

SOVEREIGNTY AND TERRITORY OF THE STATE IN THE ASPECT OF THE PROBLEMS OF CONSTITUTIONALISM: PAST AND PRESENT

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The subject of the research is issues of sovereignty and territory of the state in the light of the problems of constitutionalism, the transformation of scientists' views on the place and role of the territory of the state among the signs of state sovereignty as the main element of the constitutional system and an inalienable property of the state.

The purpose of the study is to determine, based on an analysis of the domestic and international legal political and economic situation, the optimal directions for improving the territorial and political organization of Russia.

Dialectical-materialistic, comparative-legal, system-structural methods are used in the research.

Main results. Russian pre-revolutionary statesmen, as well as the founders of scientific socialism, or ancient authors, left the territory outside their attention, assessing the state, first of all, as a specially created governing subsystem that distinguishes a class-differentiated society from its primitive communal state. The most consistent supporters of the territory as a sovereign feature of the state were international lawyers, whose line was continued by Soviet and post-Soviet authors. The article contains an extensive list of scientific sources reflecting the territorial problem, and analyzes proposals for improving the territorial and political organization of the Russian Federation.

Conclusions. Abstracting the definition of the state from the territory can lead to the erroneous conclusion that there are no fundamental differences between the state and a public association, and proposals to improve the territorial organization of Russia are acceptable insofar as they do not destroy the territorial unity of the state.

1. Introduction to the problem: Constitutionalism, the constitutional system and the sovereignty of the state.

The legal and regulatory basis of the constitutionalism regime is the legal constitution or a systematic set of legal norms regulating the most important relations within the actual constitution of a socially heterogeneous society. The actual basis is the state system regulated by this set and corresponding to it, called the "constitutional system", or the state system in a state with a real legal constitution. There are various definitions of the constitutional system in the literature, proposed, for example, by S.A. Avakian [1, p. 349], M.V. Baglay [2, p. 99], N.A. Bobrova [3, p. 18-24], O.G. Rumyantsev [4], as well as other authors.

The central place among the components of the constitutional system is occupied by state sovereignty, or the real guaranteed freedom of a subject to realize his essence, exercise his own will of power and develop in accordance with his own interests and needs, respecting the rights and freedoms of other subjects [5, p.142]. Most Russian researchers consider state sovereignty as an inherent property of the state, expressed in the fact that it is supreme, independent and unified in the expression of the will of power [6, pp. 54-68]. However, other approaches to this problem have been expressed in science at different times, a very successful and detailed review of which is given by A.D. Katkov [7, pp. 1-14].

Sovereignty belongs to the state in Part 1 of Article 4 of the Constitution of Russia, according to which "The sovereignty of the Russian Federation extends to its entire territory." The same is stated in Part 2 of Article 80 of the Constitution, which obliges the President to take "measures to protect the sovereignty of the Russian Federation." Finally, by assuming office and taking the oath of office to the people (Part 1 of Article 82 of the Constitution), the President also undertakes to "protect the sovereignty" of our state. This indicates the official recognition by the domestic legislator of the belonging of state sovereignty to the Russian state. Otherwise, the above articles would contain norms on the sovereignty of only the state power of Russia.

The Constitutional Court of the Russian Federation, in its Resolution No. 21-P of July 14, 2015, also does not name sovereignty as a necessary qualitative status feature of the state power of the Russian Federation. In this regard, the controversial position of N.A. Kataeva, who, following Zh. Boden and a number of Russian authors (M.A. Arzhanov, A.I. Lepeshkin, G.N. Manov, L.M. Spiridonov, V.S. Shevtsov) consider state power to be the bearer of state sovereignty[8].

