autonomous district cannot independently influence this situation. Obviously, not only the actual, but also the legal equality here cannot be.

It should be noted that such a redistribution of powers between public authorities of the two constituent entities of the Russian Federation did not raise objections to the Constitutional Court of the Russian Federation. In its Definition of May 12, 2005 No. 234-O the court denied the applicant (Nenets Autonomous District) the acceptance of the application referring to the lack of ambiguity in the content of the provisions of Federal Law No. 131-FZ, and thus implicitly recognized the constitutionality of the procedure for redistribution of powers between the autonomous district and the region (Gebre-Egziabher and Berhanu, 2007; Spielman *et al.*, 2011; Turton, 2006).

6. Conclusion

The presence of differences can be revealed only when comparing the characteristics of individual elements in which the content of the legal status is reflected. The normative consolidation of relations, to which the state authorities are participants, is the basis of the entire construction, which is the subject of our research. Comparison of the scope of rights and duties makes it possible to identify the specific features of the legal status of their bearers. When we are talking about the legal status of the constituent entities of the Russian Federation, it is necessary to identify the central element that will allow us to compare and highlight the features.

The desire to recognize Russia as a symmetrical federation in spite of the existing differences in the legal status of the constituent entities of the Russian Federation can be explained by constitutional political correctness. At the same time, the recognition of the asymmetry of the territorial structure is not a threat to state unity; on the contrary, it legitimizes the possibilities of various constituent entities of the Russian Federation in their diverse characteristics to show their "specialness". In some cases, the empowerment of an RF constituent entity with additional rights helps with the least losses to solve problems of achieving actual equality. In a multinational country, asymmetry makes it possible to focus on a particular cultural, linguistic, and confessional development.

Acknowledgements

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

References

- Aalen, L. (2002). Ethnic federalism in a dominant party state: The Ethiopian experience 1991-2000. *CMI Report*, (2).
- Bondar, N. S. and Dzhagaryan, A. A. (2013). Governors in the system of Russian federative statehood, regulatory and doctrinal approaches of the constitutional Court of the Russian federation. *Journal of Constitutional Justice*, (3): 11-24.
- Burgess, M. (2006). *Comparative federalism, theory and practice*. Routledge.
- Forsey, E. (1974). *Freedom and order, collected essays*. McGill-Queen's Press-MQUP. 73.

- Gebre-Egziabher, T. and Berhanu, K. (2007). *A literature review of decentralization in Ethiopia*. Decentralization in Ethiopia.
- Keating, M. (2001). *Plurinational democracy, stateless nations in a post-sovereignty era*. Oxford University Press.
- L'Heureux-Dube, C. (2001). Bijuralism, a Supreme Court of Canada Justice's perspective. *La. L. Rev*, 62: 449.
- Liverevsky, A. A. (2002). *Actual problems of the federal structure of Russia*. St. Petersburg: Publishing House of the St. Petersburg University.
- Muir, R. (2015). *Modern political geography*. macmillan international higher education.
- Spielman, D. J., Davis, K., Negash, M. and Ayele, G. (2011). Rural innovation systems and networks, findings from a study of Ethiopian smallholders. *Agriculture And Human Values*, 28(2): 195-212.
- Tarlton, C. D. (1965). Symmetry and asymmetry as elements of federalism, a theoretical speculation. *The Journal of Politics*, 27(4): 861-74.
- Turton, D. (2006). *Ethnic federalism, the Ethiopian experience in comparative perspective*. James Currey Publishers.
- Umnova, I. A. (2012). Problemy defederalizatsii i perspektivy optimizatsii sovremennoi rossiyskoi modeli razgranicheniia predmetov vedeniia i polnomochii v kontekste doktriny subsidiarnosti problems of defederalization and optimisation opportunities of the modern Russian model of differentiation of subjects of conducting and powers in the context of the doctrine of subsidiarity ravnitel'noe konstitutsionnoe obozrenie. 45-55.
- Veliyev, D. S. (2016). Protection of human rights in the activities of legislative representative bodies of state power of the subjects of the Russian federation. *News of the Saratov University. New series. Economy series. Control. Right*, 16(3).
- Watts, R. L. (1998). Federalism, federal political systems, and federations. *Annual Review of Political Science*, 1(1): 117-37.
- Zorkin, V. D. (2011). *Commentary on the constitution of the Russian federation*. 2nd edn: Norma: INFRA-M: Moscow.