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Alexander Alexandrovich Merkulenko

**Competence of the regions of the Russian Federation:
tendencies in constitutional regulation**

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Academic Supervisor:
Vladimir Dmitrievich Mazaev,
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5.1.2. Public Law (State Law) Sciences

GENERAL OVERVIEW OF THE RESEARCH

Relevance of the research topic

The development of federalism in our country, taking into account the previous Soviet experience, was accompanied by successive processes of decentralization and centralization. The most important indicator of these changes is the volume and ratio of the competence of the Federation and its constituent units. The development of the competence of the constituent units of the Russian Federation (hereinafter, including the RF) are determined by the various stages of the evolution of federal relations. If we turn to the most obvious criterion for identifying such historical stages within the post-Soviet period, namely, the adoption of the most significant constitutional and legal acts on issues of the federal structure, then we can conditionally distinguish four stages¹.

The first stage began² with the Declaration “On State Sovereignty of the RSFSR” of 1990³, included the Federative Treaty of 1992⁴, amendments and additions to the Constitution of 1978⁵, and ended with the adoption of the Constitution of the Russian Federation of 1993⁶. This period is characterized by systematic changes in the federal structure, the transition first to the three lists of subjects of jurisdiction, and then to the two, disputes about the special status of the republics, which ended with the establishment of formal equality of the constituent units of the Russian Federation in the Constitution of the Russian Federation of 1993.

¹ The literature also identifies various criteria and types of such stages, see for example: Konyukhova I.A. Modern Russian federalism and world experience: Results of formation and development prospects: monograph Foundation for legal problems of federalism and localities. self-control Moscow: Gorodets, 2004. P. 220; Gligich-Zolotareva M.V. Constitutional and legal foundations of Russian federalism: problems of theory, methodology and practice: dis. ... Doctor of Law. Tyumen, 2009. 526 pp.; Belenko N.M. Formation and development of federal relations in Russia (90s of the XX-early XXI centuries): abstract of thesis.... Doctor of History Moscow, 2006. pp. 19–20.

² The moment at which the first stage began cannot be clearly stated. On the one hand, it is difficult to talk about independent Russian federalism until the formal termination of the existence of the Union of Soviet Socialist Republics, since Russia was part of another state. At the same time, during the era of “perestroika”, qualitatively new federal relations had already begun to form, which became the basis for the construction of federalism in post-Soviet Russia (declarations on the sovereignty of a number of republics that were part of the Russian Soviet Federative Socialist Republic (hereinafter referred to as the RSFSR), changes to the Constitution of the RSFSR etc.).

³ Gazette of the SND and the Supreme Soviet of the RSFSR. 1990. No. 2. Art. 22.

⁴ Federative Treaty: Documents. Comment. M., 1994.

⁵ Law of the Russian Federation of April 21, 1992 No. 2708-I “On amendments and additions to the Constitution (Basic Law) of the Russian Soviet Federative Socialist Republic” // Rossiyskaya Gazeta (hereinafter referred to as RG). 1992 No. 111; Law of the Russian Federation of December 9, 1992 No. 4061-I “On amendments and additions to the Constitution (Basic Law) of the Russian Federation - Russia” // RG. 1993. No. 6.

⁶ Constitution of the Russian Federation (adopted by popular vote on December 12, 1993, with amendments approved during the all-Russian vote on July 1, 2020) // RG. 2020. No. 55.

The second stage began with the adoption of the Constitution of 1993. It is characterized with the agreements on the delimitation of jurisdiction and powers between government bodies of the Federation and its constituent units, which at that time were of a controversial compromise nature, as well as the absence of an established full-fledged mechanism for delimiting the jurisdiction and powers between the Russian Federation and its constituent units (at the same time, the foundations of this mechanism were laid in the Constitution), as well as detailed federal regulation of the very competence of the constituent units of the Russian Federation.

The third stage began with the adoption of Federal Law of June 24, 1999 No. 119-FZ “On the principles and procedure for the delimitation of jurisdiction and powers between government bodies of the Russian Federation and government bodies of the constituent units of the Russian Federation”⁷ (hereinafter referred to as Federal Law No. 119-FZ), which attempted to streamline the practice of concluding agreements on the delimitation of jurisdiction and powers. Also Federal Law of October 6, 1999 No. 184-FZ “On the general principles of organizing legislative (representative) and executive government bodies of the constituent units of the Russian Federation”⁸ (hereinafter referred to as Federal Law No. 184-FZ) was adopted. At that time, D.N. Kozak pointed out that “the issue of delimitation of jurisdiction and powers is the central issue of federal relations,”⁹ which shows how seriously the federal center took the problems of the competence of the constituent units of the Russian Federation. L.V. Andrichenko also emphasizes the fundamental nature of the issue of delimitation of powers: “this mechanism for the distribution of power is characteristic of any state, including a unitary one.”¹⁰

In 2003 large-scale changes¹¹ were adopted to Federal Law No. 184-FZ, which allowed to represent it as a “federal code”¹², Federal Law No. 119-FZ was repealed and

⁷ Collection of legislation of the Russian Federation (hereinafter referred to as the SZ RF). 1999. No. 26. Art. 3176.

⁸ RG. 1999. No. 206.

⁹ Kozak D.N. Problems of delimitation of powers between federal government bodies and government bodies of the Russian Federation // Russian Law Journal. 2002. No. 5. P. 3.