2. Territory is the most important feature of the state

Almost all modern Russian researchers call the right to state territory the most important sovereign right of the state, and the territory itself is a sovereign feature of the state. Although in the past, the views of a number of scientists on the territory were different, and there were practically no special works directly devoted to its study in ancient times and the Middle Ages. The Russian researcher A. D. Gradovsky [9, pp. 31-85] and his student N.M. Korkunov " [10, pp.27-28], following the ancient authors, did not include the connection with the territory among the signs of the state, assessing the state, first of all, from an essential point of view, as a specially created control subsystem, in which There is a major difference between a class-differentiated society and its primitive communal state.

For the same reason, the founders of scientific socialism, K. Marx, F. Engels [11, p. 176] and V.I. Lenin [12, p. 73-75], did not mention the territory in their approaches to defining the state, considering it only as a "machine for suppressing the exploited class." However, if, when defining a state, we abstract from the territory and take into account only public authority, then this approach suggests that there are no fundamental differences between the state and a public association. Russian experts in international law paid closer attention to the territory of the state and covered in detail the issues related to it. F.F. Martens declared in 1894 that "by losing its territory, the state ceases to exist" [13, pp. 3-284, 292, 304-305, 348-378].

The Russian historian, philosopher of law and statesman N.N. Alekseev, considering the state, followed G. Jellinek [14, p. 289], put the territory in

the first place as the spatial limit of the exercise of state power [15]. B.N. Chicherin considered the territory to be an integral and system-forming feature of the state [16, p.50, 51, 53, 57, 58, 61], L.A. Tikhomirov [17, p.633], F.F. Kokoshkin [18, p.1-6], G.F. Shershenevich, [19, p. 18] Leon Dugy, a prominent representative of French solidarism [20, pp.100-101].

3. The territory of the State in science and rulemaking of the Soviet and post-Soviet times

From the very beginning, Soviet state studies included the territory in the object of state legal regulation and the subject of state legal research. Already in the first textbook on Soviet state law in 1938, the state territory was not only named as the spatial basis for the exercise of state power, but was also positioned as "an organic part of state supremacy, protected by the full power of state and public forces and means [21, p.6].

In subsequent years, Russian legal science has always considered the territory of the state, its organization and the law of territorial supremacy as an integral part of the subject of the theory of the state and science of Soviet and later Russian state (constitutional) law. This was reflected in the textbooks published in the State Publishing House in 1948 [22] and 1958 [23, pp. 86-135], in the two-volume Course of Soviet State Law edited by A.I. Lepeshkin [24], in the textbook by Ya.N. Umansky [25, pp. 189-293], the Course of Soviet State Law edited by B.V. Shchetinin and A.N. Gorshenev in 1971 [26, pp.232-313], the first Soviet textbook "Soviet Constitutional Law" published by LSU [27, 232-313], in textbooks on Soviet state law in 1978 edited by E.I. Kozlova and V.S. Shevtsov [28, pp. 190-271] and 1980 edited by S.S. Kravchuk [29, pp. 284-389], in the textbook of A.N. Kokotov [30, pp. 126-151] and in other publications.

Serious attention is paid to the territory in the three-volume academic course of constitutional law edited by A.I. Kazannik and A.N. Kostyukov [31] as well as in the two-volume constitutional course by S.A. Avakian [32]. As an integral feature of a sovereign state, the territory of a state is considered in the domestic science of constitutional (state) law of foreign countries [33,

pp. 82-103], including the state law of foreign socialist countries [34, pp. 256-287] and the constitutional law of foreign CIS countries [35, pp. 190-236].

Similarly, the territory of the state is characterized in textbooks [36, pp. 194-222, 231-236] and textbooks [37, pp. 240-264] on constitutional law by authors from the CIS countries. This feature has a similar status in textbooks [38] and textbooks [39, pp.117-124] on the theory of state and law, as well as in academic reference publications [40, p.471] and dictionaries [41, pp. 620-621].

In recent years, journal articles, dissertation studies, and special monographs have been devoted to the territory as a legal phenomenon [42] and the problems of its structure in the state [43]. Deep and comprehensive studies of the territory and its organization [45], the interrelation of territorial issues and the world order [46] were conducted by S.N. Baburin.

