DOI 10.24147/2542-1514.2019.3(3).21-43

FEDERAL STATEHOOD OF RUSSIA AND GERMANY IN THE MIRROR OF CONSTITUTIONAL AND JUDICIAL LAW ENFORCEMENT: THE IMPORTANCE OF GERMAN EXPERIENCE FOR RUSSIAN PRACTICE

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Article info
Received –
2019 June 15
Accepted –
2019 August 20
Available online –
2019 November 01

Keywords
Federal statehood, Union state, status of constituent entities of the Federation, Federation, cooperative federalism, competitive federalism, models of delimitation of powers, Constitutional Court, Federal Constitutional Court of Germany

The subject of the article is the application of the constitutional foundations of federalism by the constitutional courts of Germany and Russia. The contribution of the highest courts of Russia and Germany to the development of the constitutional concept of the Federal system through judicial interpretation of the basic principles of Federal statehood directly enshrined in the Constitution and the discovery of unwritten principles is studied.
The purpose of the article is to confirm or disprove hypothesis that German federalism reflects mostly competition model with specific elements of cooperation of federative entities, while the Russian federalism demonstrates the increasing vertical cooperative principles.
The methodology of the study includes analysis, synthesis, description as well as particular academic legal methods (comparative analysis of legislation and judicial decisions, formal-legal method, interpretation of legal acts).

The main results and scope of their application. Competitive and cooperative principles exist in any system of federal relations. Their ratio, as well as the actual status of the Federation and its constituent entities reflect the features of a particular model of federal structure. Federal reform in Germany 2006-2009 was aimed to return competitive origins in the German federalism and was opposed to unitarist trends. The origins of significant differences in approaches to the interpretation of the nature of the Union state in Germany and the Federation in Russia are rooted in various historical and political prerequisites for the formation and development of both federal States as well as in national traditions. This is reflected in the varying degrees of doctrinal elaboration of the theory of the federal state in Russia and Germany. The unwritten principle of fidelity to Federal relations is very important for the understanding of the peculiarities of German federalism. It is based on the provisions of the Basic law and disclosed in the decisions of the Federal constitutional court. This principle presupposes a friendly attitude of the central state and the federal lands to each other and to the Federation, cooperation, mutual respect and mutual assistance. It seems that this principle can serve as a basis for the disclosure of relations between the constituent entities and central state in Russia. The functional model of the Federal organization is implemented in Germany, unlike Russia. First of all, the Basic Law for Germany focuses on the horizontal separation of powers and uses the functional principle of the separation of state powers between the Bund and the Federal lands making a distinction, respectively, primarily in the areas of legislation, execution of laws (management) and justice. The Russian concept of vertical separation of powers is characterized by a different approach: horizontal separation of powers does not precede vertical separation of powers. Competence between the Federation and it's constituent entities is differentiated not by functional, but by subject matter (by subjects of competence).Federal constitutional courts play special role in the interpretation of the constitutional principles of the Federal system and their development.
Conclusions. Unlike Germany, the Russian federalism is increasingly strengthening vertical cooperative basics, which hides the model of a highly centralized Federation. This conclusion is confirmed by the non-recognition of their own source of statehood of the subjects of the Russian Federation, in fact, their lack of quality of constitutional autonomy.

ISSN 2542-1514 (Print)

1. Introduction

Each federation is unique according to the model of its Federal structure, which is predetermined by historical, geographical, national, political, economic reasons, features of state-building, legal and political systems. In statecraft, there is no type of Federal state common to a number of federations, such as the type of "Western democracy" or uniform standards of human rights and the rule of law [1]. At the same time, there are different models of differentiation of competence within the Federation, which represent one of the fundamental constitutional issues of the organization of state power. The Constitution of any Federal state necessarily proposes a certain exhaustive list (or lists) of subjects of competence, which are eventually attributed either to the Central state (Federation) or to the subjects of the Federation, while one of these levels of power is endowed, in addition to the listed or not listed subjects of competence, with residual competence. For example, in Canada, this residual competence is vested in the Federation, and the competence of its constituent units – provinces is the list: under the Constitutional Act of 1867 (Article 91) the Federal Parliament passed the legislative competence "to ensure public peace, order and good government", as well as all remaining powers not specified in the Constitution; the exclusive competences of the provinces are clearly defined and limited [2, p. 150-156]. At the same time, quite often the opposite option occurs, in which the Constitution with a greater or lesser degree of certainty establishes the competence of the Federation, and the residual competence is assigned to its subjects, while the distinction is multi-step and along with the exclusive competence of the Federation, those areas and issues that are assigned to the Federal level of power under certain conditions – competing, parallel or joint competence (Article I, amendment 10 of the U.S. Constitution; 10-15 of the Austrian constitutional law of 1920, Article 3, part 1 of Article 42 of the Federal Constitution of the Swiss Confederation, Article 70-74 of the Basic law of Germany). This approach with some peculiarities is perceived in the Russian Constitution (Art. 71-73). There are other options for delineating competence, such as the Constitution of India, which offers very detailed and overlapping lists of the exclusive competence of the Federation (Union list) and the exclusive competence of the States (States list), as well as provides for competing legislative competence of the Center and the States. As for the residual competence, according to part 1 of Article 248 of the Constitution of India, it remains with the Federation: it is the Federal Parliament that enjoys the exclusive right to legislate on any matter not mentioned in the lists of exclusive and competing competence.

Depending on a variant of differentiation of competence and character of interrelations of Federation (Center) with its parts – subjects of Federation in the theory of the state law distinguish models respectively competitive or cooperative federalism. The model of competitive federalism implies a strict separation of powers and responsibilities of the Federation and its subjects, while the model of cooperative federalism is associated with the unification of their efforts to solve joint tasks, cooperation and mutual assistance both horizontally and vertically.

Despite the peculiarities of the Russian Federal statehood and the uniqueness of its own historical path of development, the mutual exchange of experience of Federal construction is very useful for identifying universal problems of power organization in the Federal state and specific ways to solve them, critical understanding of these ways, as well as determining the directions and tasks of the modern stage of federalism development in Russia, establishing opportunities to use positive examples taking into account national specifics. At the same time, the German experience is particularly interesting both because of historical reasons, the similarity of legal systems, and due to the fact that the German model of federalism in terms of cooperative principles was used in the process of constructing the modern Russian constitutional concept of the Federal system. The combination of competitive and cooperative principles can be observed in both the Russian and German Federation. However, their comparison shows that German federalism tends, rather, to a competitive

ISSN 2658-4050 (Online)

model while maintaining certain elements of cooperation of subjects of Federal relations, while Russian federalism demonstrates the strengthening of vertical cooperative principles, which hide Unitarian tendencies. This is due to the lack of clarity in the delimitation of powers on the subjects of joint jurisdiction, as well as due to the widespread institution of the transfer of Federal powers to the subjects of the Russian Federation.

In both federations, the constitutional court made a significant contribution to the development of the constitutional concept of the Federal structure. And we are talking not only about the constitutional and judicial interpretation of the principles of Federal statehood directly enshrined in the Constitution, but also about the discovery of the unwritten principles of the Federal structure arising from the systemic interpretation of constitutional provisions.

2. The general and the special features of a Federal state of Germany and Russia

Both in Russia and in Germany, the Federal structure and Federal statehood are considered as the foundations of the constitutional system. At the same time, the principles of Federal construction are interpreted differently in Russian and German constitutional law.