¹⁰ Andrichenko L.V. The evolution of the principles of federalism in Russia in the light of constitutional reforms in 2020 // Russian Law Journal. 2022. No. 3. P. 53.

¹¹ Federal Law of July 4, 2003 No. 95-FZ // RG. 2003. No. 123.

¹² Lyapin I.F. Constitutional theory and practice of decentralization of state power in Russia: dissertation ... Doctor of Law. Moscow. 2011. P. 324.

modern mechanism for delimiting areas of jurisdiction and powers between the Russian Federation and the constituent units of the Russian Federation was established. Federal Law of October 6, 2003 No. 131-FZ “On the general principles of organizing local self-government in the Russian Federation”¹³ was adopted, which narrowed the possibilities of legal regulation for government bodies of the constituent units of the Russian Federation (hereinafter including referred to as regional bodies)¹⁴ that in the totality of these legislative innovations marked the beginning of the fourth stage.

The content of the fourth stage is of a 20-year period of operation of the established delimiting the subjects of jurisdiction and powers, the reflection of these trends in the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation dated March 14, 2020 No. 1-FKZ “On the improvement regulation of certain issues of the organization and functioning of public power”¹⁵ (hereinafter referred to as the Law on amendment to the Constitution of the Russian Federation of 2020), transferring the previously developed model of constitutional and legal regulation of the competence of constituent units of the Russian Federation into the new Federal Law of December 21, 2021 No. 414-FZ “On the general principles of the organization of public power in the constituent units of the Russian Federation”¹⁶ (hereinafter referred to as Federal Law No. 414-FZ). During this period, the practice of implementing the current model of competence regulation was developed and continues to be enriched. In this regard, a large array of legislative and practical material on the issues of legal regulation of the competence of the constituent units of the Federation requires close scientific attention and assessment, including to identify new trends, problems and prospects in this area of constitutional and legal influence.

The implementation and development of the competence of the constituent units of the Russian Federation as a subject of research is of interest, including in the context of the analysis of the entire federal development. In the conditions of the modern highly centralized Russian state, opinions are emerging that “federal units are turning into

¹³ SZ RF. 2003. No. 40. Art. 3822.

¹⁴ In this dissertation research, the words “constituent unit of the Russian Federation” and “region” and words and phrases formed on their basis (in particular, the word “regional”) are used in the same meaning.

¹⁵ SZ RF. 2020. No. 11. Art. 1416.

¹⁶ SZ RF. 2021. No. 52 (Part I). Art. 8973.

administrative-territorial ones, and there is a danger of reforming the federal state into a unitary one.”¹⁷. At the same time state authorities of the constituent units of the Russian Federation perform significant functions that are closer to the real development of regions and the well-being of citizens than the functions of federal authorities. In this regard, studying the activities of the modern system of public power is impossible without defining and clarifying the place of regional bodies in this system, and therefore without defining and clarifying the competence of these bodies.

The competence of the constituent units of the Russian Federation, the foundations of which are enshrined in the Constitution of the Russian Federation, is developed and disclosed in the provisions of federal legislation. It was not constant throughout the 20-year period studied: in most areas it decreased, in some it expanded. However, the independence of the constituent units of the Russian Federation is determined not only by the provisions of federal laws, but also by the established constitutional, legal and law enforcement practice, constant organizational and legal influence, and control by numerous federal bodies. Moreover, the regional legislator often adapts to federal legislation and creates its own unique regulation, provided that the relevant area is not regulated by the federal legislator and (or) federal authorities allow such unique regulation. In this regard, an analysis of regional competence is impossible without studying the practice of federal and regional legal regulation of these issues. In addition, the constituent units of the Russian Federation do not have the same scope of powers. Finally, it is worth noting the emergence of new emergency powers of the constituent units of the Russian Federation, including in connection with the pandemic of the new coronavirus infection.

All of the above aspects, as well as the legislative and law enforcement framework accumulated over the past twenty years for regulating the competence of the constituent units of the Russian Federation, determine the emergence of diverse and ambiguous areas of its constitutional and legal regulation, which require generalization and doctrinal assessment.

Degree of development of the research topic

¹⁷ Cherepanov V.A. Delimit or delegate? // Comparative Constitutional Review. 2007. No. 1(58). P. 164.

Regional competence is a central issue of federalism, which, in turn, is one of the most important issues of constitutional law. In this regard, the competence of the constituent units of the Russian Federation traditionally attracts the attention of both researchers of the theory of constitutional law and practitioners of state building.

Since 1996 one can notice a gradually increasing interest in this topic (I.A. Umnova-Konyukhova, A.N. Lebedev), which continued and intensified in the first half of the 2000s (N.M. Dobrynin, A.A. Zakharov, A.V. Narutto, etc.). It was at this time that many still relevant and fundamental works were published, which, apparently, was caused by the establishment of a mechanism for delimiting jurisdictions and powers and the desire of the authors to present their vision of this problem and possible ways to resolve it.

However, after the establishment of the above mechanism and in connection with the gradual strengthening of the centralization of the Federation in constitutional and legal science, the number of fundamental studies on the problems of regulating the competence of the constituent units of the Russian Federation decreased. Although one cannot help but note the presence of a number of works on this topic in the modern period (for example, E.V. Chursina). There has been a tendency to study specific areas (regional competence in the areas of environmental management (N.I. Kostenko), control and supervisory activities (R.A. Kononov), etc.) or individual problematic issues (for example, the participation of constituent units of the Russian Federation in the development of civil society (V.N. Pesterev)).

