

SOVIET UNION: TO THE CENTENARY OF FORMATION

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The subject. The article analyzes the constitutional and legal aspects of the formation of the USSR in the context of the theory of federalism. In the course of this analysis, the author examines the constitutional norms regulating the status of sovereign republics as members of the federation.

The purpose of the paper is to classify USSR as a type of federation according to its constitutional regulation during all its existence as a state, and to define legal causes of falling soviet federalism experience.

The methodology of the study includes general scientific methods (analysis, synthesis, description) and legal methods. In addition to this, historical method was also applicable.

The main results and scope of their application. Taking into account various theoretical approaches to the classification of federations, the author comes to the conclusion that the USSR was formally created as a constitutional federation, since the issues of state sovereignty, the right to withdraw from the union and the competence of the new state were fully defined precisely in the Constitution of the USSR of 1924. At the same time, the functioning of public authority in the USSR on a contractual, consensual basis of central and regional authorities was absent.

Conclusions. The Soviet Union came to the end of its existence almost in the status of a confederation, having in its composition sovereign states with independent legal systems, state sovereignties and established international relations for some of them. A lot of constitutional risks were laid in the previous periods of development of federal relations in the USSR and their consolidation at the constitutional level strengthened the centrifugal forces and brought eventually to be adopted on June 12, 1990 the Declaration on State Sovereignty of the RSFSR.

1. Introduction

December 30, 2022 will mark the 100th anniversary of the adoption on December 30, 1922 at the First All-Union Congress of Soviets by representatives of the RSFSR, the Ukrainian and Belarusian Soviet Socialist Republics, as well as the Transcaucasian Federation of the Declaration on the Formation of the Union of Soviet Socialist Republics (hereinafter - the Declaration) and of the Union Treaty. The centenary is a significant milestone that makes it possible to assess the large-scale geopolitical socialist experiment that unfolded on the territory of the former Russian Empire fairly objectively from the standpoint of the 21st century and modern constitutional and legal thought.

Taking into account the impending anniversary date, many researchers have turned their attention to various aspects of the creation and functioning of large states, attempts are being made to rethink the solution of issues of constitutional importance in the USSR, Russian universities are holding major international conferences dedicated to these issues.

Until the beginning of the XX century, the idea of federalism, and its significance for Russia, was of little concern to domestic scholars. In the most general terms, most of them shared the rigidly centralist theory of G. Jellinek, who asserted the absolute prerogative of the federal center for sovereignty in a federal state [1].

However, with the emergence of the need for a solid constitutional and legal basis for the creation of a new state, many legal theorists and politicians have paid close attention to the issues of federalism, offering various approaches to its implementation in Russia. And with the appearance of outstanding works by S.A. Yaschenko and S.A. Kotlyarevsky, a relatively uniform conceptual apparatus was created.

In this regard, it seems relevant to consider the issues of the transformation of federal relations in the USSR, since certain fluctuations in the constitutional and legal regulation of federal relations are currently being carried out in the Russian Federation, as we have already mentioned [2], and working on "federal errors" is always useful for understanding the significance of these

constitutional legal relations and the need to ensure their stable legal regulation.

2. The creation of the USSR as a federal state.

It is well known that by 1922 there were 6 republics on the territory of the former Russian Empire: the RSFSR, the Ukrainian SSR, the Belarusian SSR, the Azerbaijani SSR, the Armenian SSR and the Georgian SSR. From the very beginning, there was close cooperation between them, due to the common historical fate. Their unification was also facilitated by the common goal set by the governments of the republics — the construction of socialism on the territory located "in a capitalist environment."

In March 1922, the Azerbaijani, Armenian and Georgian SSRs merged into the Transcaucasian Soviet Federative Socialist Republic. In December 1922, the First Transcaucasian Congress of Soviets appealed to the Presidium of the Central Executive Committee with a proposal to convene a joint congress of Soviets and discuss the creation of the Union of Soviet Republics. The same decisions were made by the All-Ukrainian and All-Belarusian Congresses of Soviets [3; 4].