One of the important legal problems of the Federal form of government, which have theoretical and practical significance, is the problem of qualitative characteristics of both the Federation and its constituent parts. German federalism initially developed in the form of the Union state (Bundesstaat). Accordingly, the Union state is considered in the German doctrine as a form of external expression and the goal of federalism [3, p. 13]. In the German state-legal theory it is possible to allocate three main stages of research of the nature of the Federal (Union) state: the period of research of statehood of Empire (Reich); the period of research of the Weimar Republic; the modern period (after adoption of the Basic law of Germany in 1949). Even at the first stage of research in the second half of the XIX century, and especially actively after the entry into force of the Constitution of the North German Union of 1867 (Verfassung des Norddeutschen Bundes) (this Union is considered the predecessor of the modern Union state, since the German Union formed in 1815 was an international legal Association-the Union of States, and the concept of the Union state of the Paulkirchen Constitution of 1849 was not implemented, since the Constitution did not enter into force [3, p. 22]), among the German statesmen developed sharp discussions around the question of state sovereignty as the Union state and its parts. And although the quality of statehood for the subjects of the German Federation was generally recognized, there were serious differences in the interpretation of the signs of this statehood, and in particular the sovereignty of parts of the German state. Recognition of statehood for the subjects of the Federation was largely predetermined by political reasons: the land princes when United in the Union could not be satisfied with the status of a self-governing territorial Corporation, as well as could not accept the loss of statehood [4, p. 408-413]. The alternative view of the lack of statehood of parts of the Union state, although not dominant, also had a spread. For example, A. Haenel denied the quality of statehood in parts of the Union state [5, p. 63].

On the one hand, under the influence of the ideas of Charles Louis de Montesquieu and Alexis de Tocquevilles, the theories of limited sovereignty of the subjects of the Federation and distributed state sovereignty between the Union state and its members became widespread in German statecraft. Montesquieu in his work "on the spirit of the laws" noted that when entering the Union state before sovereign States transfer part of their sovereignty to the Union state [6, p. 369]. Tocqueville, in his famous treatise "on democracy in America", written in 1831, developed the idea that both the power of the Union and the power of the States has limited sovereignty [7, p. 96]. At the first stage of the study of the phenomenon of the Union state dominated the position presented by Georg Waitz (Georg Waitz) that the essence of such a state in the division of sovereignty: in some areas, the Union is sovereign, in others – the States included in it. At the same time, both the state Association and its members are full – fledged States-their power is independent and independent from any external power, and the property of sovereignty belongs not to one person,

ISSN 2542-1514 (Print)

but to both parties – both the Union and the member States within the spheres of competence assigned to them. According to Weitz, in this case, only the specific scope of sovereign rights is limited, but not the content of sovereignty itself [8, p. 166]. This view was also supported by Robert von Mol [9, p. 50]. Moreover, it is incorrect to talk about the subordination of member States to the Union state, since each of the parties has the supremacy within its competence. This idea of Weitz was supported by other authors. Thus, Ruttimann (Rüttimann) brings it to the extreme, pointing out: both the Union and its members act each in its assigned sphere of competence in the same degree freely and independently of each other [10, p. 49]. Weitz's approach was the basis for the so-called "three-member model" (Dreigliedrigkeitsmodell) of the Federal state, which became widespread in German state law. The Union state is a United state in which the Union (Central state) and the lands exist independently and independently of each other [11, p. 76].

The theory put forward by A. Hanel and supported by other authors [5, p. 63; 12, p. 1097-1196; 13, p. 206; 14, p. 462] that both the Union and its members individually have only limited state power, and its completeness is concentrated in their Association is consonant with the "three-membered model". At the same time, Henel denied not only sovereignty, but also statehood in parts of the Union, believing that only the Union state becomes a sovereign state in the process of its organic interaction with member States [5, p. 63]. At the same time, Hanel recognized that, unlike a unitary state, parts of the Union state are organized in the image and likeness of States, are endowed with their own rights and perform state functions on the basis of their own laws [5, p. 66].

On the other hand, the German state-legal theory gradually asserted the position of the unity and indivisibility of state sovereignty and the possible existence of non-sovereign States. Thus, Paul Laband (Paul Laband) in his work "State law of the German Empire" (1876) characterized the States included in the Reich as "unsure". In his opinion, since the limitation or division of sovereignty is impossible, individual States in relations with the Reich cannot be considered sovereign, including in the sphere of their own competence. However, Laband noted that these States participate in the exercise of Imperial power, they are not subject to any other authority than the power of the Union formed by them. With reference to the words of Bismarck that "the sovereignty of the government of each individual state in the Bundesrat receives undisputed expression", Laband points out: the German States as a United Union have sovereignty [15, p. 93].

The undisputed merit of Laband is his proposed legal concept of the Union state as a legal entity of public law. He wrote that the bearers of state power in the members of the Union, uniting, form a legal person of public law, which is the subject exercising under the name of Imperial power the combined sovereign rights. This is called the Union state. The individual States-parts of the Reich do not transfer power either to each other or to a third party, but unite to create a community of a higher order. In the state relation they submit to the ideal subject which substratum they are [15, p. 72]. The lack of sovereignty of the member States of the Union is confirmed by the impossibility of an arbitrary withdrawal of a member of the Union from the Union state, the absence of any legal possibility for such withdrawal. Thus, the Union is an independent subject of state, not international law [15, p. 64].

Complex subject composition or composite character is in turn the defining feature of the Union state, distinguishing it from a single (unitary) state. Describing the German Reich, Laband on this occasion noted the multilevel nature of the Union state: both the Union (Reich) and its constituent entities are States. At the same time, the multilevel nature of the Union state also consists in the fact that its population and territory initially fall under the jurisdiction of a member state of the Union and through it under the jurisdiction of the Union state. The direct object of the power of the Union state, according to Laband, are the member States, they are loyal subjects of the Union. Thus, as a defining feature of the Union state, Laband puts forward the indirect nature of Imperial power in relation to the population and territory, which is implemented through the mediation of the States-subjects of the Federation [15, p. 70-71]. This thesis, in his opinion,

ISSN 2658-4050 (Online)

is not refuted by the fact that in some areas the power of the Union can be exercised directly. He points out: "it is Quite true that in the Union state the Federal law directly binds citizens residing in the member States; however, it is quite wrong to believe that it follows that the citizens of the member States, freed from the state power of these States, are directly subject to the Imperial power)" [15, p. 81]. Labande's speculations on the nature of the Union state are consonant with the ideas of Charles-Louis Montesquieu, expressed as early as 1748 [6, p. 369], who noted that the Federal Union state does not consist directly of individuals, but is composed of political communities.

At the same time, such an approach to the interpretation of the Union state has not become dominant in the state-legal literature. Statesmen, basically, defended the position that the Union state is different from the Union of States that has all the attributes of the state-and its own people, and its territory, and public power, which they directly extends [16, p. 24; 17, p. 13; 18, p. 364-474].

The answer to the question about the qualities of statehood of the subjects of the Federation depends largely on the type of legal understanding underlying the theory of state sovereignty. Developing the ideas of legal positivism of Carl Friedrich von Gerber (Carl Friedrich von Gerber) and Paul Laband, Georg Jellinek in his work "the General doctrine of the state", first published in 1900, convincingly showed differences in approaches to the interpretation of state sovereignty depending on the type of legal understanding [19]. Representatives of natural law theory considered sovereignty an essential and obligatory feature of state power. At the time of the publication of the third edition of Jellinek's book, this position prevailed in German literature [13, p. 9; 20, p. 6; 21, p. 113; 22, p. 11]. Unlike representatives of natural law theory and following Gerber and Laband, Jellinek did not consider "sovereignty"a mandatory and essential feature of the state and state power, considering it as a category of historical and legal. Emphasizing the fallacy of identifying sovereignty and state power, as well as filling the negative concept of sovereignty with the positive content of state power, Jellinek pointed to their relationship: sovereignty is a property of state power, expressed in its independence (mainly outside) and supremacy (in internal relations with the persons who are part of the state) [19, p. 475]. The characterization of sovereignty, supported by Jellinek, in this part also became widespread in Soviet and Russian statecraft.