Currently, science does not sufficiently provide an analysis of the modern mechanism for delimiting the subjects of jurisdiction and powers, detailed description of the entire volumetric content of the competence of the constituent units of the Russian Federation is not given, the appeal to regional legislation is rare, and studies of modern aspects of the competence of the constituent units of the Russian Federation (for example, emergency powers) are drawn the main focus is on other topics (for example, ensuring human rights), rather than on regional powers themselves.

The theoretical basis of the study is papers of research scientists, among which should be noted:

- theorists of state and law specializing in issues of competence (not the competence of constituent units of the Russian Federation, but competence in general):

Bakhrakh D.N., Konin N.M., Lazarev B.M., Manokhin V.M., Tikhomirov Yu.A.;

- scientists who study issues of federalism in general: Varlamova N.V., Goshulyak V.V., Danko A.A., Dobrynin N.M., Zakharov A.A., Kravtsova E.A., Kiseleva A.V., Nesterenko A.V., Lebedev A.N., Lyapin I.F., Mikhaleva N.A., Narutto S.V., Umnova-Konyukhova I.A., Chernov S.N., Shashkova E.M.;

- constitutionalists who study the competence of the regions of the Russian Federation: Andreeva E.M., Andrichenko L.V., Bagba A.V., Gligich-Zolotareva M.V., Pershin E.V., Pleshivtsev I. N., Tukhvatullin T.A., Chertkov A.N., Chursina E.V.;

- researchers specializing in regional competence in certain areas: Avdeeva A.V., Batalin A.V., Vorontsova N.L., Gladun E.V., Grigoriev A.A., Gubeydullin R.Kh., Kononov R.A., Kostenko N.I., Lipatov E.G., Lyubushkin V.A., Nigmatzyanov A.A., Kolesova O.N., Navasardova E.S., Pesterev V.N., Rossinsky B.V., Techiev S.R., Trubilov G.V., Trutaeva A.V., Kharitonov I.K., Cherkasov K.V.;

- constitutionalists who studied foreign experience: Borisov Ya.E., Deneka I.M., Kovachev D.A., Dymov D.E., Kodaneva S.I., Nasyrova L.F., Plekhanov M.V., Salenko A.V., Tsyrempilova E.B.-M.;

- foreign scientists: Blankenagel A., Blondeau J.M., Dhavan R., Eric A. Posner, Lepine Fr., Cheung P. T.Y., Sancton A.

The normative legal basis of the study was the Constitution of the Russian Federation, federal laws, other federal regulatory legal acts (hereinafter including legal acts) related to the subject of the study, agreements between federal and regional bodies, legislation of 30 constituent units of the Russian Federation¹⁸, rulings of the

¹⁸ 30 constituent units of the Russian Federation were selected according to the criterion of representative diversity:
 - 8 out of 22 republics (Adygea, Bashkortostan, Dagestan, Karelia, Sakha (Yakutia), North Ossetia-Alania, Tatarstan and Khakassia);
 - 4 out of 9 kraia (Krasnodar, Krasnoyarsk, Primorsky and Stavropol);
 - 11 out of 46 regions (Amur, Belgorod, Bryansk, Ivanovo, Kurgan, Novosibirsk, Pskov, Rostov, Saratov, Sverdlovsk and Ulyanovsk);
 - 3 cities of federal significance (Moscow, St. Petersburg, Sevastopol);
 - Jewish Autonomous Region;
 - 3 autonomous districts (Nenets, Khanty-Mansiysk, Chukotka).

At the same time, of the studied constituent units of the Russian Federation, 4 are located in the Central, Northwestern, Volga and Southern federal districts, 3 each in the North Caucasus, Ural and Siberian, and 5 in the Far Eastern. Constituent

Constitutional and Supreme Courts of the Russian Federation, lower courts, constitutional and legislative acts of decentralized states¹⁹ and rulings of their courts.

The object of the dissertation research is social relations in the field of federal structure, namely, delimitation, clarification and implementation of the powers of the constituent units of the Russian Federation, as well as federal influence on the exercise by the constituent units of the Russian Federation of their powers, emergency powers of the constituent units of the Russian Federation, special powers of individual constituent units of the Russian Federation.

The subject of the dissertation research is the Constitution of the Russian Federation, federal constitutional laws, federal laws, legislation of the constituent units of the Russian Federation, other constitutional and legal norms regulating the competence of the constituent units of the Russian Federation, decisions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and other judicial and administrative bodies, constitutional and legal norms of foreign federal and decentralized states and the decisions of their judicial and administrative bodies. The subject of the study includes the regulatory legal framework established by the legislator and the practice of direct delimitation specific sectoral powers.

The goal of the study is to identify tendencies in the constitutional and legal regulation of the competence of the constituent units of the Russian Federation at the current (fourth) stage of the evolution of federal relations and to assess possible solutions to identified problems.

The objectives of the study are:

- analysis and clarification of doctrinal ideas about the categories of “powers” and “competence” of the constituent units of the Russian Federation;

units of the Russian Federation of different welfare were taken: from the Republic of Dagestan with 231.9 thousand rubles of gross regional product per capita (hereinafter referred to as GRP per capita) to the Nenets autonomous district with more than 7 million. In 14 constituent units of the Russian Federation GRP per capita exceeds 500 thousand rubles, for the remaining 16 it is lower.