The domestic legislator also inextricably links the territory of the state with its sovereignty and establishes measures to protect it. Thus, Parts 3 of Articles 4 and 2.1 of Article 67 of the Constitution proclaim the duty of the Russian Federation to ensure the integrity and inviolability of its territory and declare unacceptable actions aimed at alienating part of the territory of the Russian Federation, as well as calls for such actions.

4. About some proposals for reforming the territorial structure Russia.

Therefore, one cannot agree with the authors who are inclined in modern conditions to allow the subjects of the Russian Federation to exercise the right to secession [47], although Russia's geopolitical opponents are still actively trying to stimulate separatist sentiments these days¹

As a way to "save" the Russian people from "extinction", some politicians propose to create a

¹ Perla A. Tatarstan and Bashkiria will leave, the Caucasus will fall off: Khodorkovsky's plan to seize power in Russia. URL - https://ug.tsargrad.tv/articles/tatarstan-i-bashkirija-ujdut-kavkaz-otvalitsja-plan-hodorkovskogo-po-zahvatu-vlasti-v-rossii_458120. Accessed: 06. 12. 2021.

so-called "Russian Republic" or "Republic of Rus" within the Russian Federation. In particular, by uniting into this subject -the Russian Republic (formerly the ASSR) all the territories, regions, and cities of federal subordination in the Russian Federation².

However, the vulnerability of this idea is not only that the majority of Russian oil and gas reserves and a significant part of many other natural resources would remain outside the territory of the new republic.

The content of the geopolitical reality of "Russia" is broader than the Russian Federation and, moreover, its part is represented by the territories of territories and regions. For example, according to 1985 data, in most subjects of the Russian Federation with an ethnic (national) component in their names (republics, autonomous oblast and autonomous okrugs), the Russian population prevailed, and the titular ethnic community was a numerical minority [48, p. 74, 102, 108, 112, 116-137]. Today, the ethno-demographic situation has changed due to the outflow of the Russian population caused by the deterioration of the socio-economic situation, the surge of ethno-chauvinism and the growth of anti-Russian sentiments in these regions. Nevertheless, Russians are numerically predominant in the ethnic composition of the population of the thirteen subjects proclaimed as national-state entities (excluding the Donetsk and Lugansk People's Republics), and in ten such subjects they make up a significant (from one tenth to almost half) share of the population³.

Russian Republic creation in Russia, taking into account the settlement of Russians within the framework of the existing scheme of the political

and territorial structure, will tear the integral Russian ethno-social organism into separate pieces, leaving a significant part of it outside the Republic of Rus.

The Russian ethnic group does not need any special subjects of the federation. As A.I. Kim noted forty years ago, "the Russian nation exercises its national rights directly through the federal organs of the RSFSR.. The RSFSR as a whole first arose within the borders of the former Russian Empire, and only later autonomous republics, autonomous regions and national districts were formed within it by acts of the central government [49, p. 62]. The inevitable result of the fragmentation and destruction of the unity of the Russian ethnic group will be the destruction of Russia as a state in which, according to Part 1 of Article 68 of the Constitution of the Russian Federation, it plays a state-forming role.

This cannot be allowed.

5. Conclusion. The territory is an integral system-forming feature of the state. Proposals to improve the territorial organization of Russia are acceptable insofar as they do not destroy the territorial unity of the state or pose a threat of such destruction.

² Gerasimov S. Why do we need a Russian Republic - Russia as part of the Russian Federation? Questions and answers. URL: <https://rr-rus.livejournal.com/2023.html?noscroll#comments>

Accessed: 03/23/2011.

³ Calculated for: Russian Federation. 1. National composition of the population. https://rosstat.gov.ru/storage/mediabank/Tom5_tab1_VP_N-2020.xlsx. Accessed: 25.04.2025.

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