Jellinek went further in the knowledge of state sovereignty. The logic of his reasoning was based on the fact that the concept of state sovereignty as a historical and therefore dynamic category should be freed from the false idea of infinity [19, p. 481]. In doing so, Jellinek rejected theories of limited and distributed sovereignty. Arguing with the proponents of these theories, he defended the integrity and unity of sovereignty. At the same time, in his opinion, although the sovereign state power knows no Supreme power over itself, this power is not unlimited. Such a border is primarily a certain law and order, to which the state is self-subordinated. (In this thesis, Jellinek agrees with Rudolph von Jhering, who advocated the idea of a bilateral binding force of law, the self-subordination of state power to the law emanating from itself [23, p. 358]). Accordingly, sovereignty is a property of state power, by virtue of which it alone has the exclusive capacity for legal self-determination and self-determination. Sovereign power is not subject to restriction only in the sense of the impossibility of preventing it from changing its rule of law. This is the positive side of sovereignty, which exists along with the negative-the inability to be legally limited by any other power of a state or non-state character [19, p. 481-482]. And in international law, the state, assuming international obligations, legally remains subject only to its own will [19, p. 479]. Therefore, there is no question of limiting sovereignty: sovereignty simply receives a different content from the point of view of the specific scope of sovereign rights.

As for the members of the allied States, then, after Laband, Jellinek did not recognize them as the quality of state sovereignty [19, p. 770], although he considered them at the same time States. The constitutions of the Swiss cantons, the constitutions of the States in the United States, and the constitutions of the States of the German Empire

ISSN 2542-1514 (Print)

were the state constitutions at the time of Jellinek's research. The presence in Federal constitutions of General principles binding on the member States of the Union state does not change the fact that their state constitutions, as well as the Union within the Union state, the adoption of obligations under the Federal Constitution is an act of their own will [19, p. 491]. Since sovereignty is not an essential and obligatory feature of the state, when studying the peculiarities of the legal nature of the members of the Federation, the emphasis shifts from discussions about sovereignty to the study of their features as States and relations with the Union state. Thus, according to Jellinek, defining for quality of statehood of members of the Union is not independence outside, and ability to self-organization and autonomy, the organization on the basis of own laws-exclusive legal self-determination [19, p. 489-491, 495]. In modern German statecraft, such self-determination was transformed into a sign of constitutional autonomy.

Describing the relationship of the Union state and its parts, Jellinek believed: although sovereignty and state power are indivisible, however, the competencies and functions, the objects on which the activities of the state are directed are divisible [19, p. 502-504]. Thus the power of the separate state of the Union is not fragmentary: restrictions concern only the subjects entering into its competence [19, p. 503]. The definition of the Union state proposed by Jellinek is largely consonant with the definition formulated by Laband: Union States are state-legal associations whose state power derives from the States United in the Union and extends to them [19, p. 769-787]. The legal order of the Union state is based on its own Constitution, which can only be changed by the Union itself, and not by the will of the members of the Union [19, p. 774]. In the Union, the differences between its members are erased, the territory and people of individual States are United into a single substrate. The territories of the members of the Union state become the territory of the Union state, and their peoples become a single people. Compensation of the sovereignty lost by parts of the Union state are various forms of their participation in implementation of the state power of the Union [19, p. 771].

The study of the Union state and the status of its parts during the Weimar Republic was even more varied. It is noteworthy that many well-known statesmen denied not only the sovereignty of parts of the Federation-lands, but also their statehood [24, p. 194; 25, p. 110; 26, p. 389; 27, p. 94-96].

In the current Basic law of 1949 (hereinafter – OZ), the constitutional legislator accepted the postulate about the statehood of the lands as parts of the Union state, fixing this form of Federal structure in the paragraph. 1 of Article 20 OZ. At the same time, the principle of inviolability of the Federal structure is proclaimed in Germany (Art. 79 para. 3 OZ) which means inadmissibility of change of the Basic law regarding cancellation of the fact of existence of lands as the States, principal participation of lands in legislative activity, and also established in ABZ. 1 art. 20 OZ fundamentals of the constitutional system-a democratic and social Federal state. The inviolability of these constitutional foundations remains in the case of the adoption of a new Constitution. Thus, we can talk about the so-called guarantee of the" eternity " of the Federal system as a principle, assuming that the lands have their own statehood (at the same time, this guarantee does not protect the lands from territorial reforms, as well as from reforming the content of their competence in the Basic law). The institution of "eternal" (unshakable, unchangeable) guarantees or principles is not known to the Russian Constitution. In this regard, the German constitutional construction is of particular interest.

Thus, in Germany, in relation to domestic relations, there are two levels of statehood (Staatlichkeit) - Federal and land, respectively. According to the majority of German statesmen, the statehood of the lands is already laid down in the term "Union state", including taking into account its traditional understanding [28, p. 350]. In addition, the Basic law explicitly refers to the "state" when referring to the land power, as, for example, in para. 1 art. 7 and para. 1 of Article 33. (So, in ABZ. 1 art. 7 OZ talking about the supervision of the state (land) for all school education, and in art. 1 Article. 33 of the LAW refers to the equal rights and obligations of all German citizens in each state-land). The statehood of the Federal lands, although only in the state-legal, and not in the international legal sense

ISSN 2658-4050 (Online)

(the lands have no independence outside: their limited rights in the international legal turnover according to Article 32 of the paragraph. 3 OZ, V. 24 ABZ. 1A OZ are implemented indirectly, through the Union), confirms and the FCC

The statehood of lands in the literature and in the judicial practice of the FCC is unanimously interpreted as not derived from the statehood of the Union, but its own, recognized by the Union [29, p. 168; 30-33]. This means that, like the Union, the lands have a primordial state legitimacy: they can legislate and form their own bodies, appoint officials, and invade fundamental rights within legal discretion. They have all three classic features of the state-the state territory, the people (although Karl Schmitt denied the existence of this quality in the land, as well as the quality of their statehood [26, c. 389]), state power [19, c. 394-434]. However, these signs are manifested in the conditions of a Federal state in a specific way. As J. rightly observes. Of course, the lands extend their jurisdiction to the same people and the same territory as the Union: the people and the territory as signs of the state they have the same. Only the third feature of the state-the state power of the Federation and the land is different, because the competence between them is differentiated. The specific content of the competence of both parties under the Constitution is not exhaustive. But the combined competence of the Federation and the lands creates a complete picture of the all-encompassing competence of the state [33, p. 14].

Territorial supremacy of lands is limited, however, because the possibility of changing the subject composition of the Federation, as well as changes in the territory and boundaries of existing Federal lands is not excluded. As for the special political and legal connection of the Germans living in the lands with the Federal land, i.e. their own land citizenship, this institution was never perceived and implemented by the land legislator. At the same time, it is noteworthy that as the sphere of legislative competence "citizenship in the lands" until 1994 it belonged to the sphere of competing competence, and after the exclusion of this sphere from the list of Article 79 of the OZ land citizenship was in the sphere of exclusive legislative competence of lands. Taking into account the principle of unity of Federal and land citizenship, the institution of land citizenship has no independent legal significance. It is no accident that even in Bavaria, whose Constitution explicitly provides for Bavarian citizenship in Article 6, the legislator did not exercise his right and did not formalize this institution. With regard to Federal citizenship, it is a matter of exclusive legislative competence of the Union (Art. 73 No. 2 OZ) [33, c. 31].

The statehood of the lands is also manifested in their constitutional autonomy (Verfassungsautonomie) [3, c. 14], which assumes not only the formal existence of its own Constitution, but also a minimum set of subjects of competence and powers, including its own competence in the field of constitutional rulemaking. The content of the constitutional autonomy of the lands is revealed by the interpretation of the paragraphs. 1 St. 28 OZ, from which follows their the right to establish principled starters own state organizations. At the same time, the Basic law establishes the limits of the constitutional rulemaking of the Federal lands, which are outlined by the principle of homogeneity (Homogenitätsprinzip). This principle assumes that the constitutional order in the lands must comply with the requirements of the Basic law of Germany on the Republican form of government, democratic system, social legal Federal state. In addition, there should be representative bodies in the lands elected on the same principles as the Bundestag. Finally, the system of fundamental rights itself is established not by land constitutions, but by the Federal Basic law and is largely unitary [28, c. 367; 34, c.76]. In the end, the basic rights directly bind the land legislator, who has the opportunity in the Constitution of the land only to establish broader guarantees for their holders, but not restrictions.