Thus, the criteria by which the constituent units of the Russian Federation were selected make it possible to ensure the representativeness of the study.

¹⁹ In the context of this dissertation research, a decentralized state is understood as a state in which the division of jurisdiction and powers between the center and the regions is established by the constitution.

- analysis of the modern mechanism for delimiting jurisdiction and powers between the Russian Federation and the constituent units of the Russian Federation and identifying its features;
- identifying common problems of the above mechanism;
- study of tendencies in changes in the volume of regional competence in various areas during the period under study;
- determination of regional competence in the world based on the constitutions of federal and decentralized states;
- comparison of regional competence in the constitutions of federal and decentralized states;
- characterization of the most important areas of legal influence on the competence of the constituent units of the Russian Federation;
- establishing the problems of implementing emergency powers of the constituent units of the Russian Federation in the fight against the pandemic of the new coronavirus infection;
- identification of features and problematic aspects of the competence of individual constituent units of the Russian Federation.

Research methodology and methods

Within the framework of the study, general scientific methods of induction and deduction, analysis and synthesis, generalization, classification, comparison, as well as special legal methods were used: formal legal, historical and legal, systemic and structural and comparative legal.

The formal legal method was used to analyze federal and regional laws, judicial practice (including the legal positions of the highest courts). The systemic-structural method was necessary to construct a general mechanism for delimiting subjects of jurisdiction and powers from disparate provisions of legislation, determining the system of federal influence on the exercise of regional powers, etc. The historical-legal method

was used to compare the current legal regulation with the previous one, to identify its trends and advantages and shortcomings²⁰.

Particular attention is paid to the quantitative comparative legal method, and the comparison was made not only with foreign constitutional legal acts (41 decentralized states), but also between the legislation of various constituent units of the Russian Federation (30 constituent units of the Russian Federation). Together with the mathematical method²¹, this made it possible to identify tendencies in constitutional and legal regulation based on objective quantitative “big data”, and not on subjective internal feelings and beliefs. The author considers the quantitative comparative legal method to be key for identifying the real competence and autonomy of the constituent units of the Russian Federation.

The scientific novelty of the dissertation research lies in the systematic and multilateral analysis of the constitutional and legal regulation of the competence of the constituent units of the Russian Federation and the development tendencies of this regulation based on a generalization of modern federal and regional legislation and the practice of its implementation, as a result of which:

- tendencies in federal regulation and impact on the competence of constituent units of the Russian Federation over the past 20 years are shown and substantiated;
- the main controversial aspects of the constitutional and sectoral legislative regulation of the competence of the constituent units of the Russian Federation have been identified;
- the contradictions of constitutional and legal practice in the area under study are shown;
- based on a comprehensive analysis of all legislation of 30 constituent units of the Russian Federation, a scientifically based assessment of autonomy of the constituent units of the Russian Federation in all areas of regional legislative regulation was made;

²⁰ In particular, a comparison of the list of regional powers in Federal Law No. 184-FZ (in force) and Federal Law No. 414-FZ, as well as a comparison of the practice of agreements on the transfer of powers in the 2000s. with modern practice of these agreements.

²¹ For example, calculating the degree of independence of sectoral legislation of the constituent units of the Russian Federation based on the share of standard (copying federal legislation) regional laws in relevant areas (see paragraph 2 of Chapter 2).

- the features of the development of the Russian model of competence of the constituent units of the Russian Federation relative to the foreign practice of federal construction are identified;

- the incompleteness of regulation of regional emergency powers is shown and solutions are proposed;

- “special” powers of individual constituent units of the Russian Federation, enshrined in federal legislation and agreements on the transfer of powers, are identified.

Thus, a more complete picture is given of the real relationship between the competence of the Russian Federation and the constituent units of the Russian Federation, the most important directions of modern development of the competence of the constituent units of the Russian Federation are presented, it is shown that, despite numerous constitutional and legal problems and the tendency towards centralization of the Federation, the constituent units of the Federation have effective competence opportunities to independently resolve many issues in the life of their regions.

Points submitted for defense:

1. Based on a generalization of scientific positions, the author’s definition of the competence of the constituent units of the Russian Federation is formulated as a system of powers of bodies of the constituent units of the Russian Federation, exercised within the framework of the subjects of competence and functions of their bodies assigned to the constituent units of the Russian Federation, as well as through the forms and methods of exercising powers established by law and other legal acts.

This definition emphasizes the idea of competence as a system of powers and other elements (subjects, functions, forms and methods), each of which has its place, and without understanding their relationship it is impossible to determine the real competence of the constituent units of the Russian Federation. For example, the form of exercise of the power is the method of its execution and (or) the act that serves as the final stage of its implementation, and the method is a set of sequential actions that must be taken to exercise the power.

2. Additional argumentation has been developed in support of the fact that the Constitution of the Russian Federation establishes an overly broad and incomplete

mechanism for delimiting subjects of jurisdiction and powers, allowing the federal legislator, without amendments to the Constitution of the Russian Federation, to classify any issue as subjects of federal or joint jurisdiction, while narrowing subjects of regional jurisdiction, and, therefore, independently determine the scope of regional powers.

Law on amendment to the Constitution of the Russian Federation of 2020 left this mechanism unchanged. Based on an analysis of the federal legislation in force at that time, it was established that the seven new subjects of jurisdiction enshrined in this Law were aimed not at vesting the federal or regional level of government with new powers, but at constituting those changes in the division of competence between the Federation and its subjects that were previously developed by the federal legislator.