The chronology of events is described in sufficient detail in many historical works [3; 5; 6; 7; 8]. Let's focus only on the constitutionally significant aspects of legal regulation and law enforcement practice of this period.

Thus, the key points of the federal framework, which were contained in the Declaration on Education, were as follows:

- the decision to form the "Union of Soviet Socialist Republics" was the will of the peoples of the Soviet republics,
- the Union being created is a voluntary association of equal peoples,
- each republic has the right of free withdrawal from the Union,
- access to the Union is open to all socialist Soviet republics, both existing and having to arise in the future,
- the new Union state was defined as a solid foundation for peaceful cohabitation and fraternal cooperation of peoples.

The sovereignty of the federation was based on the voluntarily expressed will of the equal peoples of

the Soviet republics, and therefore was a qualitatively new entity, and not the sum of the sovereignties of the Soviet republics, since it had a people's sovereignty of a different nature.

A new federal state arose on the territory of a unitary state – the Russian Empire. In this regard, it is possible to cite the position of the first Russian theorist of federalism, A.S. Yashchenko, who expressed a negative attitude to the kind of federalism that seeks to break up existing unitary states, and saw in it a share of anarchism, denial of state organization [9, p. 367]. In particular, reflecting on the form of the state structure of Russia, A.S. Yashchenko believed that in these historical and political conditions, "federalism is conceivable only as the fragmentation of a single sovereign power, and therefore it must be unconditionally condemned," which, however, does not negate the fact of the need to "promote reasonable and expedient self-government in every possible way, as a life-creating and affirming principle" [9, p. 786]. The scientist, thus, negatively assessed the fragmentation of the unitary state into independent republics, carried out, moreover, on a national basis, which is not capable of ensuring the stability of the federation and will inevitably lead to its collapse, since the essence of federalism is an expression of the political integration of human societies, one of the political means of organic union of hitherto amorphous communities, the stage of on the way to true organic unity [9, p. 359]. In this regard, what kind of federalism is possible to talk about if it was preceded by the explicit political integration of the people in the form of a unitary state? It was from these positions that the Soviet approach to federalism was criticized by A.S. Yashchenko.

Thus, from a theoretical standpoint, federalism, by virtue of its integrating essence, should not have emerged from a unitary state, however, history had other plans in this regard.

The Constitution of the Union of Soviet Socialist Republics, which was approved by the II Congress of Soviets of the USSR on January 31, 1924 [9, p. 359] included 2 sections:

Section 1 - Declaration on the Formation of the Union of Soviet Socialist Republics;

Section 2 is an Agreement according to which

the Russian Socialist Federative Soviet Republic (RSFSR), the Ukrainian Socialist Soviet Republic (USSR), the Belarusian Socialist Soviet Republic (BSSR) and the Transcaucasian Socialist Federative Soviet Republic (ZSFSR) are united into one union State – the "Union of Soviet Socialist Republics" (hereinafter – the Agreement).

The second chapter of this Treaty regulated the "sovereign rights of the Union republics" and "Union citizenship". In accordance with articles 3 and 4 of the Treaty, the sovereignty of the Union Republics was limited only within the limits specified in this Constitution, and only on subjects referred to the competence of the Union. Outside of these limits, each Union republic exercised its state power independently. At the same time, it was stipulated that the USSR protects the sovereign rights of the Union republics, and each of the Union republics retains the right of free withdrawal from the Union. According to article 66 of the Treaty, the relationship between the supreme authorities of the Union republics and the supreme authorities of the USSR is established by "this Constitution".

However, it is not necessary to identify the Treaty given in the second section of the Constitution of the USSR of 1924 and the Treaty on the Formation of the Union of Soviet Socialist Republics [10]. As noted by O.I. Chistyakov, the Treaty on the Formation of the Union of Soviet Socialist Republics, approved by the First Congress of Soviets of the Union, is a document that originally had, generally speaking, international legal significance, and the Treaty that became part of the Basic Law, its main section, differ sharply in content. For example, the Treaty on the Formation of the USSR did not contain norms on sovereignty, but according to its 26th paragraph, each of the Union republics also retained the right to freely withdraw from the Union.