An important guarantee of the statehood of lands is their financial independence, which is enshrined directly in the Basic law. According to paragraph.1 Art. 109 OZ budgets of the Union and lands are independent and independent from each other. The provision of the financial Constitution of Germany were predefined historically: thus, the constitutional legislator has attempted to find a balance in the financial relations between the Union and the territories in order to prevent, on the one hand, the financial dependence of the Union on land,

ISSN 2542-1514 (Print)

as it was during Imperial Germany (1871-1918), and, on the other hand, financial dependence of land from the Union, as it was in the days of the Weimar Republic (1918-1933). Accordingly, Articles 104a - 109a of the ACT deal with the distribution of tax revenues and public expenditures between the Union and the lands.

Thus, according to the constitutional concept, the Federal lands have their own statehood, are independent within the limits established by the Constitution, and are in complex Federal relations with the Union. These relations are formed, as a General rule, between subjects not subordinate to each other, but in some cases can be hierarchical. This hierarchy is determined by the operation of the above-mentioned constitutional principle of homogeneity and, consequently, the extension to the entire Federation of the minimum standards of uniformity to be followed by the Federal lands and their constitutions. This, however, does not preclude the possibility of "constitutional diversity" in the Federal States, which in particular have the right to establish additional, higher guarantees of fundamental rights in their constitutions.

The hierarchical relations between the Federation and the Federal lands have a strict framework and operate only within the limits established in the Basic law, which are outlined in the following constitutional provisions: on ensuring that the Federation complies with the constitutional order in the Federal lands to the fundamental rights and principles of the constitutional state, enshrined in paragraphs 1 and 2 of Article 28 of the Basic law (para. 28); on the priority of Federal law (Article 31); on cases of application of Federal coercive measures (Article 37); on the implementation of Federal supervision over the execution of Federal laws by the lands (Articles 84 and 85) and on the participation of the Bundesrat, the body representing the land governments at the Federal level, in the legislative activity of the Federation and the Federal administration, as well as in the Affairs of the interstate Association – the European Union (Article 50). Where hierarchical relationships are not prescribed, the Federation and the lands are on an equal footing. As the FCC noted in The decision on the competence of the land constitutional courts, "in a federally organized state, the constitutional spheres of jurisdiction of the Federation and the lands exist in parallel and in principle independently of each other." Accordingly, treaties between the Federation and the lands, as well as disputes about competence between them, are not excluded. In the end, the Federal constitutional court is left to decide on the limits of the constitutional autonomy of the lands and assess the constitutionality of its limitation, as well as the actions of the lands in the field of constitutional rulemaking.

In Russia, the approach according to which the subjects do not have sovereignty has been recognized. According to the legal positions of the constitutional Court of the Russian Federation (hereinafter – CC RF), formulated in the Decree dated June 7, 2000 № 10-P "the Constitution of the Russian Federation does not permit any other bearer of sovereignty and source of power, in addition to the multinational people of Russia, and, therefore, does not assume any other state sovereignty, besides the sovereignty of the Russian Federation. The sovereignty of the Russian Federation, by virtue of the Constitution of the Russian Federation, excludes the existence of two levels of sovereign authorities, located in a single system of state power, which would have supremacy and independence, i.e. does not allow the sovereignty of any republics or other subjects of the Russian Federation." In this position reflected the dominant doctrine in the Russian theory of indivisible state sovereignty, the Constitution does not allow any other bearer of sovereignty and source of power, in addition to the multinational people of Russia, and hence does not involve any other state sovereignty, besides the sovereignty of the Russian Federation. The subjects of the Russian Federation is not entitled to give himself the properties of a sovereign state even under the condition that their sovereignty would be recognized is limited, and despite the fact that the Republic, unlike the other subjects of the Russian Federation, referred to in the Constitution "States" (part 2 of Article 5 of the Constitution). Neither the constitutions of republics nor the statutes of other subjects have the quality of constitutional autonomy. Even a government organization they regulated not only in accordance

ISSN 2658-4050 (Online)

with the Constitution, but in the framework of the General principles enshrined in Federal law (Federal law of 6 October 1999 №184-FZ "On General principles of organization of legislative (representative) and Executive state authorities of constituent entities of the Russian Federation", the Federal law No. 184-FZ; FZ No. 184) and the defining questions of the organization of the system of state power in subjects of the Russian Federation in detail. The rights and freedoms of man and citizen is not included in the scope of the constitutions (charters) of subjects of the Russian Federation, as are subject to the exclusive jurisdiction of the Russian Federation (paragraph "C" of Article 71 of the Constitution).

In fact, the constitutional Court does not recognize the republics not only as sovereign, but also as a whole. The concept of non-sovereign States has not received any development either in doctrine or in judicial practice. Thus, the constitutional Court of the Russian Federation points out that the mention in the Constitution of the Russian Federation in relation to the republics of the term "state" only " reflects certain features of their constitutional and legal status associated with factors of historical, national and other nature "(para.7 p. 2. 1), ie. it is a formal tribute to the tradition and is not related to the content of the statehood of the subjects. As an additional argument in favor of the lack of both sovereignty and statehood of the republics, the constitutional Court of the Russian Federation refers to the principle of equality of subjects of the Russian Federation (part 1 of Article 5 of the Constitution). The absence of statehood in other subjects of the Russian Federation is considered as an indisputable thesis, therefore, the allocation of the appropriate quality of the republics would mean a violation of the principle of equality (para.6 p. 2. 1).

In favor of the absence of statehood of the subjects of the Russian Federation said the lack of recognition by the Constitutional Court for peoples subjects of the Russian Federation constituent values: the peoples in the Russian Federation are considered only as a cultural-ethnic community, part of the multinational people of the Russian Federation, forming a single state – the Russian Federation. Accordingly, the constitutional Court refuses the republics in the establishment of their own nationality, justifying his conclusion by the absence of the Federation's sovereignty, and, consequently, the right "to legally define who are its citizens, (...) full subjects of law, with all the constitutional rights of man and citizen". The fact that the Constitution does not mention the nationality of constituent entities of the Russian Federation, and establishes the principle of a single citizenship of the Russian Federation in Article 6 and include the citizenship of the Russian Federation to exclusive conducting of the Russian Federation (p. 71 of the Constitution of the Russian Federation), is, in the opinion of the Court, the basis for the conclusion that the subjects of the Russian Federation establish their own citizenship . (It is noteworthy that this position was expressed by the Constitutional Court of the Russian Federation during the period of the Law of the Russian Federation of November 28, 1991 No. 1948-1 "on citizenship of the Russian Federation", which provided for the citizenship of the republics within the Russian Federation (Article 2)). Adopted on may 31, 2002, the current Federal law No. 62-FZ "on citizenship of the Russian Federation", following the positions expressed by the Court, completely abandoned the institution of Republican citizenship.

Finally, it is hardly possible to talk about genuine financial and budgetary independence of the subjects of the Russian Federation. The text of the Russian Constitution, in contrast to the Basic law of Germany, does not guarantee the financial independence of each level of public power, does not establish the rules of primary and secondary distribution of financial resources between them. In fact, this constitutional task is carried out by the Budget code of the Russian Federation, although not in full: the BC of the Russian Federation and the basic laws determining the status of the subjects of the Russian Federation (Federal law No. 184) and municipalities (Federal law of October 6, 2003 No. 131-FZ "on the General principles of the organization of local self-government in the Russian Federation" (hereinafter-FZ No. 131)) are still insufficiently coordinated. At the same time, the Budget code proclaims the principle of unity of the budget system of the Russian Federation, justified by the Constitutional Court of the Russian Federation. The

ISSN 2542-1514 (Print)

constitutional court of the Russian Federation deduces this principle from the constitutional principles of state integrity, unity of economic space, establishment of financial regulation as a subject of exclusive jurisdiction of the Russian Federation. In the Resolution of December 15, 2006 No. 10-P of the constitutional court explains the transfer function of cash service of execution of budgets of all levels of the Federal Treasury the need to ensure that the management of public finances, not trying to assess the situation from the standpoint of observance of the principle of federalism . Thus, the principles of differentiation of subjects of reference and powers, financial independence of both subjects of the Russian Federation, and municipalities are implemented in a very reduced form, within the framework of a single budget system, hierarchically built.