It seems necessary to supplement constitutional mechanism for delimiting jurisdiction and powers, namely: to consolidate in the Constitution of the Russian Federation a list of the constituent units of the Russian Federation's own jurisdiction, to clarify the subjects of federal and joint jurisdiction, and to introduce into constitutional and legal practice the principles of delimitation of powers, in particular the principles of subsidiarity, framework federal regulation on subjects of joint jurisdiction, favorable legal regime.

3. A generalized analysis of the positions of the Constitutional Court of the Russian Federation on issues of the competence of the constituent units of the Russian Federation allows us to consider the Constitutional Court of the Russian Federation as a special and most important element of regulatory influence on the powers of the constituent units of the Russian Federation, as well as identify the most significant of them, which had a system-forming impact on the regulation of the competence of the constituent units of the Russian Federation. For example, the recognition of federal law as a method to capture regional powers made it possible to apply it in such a way that it became dominant in determining regional powers. The recognition of the right of constituent units of the Russian Federation to "advanced" legal regulation and some other positions are highlighted as the most significant legal positions of the

Constitutional Court of the Russian Federation in the general system of formation and implementation of the competence of constituent units of the Russian Federation.

4. It is substantiated that in modern constitutional and legal practice the following main methods are used to determine the attribution of specific powers to one or another level of power: consolidation of powers as “own” powers in a federal or regional law, transfer of federal powers for their implementation by the authorities of the constituent units of the Russian Federation to federal regulatory legal acts, as well as transfer of powers by concluding an agreement.

Based on the above methods, the following groups of powers within the competence of the constituent units of the Russian Federation, are highlighted:

- regional powers provided for by federal laws;
- regional powers provided for by the laws of the constituent units of the Russian Federation;
- federal powers transferred to the constituent units of the Russian Federation on the basis of federal legal acts;
- federal powers transferred to the constituent units of the Russian Federation on the basis of agreements;
- regional powers transferred to federal bodies on the basis of agreements.

At the same time, it has been proven that there is no essential difference between the consolidation (transfer) of powers depending on its belonging to subjects of federal, joint or regional jurisdiction.

5. The overwhelming majority of regional powers are captured in federal law. This is confirmed both by the increase in the number of these powers, enshrined in Federal Laws No. 184-FZ and No. 414-FZ (from 41 to 173 over 20 years), and by the expansion of federal legislative regulation in almost all areas of public relations.

At the same time, the increase in regional powers enshrined in federal laws does not indicate an expansion of the competence of the constituent entities of the Russian Federation. On the contrary, this confirms the strengthening of the centralized approach to resolving the issue of the limits of independence of the constituent entities of the Russian Federation. In addition, the use of federal law as the main way to consolidate

regional powers narrows the methods of delimitation of powers provided for by the Constitution of the Russian Federation.

Simultaneously, in Art. 44 of Federal Law No. 414-FZ, which establishes a list of regional powers on subjects of joint jurisdiction, a number of significant and diverse gaps, inaccuracies and conflicts with sectoral legislation have been identified and presented in the work.

At the same time, the establishment of regional powers in the laws of the constituent units of the Russian Federation is rarely carried out, which is due to the limited range of subjects under the exclusive jurisdiction of the constituent units of the Russian Federation and their narrow nature (issues of holidays, awards, honorary titles, etc.). The right of the constituent units of the Russian Federation to carry out “advanced” regulation on subjects of joint jurisdiction and to create new powers of their own for regional bodies is also used to an increasingly limited extent. The main reason for this is, first of all, the above-mentioned expansion of federal legislative consolidation of relevant powers in various areas (in recent years - youth policy, beekeeping, etc.).

6. Federal powers transferred to the constituent units of the Federation by federal law differ from regional powers enshrined in federal law only in additional ways of control by federal bodies over their implementation. The procedures for transferring and establishing powers and the procedure for their temporary or final withdrawal are almost identical. In this regard, in the context of the modern mechanism for delimiting jurisdiction and powers, the federal powers transferred to the constituent units of the Federation by federal law should be characterized as “specially controlled” powers.

It seems that it is precisely thanks to this characteristic that the practice of transferring federal powers by federal laws has received such active development. In certain areas (for example, forestry and hunting), the bulk of the state’s regulatory influence falls precisely on federal powers transferred to the bodies of the constituent units of the Russian Federation in this way.

7. The institution of agreement as a way of transferring powers is rarely used. A developed and varied practice of transferring federal powers to constituent units of

the Russian Federation on the basis of agreements exists only in the Republic of Crimea, the cities of Sevastopol and Moscow, as well as the Moscow region. In other constituent units of the Russian Federation, this practice is either absent or has not received a significant development. This suggests that the use of agreements to transfer federal powers is caused by situational political circumstances, and not by the desire for a comprehensive solution to the problem of redistribution of competence.

In the case of the transfer of regional powers to federal bodies, such a method as an agreement is used only for two purposes - to exclude duplication of the functions of the Ministry of the Russian Federation for Civil Defense, Emergency Situations and Disaster Relief by regions and to assign to the Ministry of Internal Affairs of the Russian Federation (hereinafter referred to as the MVD) those administrative offenses established by the regional legislator that the regions themselves do not have the ability to administer. The last goal is due to the fact that the regional legislator is deprived of the right to independently assign to the police the powers to administer regional administrative offenses. At the same time, the federal legislator did not provide for the mandatory conclusion of an agreement between the MVD and regional authorities on the transfer of the above powers. This led to the low dynamics of concluding agreements and, due to the lack of a similar system of bodies with relevant rights at the regional level of government, to the actual non-application of a significant part of the regional legislation on administrative offenses.