However, the legal assessment of the transformation of the Contract into a section of the Constitution is very complex and contradictory.

The most important issue of Soviet federalism was the constitutional right of the Union republics to secede from the Union. As already mentioned, such a right was guaranteed by two treaties, but the mechanism of its implementation was not regulated in them, and during the entire existence of the Soviet constitutions, no attempts were even made to

settle this issue, since it was believed that the problem of withdrawal would never really arise [11, p. 18].

All the above constitutional norms give us the necessary legal substance to resolve the issue of the form of federation in which the USSR was formed, about the starting point of its federal structure.

3. The issue of the form of federation in the USSR at the initial stage of its formation.

A.S. Yashchenko argued that the federal state is "a combination of a state-legal nature, and it has only one sovereign power, a nationwide one, but it is formed in a very special way, specific only for this political form" [12, p. 320]. Federalism, according to A.S. Yashchenko, is a form in which "each political unit unites with other units in such a union in which it loses its sovereignty, but the central government formed by the union does not receive sovereignty, and sovereignty belongs only to the consonant will of the central and local authorities" [12, p. 264]. The fact that the Union republics did not lose their sovereignty *de jure* and had the right to secede from the Union casts doubt on the very concept of federalism.

The theory of federal relations knows various ways of building a federation and constitutional and legal regulation of federal relations.

In particular, scholars distinguish a treaty federation - a federal state created by concluding a federal treaty between states or other territorial units that have decided to enter into this state. Another option is the transformation of a previously unitary state into a federal state with the conclusion of a federal agreement between the parts of the state that become subjects of the federation.

In the literature, one can find the opposition of contractual and constitutional federations. A constitutional federation is understood as a way of building a federal state not on the basis of a treaty, but immediately on the constitution adopted by the supreme body of the new federation.

In addition, there is a mixed form of constitutional-contractual (contractual-constitutional) federation, according to which a contract is first concluded, then the constitution is

adopted, but both documents are applied and they have equal force.

As noted by S.A. Avakian, the ideas of the existence of a federation only on the basis of a contract, as well as on the basis of two equal documents - the contract and the constitution - seem unpromising, since a federal contract, as a rule, I accept federations at the beginning of the registration of federal relations, however, the federation is a state, which means that its basis should be the constitution [13].

A.N. Mochalov also points out that the federal form of government is enshrined in the federal constitution, since the state must define itself as a federation [14].

Taking into account the above, the USSR was created as a constitutional federation, since the issues of state sovereignty, the right to secede from the Union and the competence of the new union state were fully defined in the Constitution of the USSR of 1924.

In form, it was a federation, but in terms of content, everything was not so clear. Foreign researchers noted, not without reason, that the legal policy of the USSR was federal only in form, while its content was unitary [15, p. 1]. In fact, the country was governed by a strong central government, the subjects of the federation could not make independent decisions even in the sphere of their exclusive competence.

It is worth pointing out here that the contractual understanding of the nature of federation (regardless of whether it is a contractual federation or a constitutional one) goes back to the interpretation of federalism as a federal bargain laid down by W. Riker and developed in the works of other prominent foreign theorists of federalism, in particular R. Watts and D. Elazar [16; 17; 18] between the central and regional authorities on solving vital issues of the new state and resolving possible constitutional conflicts on the basis of consensus: subjects of competence, taxes, economic resources, maintenance of public order, etc.

Thus, for the correct answer to the question about the nature of federal relations in the USSR in its initial period, it is important not only the form and its consolidation in the constitutional text, but also the very functioning of public power in the state

on a contractual, consensual basis of central and regional authorities, which was absent in the actual constitution of the USSR.

4. Federal relations of the epoch of the "decline" of the USSR.

The last valid Constitution of the USSR was the Constitution of 1977, according to which the Union of Soviet Socialist Republics was defined as a single union multinational state formed on the basis of the principle of socialist federalism, as a result of the free self-determination of nations and the voluntary unification of equal Soviet Socialist Republics.