At the same time, some elements of statehood are still recognized by the subjects of the Federation.

* Availability of own Constitution (Charter) and legislation. According to the interpretation given by the Constitutional Court of the Russian Federation, constitutions (charters) of subjects of the Russian Federation are constituent acts by their nature, forming the basis of law-making of subjects on issues of their exclusive jurisdiction . At the same time, the analysis of the subject of regulation of constitutions (statutes) of subjects shows that this subject includes issues that have their roots in the subjects of joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. Thus, the constitutions (statutes) of the subjects of the Russian Federation are not Autonomous, and do not originate from their own source, unlike the constitutions of the Federal States of Germany, but are based on the Federal Constitution and legislation. However, they have a direct normative relationship with the Constitution of the Russian Federation, and therefore can only be checked for their constitutionality in the framework of constitutional proceedings .

* Establishment of a system of public authorities, including the establishment of constitutional (statutory) courts, in accordance with the General principles established by Federal law .

* Existence of own state subjects of reference and powers on the basis of constitutional and legislative distribution of subjects of reference and powers on implementation of the state power.

• Recognition of state ownership of subjects of the Russian Federation separate state ownership (Article 8 paragraph 2; h 1 "g" of Article 72 of the Constitution).

* Proclamation of budgetary independence of the subjects of the Russian Federation within the unified budget system of the Russian Federation.

* Independent definition of internal administrative-territorial division, but not municipal structure: questions of the organization of local self-government are in competence of the Federal legislator regarding rather detailed establishment of the General principles ; change of borders with other subjects of the Russian Federation by the agreement between them with the subsequent approval in Federation Council (part 3 of Art. 67, part 1 "and" Art. 102 of the Constitution of the Russian Federation).

• In addition, the subjects of the Russian Federation participate in the exercise of national sovereignty, in particular, through activities within the Federation Council as a chamber of the Federal Parliament representing the interests of the subjects of the Russian Federation, as well as through the participation of the subjects of the Russian Federation in the Federal legislative process directly, through their own bodies. Finally, in the Russian Federation, despite the recognition of the constitutional nature of the modern Federation, the elements of the Treaty Federation remain, at least formally: agreements on the delimitation of powers, agreements on the transfer of some powers, agreements on cooperation. Ultimately, disputes about competence arising between the Russian Federation and the subjects are considered as constitutional disputes.

Summing up the analysis of the characteristics of the Russian and German Federal state, we can state a number of common features inherent in both Germany and Russia, namely: the constitutional nature of both federations; recognition of state sovereignty for the Federation as a whole, and not its subjects; the establishment at the level of the Federal Constitution of the General

ISSN 2658-4050 (Online)

principles of state organization, directly obliging the subjects of the Federation to follow them; "penetrating", unitary nature of fundamental rights and freedoms; the presence of the Federation of their competence to exercise state power, including competence in the field of constitutional law-making; participation of subjects of Federation in implementing of Federal state power through its representation in the upper house of the Federal Parliament and in other forms; the special role of the Federal constitutional court in the resolution of conflicts arising between the Federation and its constituent entities, as well as in the implementation by the subjects of their competence.

However, each of the federations is different in nature. Germany historically adheres to the idea of the Federal state where the regions have their own statehood, manifested in its neprostoi from the Union government, an independent source of constitutional autonomy, the financial autonomy of regions and their independence from the Federal government, the capability of the land to establish and regulate its own citizenship, to establish additional safeguards of fundamental rights, and to regulate their own internal municipal territorial organization, and the organization of municipal self-government. Subjects of the Russian Federation do not possess these qualities: they lack both their own source of power and constitutional autonomy; constitutions (statutes) of subjects are adopted on the basis of the Constitution of the Russian Federation and Federal legislation on the General principles of the organization of power in the subjects of the Russian Federation and can be checked for compliance with the Constitution by the Constitutional Court of the Russian Federation; financial independence is limited by the principle of unity of the budget system of the Russian Federation. Thus, despite the common trend towards unitarization for both countries, Russia is a more centralized Federation compared to Germany.

3. Equality of subjects of the Federation and the principle of loyalty to the Federation

The principle of equality of the subjects of the Federation among themselves and in relations with the Federation has been enshrined in both the Russian and the German Constitution. At the same time, the subjects of the Russian Federation, unlike the lands of Germany, do not have the same constitutional and legal status, which allows to characterize the Russian Federation as asymmetric. The Constitution of the Russian Federation fixes as subjects of Federation of the Republic, called the States, and state-similar formations-edges, areas, Autonomous districts, Autonomous region, the cities of Federal value. The Republic and the Autonomous region allocated by the national-territorial principle, and of the territories, regions and Federal cities – territorial. Accordingly, it is possible to find significant features in the status of certain types of subjects of the Russian Federation. For example, republics, unlike other subjects of the Russian Federation, in addition to the formal attributes of statehood (see above), have an additional right to establish their own state language, used along with the national Russian language (part 2 of Article 68 of the Constitution of the Russian Federation). Autonomous okrugs and Autonomous region in the majority are a part of edge or area, forming composite subjects of the Russian Federation that cannot but be reflected in features of the status of all these subjects. As noted by the constitutional Court of the Russian Federation in the Decision of 14 July 1997 No. 12-P, the territory and the population of the Autonomous Okrug are part of the population and territory of the subject into which it is included, so the edge region to form their own representative and Executive bodies of state power elected by the whole population of the region, region, including the population of the Autonomous districts, which creates legal preconditions for the redistribution of powers between authorities of edges, areas and Autonomous regions. Accordingly, the powers of the state authorities of the Krai, the region extend to the territory and population of the Autonomous Okrug . Finally, the status of the Federal cities of Moscow, St. Petersburg, Sevastopol, which at the same time represent urban settlements in which local self-government is organized, also differs.

The equality of the subjects of the German Federation among themselves is expressed in the fact that they all have the same status of Federal lands. At the same time, Germany, as well as Russia,

ISSN 2542-1514 (Print)

is known for the phenomenon of cities-subjects of the Federation, which are the cities – lands of Berlin, Hamburg and Bremen. The experience in urban management and implementation of the guarantee of municipal self-government in the city – lands of Berlin, Hamburg and Bremen is of interest to the Russian cities of Federal significance, where is the guarantee of local self-government operates in a truncated form in terms of maintenance of unity of municipal economy [35, c. 28-35].

Of particular importance for understanding features of German federalism is derived from the provisions of the Basic law and disclosed in the decisions of the Federal constitutional court the unwritten principle of fidelity Federal relations, assuming a friendly attitude on the part of the Central state, and Federal lands to each other and to the Federation, cooperation, mutual respect and mutual support . From this principle follow the duties of mutual cooperation, coordination, participation, information interaction, financial assistance to financially weak and needy subjects of the Federation, mechanisms not only vertical but also horizontal financial alignment, as well as the possibility of using the institution of Federal coercion [36].

It seems that this principle can serve as a basis for disclosure of the relationship of subjects of the Russian Federation among themselves and with Russia: grounds for creative perception of this principle in the Russian Federation are including the constitutional provisions on Treaty-based forms of delimitation of powers and interaction of the Russian Federation and subjects of joint jurisdiction of the Russian Federation and the subjects were also introduced in the law Institute of Federal coercion, and responsibility of bodies of state power of subjects of the Russian Federation to Federation. In essence, the constitutional Court has already made a step in the formulation of this principle, stating that the principle of federalism arise mutual rights and obligations of the Federal bodies of state power and bodies of state power of subjects of the Russian Federation, the necessity of their concerted activities to ensure compliance with regulatory acts of constituent entities of the Russian Federation of the Federal Constitution and Federal laws, as well as establishing a control mechanism over the implementation by public authorities of subjects of this their responsibilities . However, to date, this principle has been developed mainly in the direction of working out the duties of the subjects of the Russian Federation to the Federation, but not the Federation to the subjects.