8. The dynamics of changes in sectoral federal laws over the past 20 years shows that in each area of legal regulation there are narrow sectoral tendencies that are associated with its characteristics. For example, in the social sphere, regional powers were reduced or placed under federal control, but regions were additionally given powers to support certain categories of persons.

In addition to narrow industry tendencies, based on the generalization of federal legislative changes into regional powers, tendencies were identified that are simultaneously characteristic of several industries. Thus, their own regional powers were actively transferred to the category of federal powers transferred to the constituent units of the Russian Federation, which entailed the establishment of numerous

instruments of federal control over their implementation. At the same time, the delegated powers established in the agreements on the transfer of powers were institutionalized in federal laws. In the areas of defense, security and public order a significant redistribution of powers was carried out in favor of the federal center, for example, the reform of the internal affairs bodies, which turned the police into an exclusively federal structure.

The main source of new powers of the constituent units of the Russian Federation are those federal laws that expand legal regulation in the relevant area, while simultaneously increasing federal powers in the same area, and therefore such cases cannot be called examples of real decentralization. On the contrary, the appearance of sectoral regional powers in federal legislation often means the establishment of federal control over their implementation, since previously federal legislation did not regulate regional powers and left the corresponding area of legal regulation to the discretion of the constituent units of the Russian Federation. Cases of real and significant decentralization are rare and are usually expressed not in the establishment of their own regional powers, but in the transfer of federal powers to the constituent units of the Russian Federation, which implies the presence of additional instruments of federal control, and therefore controlled decentralization (for example, forestry).

The current stage of development of regional competence is also characterized by the consolidation in most sectoral federal laws of closed and exhaustive lists of regional powers, which means that the constituent units of the Russian Federation do not have the possibility to create new powers proactively. Also, many powers that were previously full-fledged regional powers have turned into powers to participate in the implementation of federal powers (especially, in the field of environmental protection). In addition, it is necessary to note the introduction of numerous requirements that regional bodies must meet and approvals that they must undergo, which can be considered both as a sign of centralization and as an element of cooperative federalism.

9. As a result of the analysis of the constitutional texts of 41 decentralized states (27 federations and 14 unitary decentralized states, which enshrine norms on the delimitation of jurisdiction and powers in their constitutions), as well as the law-making

and judicial practice of their implementation, a general model of delimitation of competence was identified that determine the degree of centralization and decentralization of a particular sphere of legal regulation. Based on the comparison of this model with the competence of the constituent units of the Russian Federation, a conclusion was made, based on a quantitative comparative analysis of the subjects of jurisdiction and powers, that Russia is a centralized federation in the spheres of economics, education and culture. In other areas, the Russian Federation, in general, is developing within the framework of the above general model.

10. Based on the author's classification of regional laws into typical (copying federal legislation), mixed (adopted in pursuance of the general provisions of federal legislation) and unique (adopted in the absence of federal regulation of the relevant area), a large array of regional legislation was analyzed in order to identify the degree of autonomy of the constituent units of the Russian Federation in various fields.

Completely independent groups of regional legislation, in which the legislator of a constituent unit of the Russian Federation establishes rules of behavior without the intervention and active participation of the federal legislator, are issues of holidays, awards, symbols, administrative-territorial structure, as well as the organization and activities of their own government bodies (including the creation of constitutional (statutory) councils). The Federation and its constituent units regulate in a cooperative manner the social sphere and most areas of management and economics. Regional legislation on land, law and order, justice, labor, elections and local self-government has significantly less unique regulation and more of the duplication of federal legislation. In the financial and budgetary sphere, the constituent units of the Russian Federation exercise mainly law enforcement powers and rarely establish their own regional rules.

11. Analysis of the regulation of regional emergency regimes, which was radically changed in connection with the pandemic of a new coronavirus infection, and the practice of applying regional emergency regimes showed a number of shortcomings of this regulation, in particular the absence of a legally established list of possible restrictions, requirements for establishing the duration of the emergency regime, as well as control by regional legislative bodies, which, accordingly, influenced the

implementation of the powers of the constituent units of the Russian Federation on these issues. In order to solve these problems, the author proposes a test of the proportionality of emergency restrictions that are introduced by the constituent units of the Russian Federation, in order to verify their validity, limitation, competence, legality, adequacy, alternativeness and proportionality.

12. The scientific understanding about asymmetry of the Russian Federation is expanded and clarified. The asymmetry is currently manifested not only (and not so much) in the special status of republics, generally recognized in science, but also in the assignment to cities of federal significance, as well as to the Republic of Crimea, special powers that do not exist in other constituent units of the Russian Federation. The reasons for assigning special powers to these constituent units of the Russian Federation are seen both in the features of their economic and infrastructural development (in the case of cities of federal significance), and in the historical aspects of their accession into Russia (in the case of the Republic of Crimea and the city of Sevastopol)..

At the same time, in addition to special powers of all cities of federal significance, and the powers related to the status of the capital, the city of Moscow is also assigned with other groups of special powers, namely: those related to changing the boundaries of the city of Moscow, related to the conduct of legal experiments in the city of Moscow (for example, remote electronic voting), and other various powers. Among the latter, the powers for renovation are prominent. It is also noted on the peculiarity of the Republic of Crimea and the city of Sevastopol that are given special powers not on the basis of federal laws, but on the basis of agreements concluded with federal executive authorities.