At the same time, each Union republic also retained the right of free withdrawal from the USSR. It was recognized that the territory of the Union of Soviet Socialist Republics is united and includes the territories of the Union republics, and the sovereignty of the USSR extends to its entire territory. The Union Republic was defined as a sovereign Soviet socialist state that merged with other Soviet republics into the Union of Soviet Socialist Republics and outside the jurisdiction of the Union, the Union Republic independently exercises state power on its territory.

It is noteworthy that Article 80 of the 1977 Constitution of the USSR secured the right of the Union republics to enter into relations with foreign states, conclude treaties with them and exchange diplomatic and consular representatives, and participate in the activities of international organizations. This norm was by no means a declaration.

Before the adoption of this constitutional norm, there was an interesting fact about the inclusion of the Union Republics of Belarus and Ukraine in the United Nations (hereinafter – the UN) as independent members at its creation. Thus, when discussing the creation of the UN, the USSR received a proposal to join the new international organization not entirely of the entire Soviet Union, but of all its union republics separately. This proposal was announced by the USSR Ambassador to the USA Andrei Gromyko at the Washington business Conference of representatives of the foreign ministries of the USA, USSR and Great Britain, held from August 28 to September 21, 1944

in Dumbarton Oaks, a private mansion in Washington. The United States and Great Britain reacted negatively to this proposal from the Soviet side. In particular, US President Franklin Roosevelt immediately put forward a counter-proposal to include all American states separately in the UN. The USSR, in this case, pursued the goal of preventing a numerical advantage in the future international organization of the Anglo-Saxon countries, since the British dominions – Canada, Australia, New Zealand, the South African Union and India - were to enter there as separate independent states.

Subsequently, in 1945, at the Yalta summit, the People's Commissar for Foreign Affairs of the USSR Vyacheslav Molotov made a proposal to admit to the UN, separately from the USSR, only three union republics – Ukraine, Belarus and Lithuania, in view of the great sacrifices that these union republics suffered in the war, since they were the first to be attacked and suffered greatly as a result of it. As a result, only the Union republics of Belarus and Ukraine were admitted to the UN on October 24, 1945 as sovereign states. Of course, this fact is quite difficult to correlate with the theory of federalism and state sovereignty, an element of which is the independence of the state in establishing international relations.

Also, the last Soviet Constitution in article 78 proclaimed that the territory of the Union Republic could not be changed without its consent, while article 81 of the Constitution established that the sovereign rights of the Union republics were protected by the USSR. By virtue of Article 77 of the Constitution of the USSR of 1977, the Union Republic participated in resolving issues within the jurisdiction of the USSR in the Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of the USSR, the Government of the USSR and other bodies of the USSR.

As V.E. Chirkin noted, the fact that in the Constitution of the USSR and all the Union republics were called states meant that 16 states were located on the same territory of the country in the last period of the USSR's existence (the USSR and 15 union republics, and 15 states were still part of one state - the USSR) [19].

The final segment of federal relations in the USSR dates back to the period after 1985 [20], during

which the dead-end path of development of the so-called unitary federalism in the Soviet state was fully manifested, moreover, built on the national principle, where the federal center did not pay due attention to the solution of interethnic issues for decades.

It is necessary to agree with those authors who note that the "perestroika reform" caused by the crisis of statehood was carried out absolutely ineffectively, without any political forecasting of its consequences, and achieved completely the wrong goals that were declared: instead of the state's exit from the crisis situation, there was a slide deeper and deeper into the abyss, which eventually provoked the collapse of all state institutions [21; 22].

5. Conclusions.

Too many "time bombs" were laid in previous periods of the development of federal relations in the USSR and their consolidation at the constitutional level, which, with a certain political perestroika populism, ill-conceived changes to the most important sources of constitutional law, including the basic law of the country, strengthened centrifugal forces and eventually led to the adoption of June 12, 1990. The Declaration on the State Sovereignty of the RSFSR, the provisions of which proclaimed the supremacy of the laws of the RSFSR over the Union laws, which testified to the desire for a greater degree of independence than was provided for by the norms of the USSR Constitution of 1977.

Thus, by the end of its existence, the Soviet Union came almost to the status of a confederation, having sovereign states with independent legal systems, state sovereignty and established international relations among some of them.

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