Thus, it can be stated that the principles of equality of subjects of the Federation and loyalty to Federal relations are of universal importance for both analyzed federations. However, exceptions to the principle of equality in Russia, due to the historical typology of the subjects and the action of the competing principle of the asymmetry of the Russian Federation or assumptions of the characteristics of the constitutional-legal status of individual types of subjects, suggests a fundamentally different understanding of the limits of the principle of equality of subjects of Federation in Russia and Germany. The principle of fidelity to Federal relations in the Russian Federation still requires doctrinal study, especially in the context of the mutual nature of the obligations of the Federation and the subjects arising from it.

4. The combination of competitive and cooperative principles in Federal construction: the separation of subjects of competence and powers and the interaction of the Federation and subjects vertically and horizontally

As it was already noted above, types of Federal systems are based first of all on various approaches to differentiation of state power powers between independent in the legal relation public legal entities-Federation and its subjects. Both in Russia and in Germany, the separation of state powers between the Federation and its subjects is often characterized as a "vertical separation of powers". At the same time, depending on the approaches to such a distinction, on the principles and criteria applied, different models of Federal States are distinguished. By the way and how clearly the powers between the Federation and its subjects are differentiated, it is possible to judge what model of the Federal structure the state has chosen - the model of competitive federalism or the model of the Federal state of the Unitarian type.

ISSN 2658-4050 (Online)

In Germany, in contrast to Russia, a functional model of the Federal device is implemented. First of all, the Basic law of Germany (OZ) focuses on the separation of powers between the levels of state power on the separation of powers horizontally and uses the functional principle of the separation of state powers between the Bund and the Federal lands on legislative, Executive and judicial, drawing a distinction, respectively, primarily in the areas of legislation, law enforcement (management) and justice.

The branch criterion of differentiation has thus auxiliary character: on specific branches, spheres of activity legislative (Art. 70-74 OZ) and Executive powers (Art. 83-91 OZ) are distributed respectively. Thus, the scope of each of these groups of powers of the Federation in specific areas of life is not the same. The existence of the Federation of legislative powers in a particular area of life does not mean that the implementation of laws in this area is also concentrated in its hands. The rule is the concentration of Executive powers at the level of the subjects of the Federation, the recognition of the priority of lands in the performance of state powers and state tasks (art. 30 OZ). In determining the competence of the Federal lands, the "residual principle" or the principle of the General reservation (Generalklausel) applies, and in establishing the powers of the Federation, the principle of the "exhaustive list" (Enumerationsprinzip): the powers of the Federation must always be confirmed by the Constitution or law. Accordingly, the competence of the Federation (Union, Bund) in the field of law enforcement is the exception rather than the rule. Another matter is the distribution of legislative powers: despite the effect of the residual principle in determining the legislative competence of the lands, the scope of the legislative powers of the Federation significantly prevails over the legislative competence of the lands.

Considering the consolidation in the German Constitution of the procedure for the separation of powers between the Federation and the subjects in development, we can note the following:

- at the first stages of modern constitutional development, there was an evolution from the idea of a clear division of spheres of competence and powers between the Federation and its subjects (competitive federalism) to the strengthening of the principles of cooperative federalism, which often led to unitarization through cooperation,

- during the reform of 2006 -2009, an attempt was made to implement competitive federalism with a reasonable combination of elements of cooperative federalism: to achieve this goal, first of all, a clearer delimitation of legislative powers between the Federation and the lands, the expansion of the legislative competence of the lands while reducing the number of Federal laws requiring the approval of the Bundesrat.

Thus, even before the reform, the legislative powers of the Federation and the lands were differentiated in the following main areas:

- own (exclusive) legislative competence of lands: originally defined in paragraph 1 of Article 70 of the Basic law on the residual principle, based on the presumption enshrined in Article 30 of the priority of lands in the implementation of state tasks; the said principle does not indicate the quantitative priority of the legislative competence of lands, it assumes that the implementation of the Federation of its legislative powers is possible only if there is a constitutional basis, i.e. by virtue of a direct indication of the Basic law;

- exclusive legislative competence of the Federation (Article 73): the peculiarity of this sphere is that in it the land can legislate only if they are specifically authorized by Federal law (Article 71);

- competing legislative competence of the Federation and the lands: the lands have the right to make laws in this area only if and insofar as the Federation does not use its legislative competence (Articles 72, 74, 74A OZ in the previous edition);

- framework legislative competence of the Federation: the essence of the framework legislation, mainly consisted in granting the Union the right to issue fundamental regulations on the issues listed in the Basic law, to determine the "framework", guidelines for land laws (Article 75 of the law IN the previous edition);

- the legislative competence of the Federation in determining the General principles of

ISSN 2542-1514 (Print)

solving joint tasks: such Federal laws had to be adopted with the approval of the Bundesrat and, like the framework laws, addressed to the bodies of the Federation and the lands (para. 2 art. 91A, para. 3 of Article 109 of OZ in the previous version).

The Federal reform of 2006 was aimed at a clearer delineation of legislative competence between the Federation and the lands, at reducing the number of Federal laws adopted with the consent of the Bundesrat, by increasing the areas of legislative competence of the lands and some truncation of the legislative powers of the Federation.

First, the institution of "framework legislation" was abolished: Article 75 was deleted from the text of the Basic law.

Secondly, the areas previously related to framework and partially competing legislation have been transformed into areas of exclusive legislative competence of the Federation or the States, respectively. For example, the law on assemblies, penal laws passed in the competence of the länder and the legislation on registration and passport system was submitted to the exclusive jurisdiction of the Federation.

Third, the competing legislation (Articles 72, 74 of the Basic law) has undergone substantial reform. Starting from the principle of residual legislative competence of the lands (para. 70 of the Basic law), Article 74 contains an exhaustive list of areas of competing legislation of the Federation. Moreover, in these areas, the Federal lands have the right to carry out legislative regulation as long as, and to the extent that the Federation has not used its legislative powers (para. 1 Art. 72 of the Basic law).

In addition, the competing competence of the Federation is implemented in accordance with the following new constitutional principles:

A) taking into account the criterion of the need for a single Federal regulation or without it (para. 2 V. 72 OZ);

B) taking into account the right of lands to make laws on deviation from provisions of Federal laws on questions of the competing competence or without that (para. 3 V. 72 OZ).

As already noted above, the responsibility for the execution of laws (both Federal and land) rests mainly on the land: according to Article 83 of the OZ, the execution of Federal laws is the subject of the land's own jurisdiction, unless otherwise expressly prescribed in the Main or in the ordinary law adopted on the basis of a constitutional prescription. The expediency of this approach is predetermined primarily by the fact that two-thirds of all laws are executed at the level of municipalities, which are in legal connection with the land and act as an independent link in the organizational relation of indirect land administration.

Accordingly, the Basic law distinguishes two types of public administration – Federal and land, each of which is a relatively independent and organizationally separate system (it is, however, not about the unity of the system of Executive authorities of the Federation and the subjects, as in the Russian Federation). At the same time, it is the land administration system that is more complex and branched in comparison with the Federal one, which is due to the much greater scope of land powers in the field of law enforcement. Thus, the Constitution distinguishes the following types of public administration (Executive activity):

private land management: the land themselves determine what organs and in what order will be implemented by the execution of Federal and land law; the Federation shall establish substantive law, i.e. answers the question that has to be fulfilled, and the land decide who (what authorities) and how (process management) it will be done, with the Federal government exercises legal supervision (supervision of legality) of the actions of the länder on the execution of Federal laws and may issue with the approval of the Bundesrat, General administrative regulations (par. 1, 2, 3 art. 84 OZ), and only in exceptional cases to give instructions to land authorities (para. 1 and 5 V. 84 OZ);

- land administration on behalf of the Federation (delegated administration) as an exception to the General rule and usually in areas expressly provided for in the Constitution (for example, when it comes to the disposal of taxes, wholly or partly coming to the benefit of the Federation; if the Federation bears more than half of the costs of implementing the law); the definition of land administrative structures, as a rule, is still left to

ISSN 2658-4050 (Online)

the lands, But the Federal government can issue not only General administrative regulations, but also uniform rules for the training and recruitment of officials and employees, to coordinate the appointment of heads of land departments of middle management (para. 2 tbsp. 85 OZ). The competent higher Federal administrative bodies shall have the right to give mandatory instructions to land departments (para. 3 V. 85 OZ). Federal supervision extends to check both legality of administrative activity on execution of the Federal law, and its expediency. In this regard, the Federal government may require the submission of reports and other documents, as well as send their commissioners to the relevant land offices (para. 4 of Article 85 OZ).