Theoretical significance of the study

The results of the dissertation research will contribute to the development of scientific knowledge about the constitutional and legal regulation of the competence of the constituent units of the Russian Federation, and can also be used in the process of teaching legal and political science academic disciplines affecting issues of federal construction. Also, the provisions and conclusions presented in the study may be of interest and a methodological basis for further research in the field of constitutional law.

Practical significance of the study

The proposals and conclusions outlined in the work can be used in law-making activities at the federal and regional levels, as legal argumentation in the framework of the constitutional judicial process.

Degree of reliability and approbation of research results

The dissertation was completed at the School of Public Law of the National Research University “Higher School of Economics” (HSE University). Selected results of the dissertation research were presented at the following scientific conferences:

1) VI International Scientific and Practical Conference «Federalism in Contemporary Public Law», held at Lomonosov Moscow State University, MGIMO University, Kutafin Moscow State Law University (MSAL), St. Petersburg University and Omsk State University, Moscow, in October 2019. The topic of the report is “The powers of the constituent units of the Russian Federation in the field of legislation on administrative offenses: problems through the prism of the Concept of the new Code of Administrative Offenses of the Russian Federation”.

2) All-Russian scientific and practical conference of masters, graduate students and applicants “Current problems of modern law in scientific research of young legal scholars”, held at the The All-Russian State University of Justice (RLA of the Ministry of Justice of Russia), Moscow, in May 2022. The topic of the report is “Division of subjects of jurisdiction and powers between the center, regions and municipalities in the constitutions of federal and decentralized countries”.

3) International scientific and practical conference “Federal State: historical and legal experience and modern practices. To the 100th anniversary of the formation of the Soviet Union” on the basis of Omsk State University, Omsk, in October 2022. The topic of the report is “Division of subjects of jurisdiction and powers between the center, regions and municipalities in the constitutions of federal and decentralized countries”.

4) International scientific and practical conference “Administrative law and procedure in the context of global challenges” at the National Research University “Higher School of Economics”, Moscow, in October 2022. The topic of the report is “Federal control methods over the implementation of regional powers.”

5) V International Scientific Conference “Federalism in Modern Public Law”, at the basis of Lomonosov Moscow State University and MGIMO, Moscow, in November 2022. The topic of the report is “Competence of the “special” regions of the Russian Federation: the asymmetry is obvious.”

6) VI International Scientific Conference “Federalism in Modern Public Law”, at the basis of Lomonosov Moscow State University, MGIMO University, St. Petersburg University and Kutafin Moscow State Law University (MSAL), Moscow, in November 2023. The topic of the report is “The evolution of competence of the constituent units of the Russian Federation in federal legislation.”

MAIN CONTENT OF THE STUDY

The dissertation consists of an introduction, two chapters, including nine paragraphs, a conclusion, a list of abbreviations and alphabetic acronyms, and a list of references.

The introduction make foundation the relevance of the study. The degree of development of the research topic is also examined, including a brief analysis and classification of authors with works related to the research topic (theoretical basis of the research). The normative basis of the study is described. The subject and object of the study are justified. The goal of the research is established, and on its basis – the objectives of the research. An explanation of the scientific research methods used in the work is presented. The scientific novelty of the research is established. Points submitted for defense are stated.

Theoretical and practical significance of the study is explained, and the approbation of research results is outlined.

Chapter 1 “Constitutional and legal basics of the competence of the constituent units of the Russian Federation and the mechanism for delimiting constituent units of jurisdiction and powers between the Russian Federation and its constituent units in the practice of federal sectoral regulation” reveals the general theoretical, basic aspects of regulation, as well as tendencies in the development

and implementation of the mechanism for delimiting subjects of competence and powers between the Russian Federation and its constituent units as the main element of the constitutional and legal regulation of the competence of the constituent units of the Russian Federation.

Paragraph 1 of Chapter 1 “The definition, nature and essence of the competence of the constituent units of the Russian Federation” reveals the existing points of view on the concept of “competence”.

The basic view of competence defines it as a set of powers. Other approaches enrich this concept with additional aspects. The author offers his understanding of the competence of the constituent units of the Russian Federation and conducts analysis of each element of this definition and their importance for a deep understanding of the competence of the constituent units of the Russian Federation. In addition, the author reveals the connection between the competence of the constituent units of the Russian Federation and other key concepts, such as their status, jurisdiction and sovereignty.

Paragraph 2 of Chapter 1 “Constitutional basis for the delimitation of jurisdiction and powers between the Russian Federation and the constituent units of the Russian Federation” examines the role of constitutional provisions on the competence of the constituent units of the Russian Federation. In particular, it was noted that the regional legislator does not have the right to establish legal restrictions, broad “rubber” formulations of the subjects of jurisdiction in Articles 71 and 72 of the Constitution of the Russian Federation, contradictions between these subjects, etc. In conditions when the subjects of jurisdiction of the Russian Federation and the subjects of joint jurisdiction listed in the Constitution of the Russian Federation are very broadly formulated and any issue can be brought under them, the existence of “own” regional powers is very conditional.