- own Federal management – in the spheres and cases provided by the Constitution or the Federal law adopted on its basis-for example: 87 (para. 1, 3), 87b, 87d, 88 OZ. Thus the Constitution provides various organizational and legal forms of own Federal government: (1) with construction of the system of administrative bodies: as, for example, governing bodies of Federal armed forces (para. 1 of Article 87b GG), the authorities of the Federal waterways (par. 2 V. 89 OZ), etc.; (2) through the Supreme Federal administrative body (the Federal statistical office, the Federal Supervisory body for mass media that have a harmful impact on young people, etc.); (3) through the organizations of the mediated Federal state administration – corporations and public law institutions.

- joint management of the Federation and the lands in the framework of joint tasks and cooperation in the administrative sphere. The prevailing view in the doctrine, as well as the prevailing interpretation of the Basic law, inclines to the fact that the idea of competitive federalism, which is the basis of the German model of vertical separation of powers, presupposes a fundamental prohibition of mixed management and financing. At the same time, this prohibition is not absolute and allows cooperation. And although in principle it is unacceptable for Federal and land structures to act in parallel on the same issue, in the case of a direct constitutional instruction, joint administration of the Federation and the lands is allowed. For example, in paragraph 1 of Article 108 of the OZ, which deals with the construction of Federal administrative bodies in the field of financial management, it is stated: if the Federal financial bodies of the middle level are created, their leaders are appointed with the participation of the land governments. In this form of government, the cooperative beginnings of German federalism are manifested. These are tasks of General importance if the participation of the Federation is required to improve and equalize living conditions. In the process of implementation of joint tasks (improvement of regional economic and agrarian structure; protection of the sea coast), the Federation takes part as a financing authority: it assumes half or at least half of the costs in these areas (Article 91A of the Basic law). In addition, the Federation and the States may cooperate on the basis of agreements to support institutions and projects of interregional importance (research institutions and projects outside of higher education; research projects in higher schools; construction of research facilities in higher schools), as well as to cooperate in the field of establishing the competitiveness and effectiveness of education (Article 91b of the Basic law).

Thus, the constitutional distribution of powers in the field of law enforcement combines elements of competitive and cooperative federalism: on the one hand, the competency-based order forms a clear distinction of Executive powers between the Federation and the land (their own land and their own Federal office), and, on the other hand, an additional, although significant, importance is the interaction of Federation and its subjects through the mechanisms of the transfer of the Executive powers of the Federation to the länder level, as well as through forms of joint management in solving joint tasks (Gemeinschaftsaufgaben) and within the framework of cooperation in the administrative sphere (Verwaltungszusammenarbeit).

The Russian concept of vertical separation of powers is characterized by a different approach:

1). Unlike in Germany, horizontal separation of powers does not precede vertical separation of powers. Competence between the Federation and the regions not delimited by functional and substantive grounds, i.e., objects of reference, which

ISSN 2542-1514 (Print)

allocates spheres of life, state policies and legislation as the subjects of exclusive Federal jurisdiction; the joint jurisdiction of the Russian Federation and of the subjects; the subjects of exclusive conducting subjects of the Russian Federation. Accordingly, it is assumed that in the sphere of competence assigned, for example, exclusively to the Federation, the Federal authorities initially have all the powers-both legislative and enforcement powers. The areas allocated in the Constitution as subjects of reference for "establishing General principles of organization" are also interpreted by both the legislator and the Constitutional Court of the Russian Federation very broadly. For example, the establishment of General principles of the organization of legislative (representative) and Executive bodies of state power of the subjects of the Russian Federation covers the regulation of relations between these bodies horizontally within the principle of separation of powers, the order of their formation, measures to exercise control and supervision over the activities of public authorities by Federal bodies, including mechanisms for the application of Federal coercion and bringing bodies and officials of the subjects of the Russian Federation to responsibility before the Federation .

2). As in Germany, Russia uses the "residual principle" to determine the competence of the subjects of the Russian Federation: outside the jurisdiction of the Russian Federation and the powers of the Russian Federation on subjects of joint jurisdiction, they have full power. This, however, does not mean that the competence is differentiated in favor of the subjects of the Russian Federation: the spheres of life, state policy and legislation as subjects of jurisdiction of the Russian Federation and joint jurisdiction are defined using different, often overlapping, criteria and so widely that the spheres of exclusive jurisdiction for the subjects of the Russian Federation practically do not remain [37, p. 153; 38, p. 189].

3). Of particular importance for the Russian model of the Federal structure is the institution of "joint management" of the Russian Federation and the subjects, which reflects the cooperative beginnings of Russian federalism. At first glance, this Institute has similarities with the German Institute of joint tasks of the Federation and subjects. However, this similarity is very remote. If the joint tasks in Germany are related to the management (Executive) and financial spheres, have a strictly defined scope of application (rather the exception than the rule), the joint management of the Russian Federation and the subjects of the Russian Federation has a comprehensive character.

4). Some Parallels can also be drawn between the competing legislation in Germany and the Russian provisions on the advanced legal regulation of the subjects of joint jurisdiction of the Russian Federation before the adoption of Federal laws. However, a more detailed comparison of these institutions reveals more differences than similarities: the advanced legal regulation of subjects in the Russian Federation is of an emergency and temporary nature (only in the absence of Federal regulation and only before the adoption of a Federal law). In modern conditions, it has practically not found application in the Russian practice of Federal relations.

5). Another important difference of the Russian Federal model is the addition of the constitutional delimitation of the legislative: legislative distinction amplifies the constitutional provisions: as a result of the Federal law "On General principles of organization of legislative and Executive bodies of state power of subjects of the Russian Federation" of 6 October 1999 No. 184-FZ (as amended Federal law of 4 July 2003 No. 95-FZ) contains an exhaustive list of their powers of public authorities of subjects of the Russian Federation in subjects of joint conducting, i.e. there is a departure from the principle of residual competence of subjects of the Russian Federation enshrined in Article 73 of the Constitution of the Russian Federation. Legislative changes in the division of powers on the subjects of joint jurisdiction are very mobile, subject to private changes, thus, there is no stability in the division of powers, and, consequently, in the division of Finance and property [39; 40]. Accordingly, the execution of Federal laws on behalf of the Federation (transfer of certain powers of the Russian Federation to the subjects of the Russian Federation with the transfer of subventions for their implementation) becomes the most common

ISSN 2658-4050 (Online)

phenomenon in the Russian Federation, while this type of management in Germany is rather an exception.

All the above-mentioned features of the Russian model of federalism in their totality allow us to state that in the Russian Federation, in principle, the separation of powers, cooperative principles prevail over competitive ones. This again confirms the thesis of the centralized nature of the Russian Federation.

5. The body representing the interests of the subjects of the Federation in the system of public authorities (Bundesrat and the Federation Council)

In Russia, the participation of subjects of the Russian Federation in the Federal legislative process is carried out within the framework of the Federation Council. According to the original constitutional concept, the Federation Council was conceived as a chamber of the Federal Parliament, representing the interests of the subjects of the Russian Federation within the Supreme legislative and representative body of state power of the Russian Federation and ensuring the solution of a number of important national issues for the entire Federation (art. 102 Constitution trades abroad): respectively from every actor trades abroad in it must were enter on two representative – on one from legislative and Executive organs state power (h. 2 UF. 95 Constitution trades abroad in the previous drafts). The law on the amendment to the Constitution of the Russian Federation of July 21, 2014 No. 11-FKZ "About the Federation Council of the Federal Assembly of the Russian Federation" the concept was changed: the composition of the Federation Council was complemented by the "representatives of the Russian Federation" appointed by the President of the Russian Federation, in the amount of not more than ten percent of the number of other members of the Council of Federation - representatives from legislative (representative) and Executive bodies of state power of subjects of the Russian Federation. The new constitutional approach to the formation of the Federation Council seems to indicate an attempt to implement the "three-member model of Federal statehood" known in the German doctrine, according to which both the center (Federation) and the regions (subjects of the Federation) are equal, exist independently of each other and acquire the quality of Federal statehood as a result of unification and interaction within this Association. This approach to Federal construction has not received any elaboration in the Russian doctrine, moreover, it contradicts the widespread theories. The idea of identifying a Federal interest through the coordination of interests of all subjects of the Russian Federation is subjected to severe strain, and the status of Federation Council members from the authorities of constituent entities of the Russian Federation, in contrast to the status of the members of the Federation Council of the Russian Federation, erroneously reduced to the representation only to the interests of a particular constituent entity of the Russian Federation, contrary to their mission as bearers of regional interest, to reconcile this interest with all others and to act in the interests of the multinational people of the Russian Federation. The ill-considered nature of the new concept of forming the Federation Council is manifested in the fact that the Constitution proceeds from the opposition of "members of the SF-representatives of the Russian Federation" to other members of the Federation Council, although it does not use the term "representatives of the Russian Federation" in relation to members sent by the authorities of the subjects of the Russian Federation. The inconsistency of the new status of the Federation Council and its members was expressed, as it seems, in the fact that the new procedure for the formation of the SF has not yet been implemented in practice.

With regard to the participation of the Federation Council in the Federal legislative process, the Constitution of the Russian Federation distinguishes between laws that must be considered by the Federation Council and other laws that are not subject to mandatory consideration by the Federation Council. At the same time, in respect of any laws, the decision of the Federation Council to reject them can be overcome. For this re-examination of the Federal law rejected by the Federation Council, the State Duma of a Federal law in the original version should be given not less than 2/3 from total number of deputies of the State Duma

ISSN 2542-1514 (Print)

(p. 3-5 of Article 105 of the Constitution).

In Germany, the Bundesrat is regarded as an independent constitutional Federal body, whose functions, however, are not limited to those of the second chamber of the Federal Parliament. (On the question of attribution of the Bundesrat to the Federal Parliament as its second chamber in the German state-legal literature, discussions are still ongoing [41, c. 1396-1397; 42, c. 943-964]). The purpose of the Bundesrat, the representation of land in the exercise of Federal functions, promoting the participation of the länder in the Federal legislative process and Federal government and administrative authorities. The Bundesrat is composed exclusively of representatives from the land governments. In this case, the number of members of the Bundesrat from one land (from 3 to 6) is determined in proportion to the population of the corresponding land. The laws of the Federation submitted to the Bundesrat fall into two categories. The first includes laws that do not require the consent of the Bundesrat, but on which the Bundesrat may raise objections (Einspruchsgesetze – Art. 77 para. 4 OZ). These objections may be overcome by an absolute majority of the total number of deputies of the Bundestag (Article 121 of the law) or by a qualified two-thirds majority, if the objection on the part of the Bundesrat was expressed by a qualified majority of its members. The second category includes laws requiring the consent of the Bundesrat (Zustimmungsgesetze). Under such laws, the Bundesrat may initiate the convening of a conciliation Commission, or may refuse to agree on a law without such a convocation. In this case, the Bundestag and the Federal government have the right to initiate the convening of the conciliation Commission themselves (Art. 77 para. 2 OZ). However, in any case, laws of this category cannot be adopted without the Express consent of the Bundesrat. The areas on which the laws adopted require the consent of the Bundesrat are exhaustively formulated in the Basic law and cover issues that directly and most significantly affect the interests of the land. It is noteworthy that the number of such areas and, accordingly, laws requiring the consent of the Bundesrat, during the reform of 2006, decreased significantly: their number decreased from 62 % of all Federal laws to 36 % during the work of the Bundestag of the 18th convocation (2013-2017) [43, p. 2190]. Thus, the idea of limiting the blocking role of the Bundesrat in the Federal legislative process was realized, although the model remained essentially the same.

In addition, the Bundesrat participates in the coordination of government regulations (Article 80 para. 2 OZ) and administrative orders (Art. 84 para. 2, Art. 85 para. 2 OZ), as well as in the formation of the Federation's opinion on the European Union (art. 4-6 OZ).

Comparing the status of the Federal body representing the interests of the subjects of the Federation in Russia and Germany, we can state fundamental differences in national approaches. Unlike the Federation Council of the Federal Assembly of the Russian Federation, the role of the Bundesrat is not limited to the role of the second chamber of the Federal Parliament, which is confirmed by the order of its formation, its composition, and the functions assigned to it to participate in the Affairs of the Federation and the EU. In addition, the Bundesrat has the right of "absolute veto" on matters requiring its mandatory consent, while the veto of the Federation Council on the adopted law is always relative.

6. Assessment of the possibilities of using the German experience of Federal construction for the development of Russian federalism: conclusion

Creative use of the German experience of constitutional regulation of the Federal system is possible within the definition of further directions of development of Russian federalism. At the same time, the following principles and provisions reflecting the peculiarities of German Federal construction are of particular interest for Russian practice:

1. The institution of unchangeable (unshakable) constitutional foundations deserves special attention. Among such foundations should be attributed and the principle of the Federal structure. Its inviolability, however, does not exclude the possibility of changing the status and boundaries of individual subjects of the Federation.

2. The theory of the Union state and the state status of the subjects of the Federation needs

ISSN 2658-4050 (Online)

further doctrinal elaboration taking into account German dogma.

3. Noteworthy is the German experience of using the functional principle of the separation of powers between the Federation and the subjects as the primary basis, and the objective principle as an auxiliary. At the same time, Executive powers should be concentrated mainly at the level of the subjects of the Federation and local self-government as the levels of power closest to the population.

4. It seems expedient and consistent with the principle of the Federal system to expand the rights of the subjects of the Federation in the legislative sphere. The right of Federal lands to deviate from the unified Federal regulation in the areas of competing legislation can be adapted to the relevant legislative rights of subjects of the Russian Federation on the subjects of joint jurisdiction.

5. The blocking role of the Bundesrat in the adoption of Federal laws deserves critical evaluation, as it is the basis for conflicts. At the same time, the question in which part the role of the Federation Council should be strengthened needs to be discussed.

6. The financial basis of the Federal structure in Russia need to be improved in the direction of decentralisation, strengthening of the financial autonomy of the RF subjects and local self-government.

7. The limits of the constitutional autonomy of the constituent entities of the Federation also need to be understood. The question of the right to regulate at the level of subjects of the Russian Federation additional guarantees of the realization of rights and freedoms in compliance with Federal guarantees requires discussion.

8. The conditions and procedure for the use of the Institute of Federal coercion in Germany can be used to improve this institution in the Russian Federation. This is particularly true of the conditions and procedure for the temporary exercise of the powers of the subjects of the Russian Federation by Federal bodies, as well as the establishment of a temporary financial administration.

9. The role of the body of constitutional justice in the development of the principles of the Federal system, if there are appropriate reasons and grounds, can be strengthened. So, in the interpretation of the needs principle of competitive federalism through interpretation of the principle of differentiation of subjects of conducting and powers, the principle of cooperative federalism through the adoption of the principles of loyalty to the Federation and friendly relations to the principles of the Federal structure (horizontal and vertical cooperation and mutual assistance, mutual rights and duties of the Federation and of the subjects), as well as the question of the relationship between competitive and cooperative federalism in the Russian Federal system.

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ISSN 2542-1514 (Print)

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BIBLIOGRAPHIC DESCRIPTION

Gritsenko E.V. Federal statehood of Russia and Germany in the mirror of constitutional and judicial law enforcement: the importance of German experience for Russian practice. *Pravoprimenenie = Law Enforcement Review*, 2019, vol. 3, no. 3, pp. 21–43. DOI: 10.24147/2542-1514.2019.3(3).21-43. (In Russ.).