One of the main ways to resolve many of the problems mentioned is the constitutional and legal consolidation of the principles of delimitation of competence. Motivated analysis of scientific positions regarding the above principles is presented. This paragraph also presents a complete analysis of the positions of the Constitutional Court of the Russian Federation on issues of regional competence, and conclusion is

drawn about the role of this body as the most important element (institution) of regulatory influence on establishing the competence of the constituent units of the Russian Federation. Finally, amendments to the Constitution of the Russian Federation are examined for changes in the competence of the constituent units of the Russian Federation, and the constitutionalization of already existing changes by amendments is noted.

In paragraph 3 of Chapter 1 “Modern subconstitutional mechanism for the delimitation of powers between the Russian Federation and the constituent units of the Russian Federation” groups of regional powers are examined in detail depending on the method of their consolidation (transfer).

1) The powers of the constituent units of the Russian Federation, provided for by federal laws, are the most numerous group of powers. A comparison of the lists of regional powers in the repealed Federal Law No. 184-FZ and in the new Federal Law No. 414-FZ is presented. The absence of real changes due to the change in the list was noted.

2) The powers of the constituent units of the Russian Federation, provided for by the laws of the constituent units of the Russian Federation. The insignificance of this group is noted and examples are presented.

3) The powers of the Russian Federation transferred to the bodies of the constituent units of the Russian Federation on the basis of federal legal acts. Such methods of transferring federal powers as federal law and regulatory legal acts of the President and the Government of the Russian Federation are noted. A quantitative analysis of the powers transferred in such ways is presented, and the features inherent in such methods are indicated.

4) The powers of the Russian Federation transferred to the bodies of the constituent units of the Russian Federation on the basis of agreements. An analysis of the participants in these agreements was carried out, both from federal bodies and constituent units of the Russian Federation (including a detailed analysis of the most frequent participants). A number of standard agreements, as well as special agreements with special constituent units of the Russian Federation, are noted (an analysis of

agreements concluded with the Republic of Crimea and the federal city of Sevastopol is presented in paragraph 4 of Chapter 2).

5) The powers of the constituent units of the Russian Federation transferred to federal bodies on the basis of agreements. Regional powers are transferred only in favor of the Ministry of Internal Affairs and the Ministry of Emergency Situations. Moreover, the Ministry of Emergency Situations has concluded standard agreements with all constituent units of the Russian Federation, and the Ministry of Internal Affairs, on the basis of agreements, exercises powers to administer regional administrative offenses.

In addition, the paragraph under consideration notes the existing problems of applying the above methods, including in the practice of concluding agreements on the transfer of powers, especially the transfer to the Ministry of Internal Affairs of powers to administer regional compositions on administrative offenses. In addition, identified problems existing in the legislative text are indicated. Thus, the list of powers of Federal Law No. 414-FZ cannot be called complete and reflects all the powers assigned to the constituent units of the Russian Federation in federal legislation.

Paragraph 4 of Chapter 1 “The change of volume of the competence of the constituent units of the Russian Federation in federal legislation” presents the main changes in the powers of the regions of the Russian Federation in 2003 – 2023 period in various branches of legislation. A number of tendencies and features of the legislative consolidation of the centralization of powers during this period are noted:

- gradual federal regulating the areas that he had not been previously governed;
- detailing the regional powers in federal legislation;
- expanding the regional powers to participate in the implementation of certain federal powers;
- establishing numerous requirements, reporting and approvals to exercise the regional powers;
- reclassifying “own” regional powers into the category of “transferred” ones with simultaneous tightening the control over their exercise.

Paragraph 5 of Chapter 1 “Delimitation of jurisdiction and powers between the center, regions and municipalities in the constitutions of federal and decentralized

states” presents the results of a studying those constitutions of the world (41 constitutional acts in total) that establish delimitating subjects of jurisdiction and powers. The objective of this study was to identify issues that constitutions refer to the exclusive jurisdiction of one or another level of government (central, regional and municipal), as well as those that are resolved jointly.

The paragraph presents an analysis on the division of competence between the center, regions and municipalities around the world in the areas of organization of power, foreign policy and defense, law and order and security, financial and economic policy, means of communication and energy, agriculture, natural resources and ecology, transport, other spheres of the economy, social and communal economic spheres, education, science, culture.

Based on this study, the position of competence of the regions of the Russian Federation in the world is presented, and based on a comparative analysis a conclusion about the centralized nature of the Russian Federation in the spheres of economics, education and culture is given.

Chapter 2 “Specific elements of the constitutional and legal regulation of the competence of the constituent units of the Russian Federation: tendencies and development prospects” is aimed at studying the development of other elements of the constitutional and legal regulation of the competence of the constituent units of the Russian Federation, except for the mechanism for delimiting the subjects of jurisdiction and powers between the Russian Federation and its constituent units.

Paragraph 1 of Chapter 2 “Institutions of federal influence on the exercise of powers by the constituent units of the Russian Federation” examines the practice of federal government bodies with functions of control (supervision) over the exercise of powers by regions of the Russian Federation (prosecutor’s office, justice authorities, the Accounts Chamber of the Russian Federation, the Ministry of Finance, authorized representatives of the President of the Russian Federation and others). Specific methods of influence and the role of each of these bodies in the general mechanism of federal influence on regional bodies are analyzed.

Also, institutions of federal influence that are not associated with specific federal authorities (sectoral state control (supervision), control of the implementation of delegated powers, assessment of the effectiveness of the activities of executive bodies of the regions of the Russian Federation, and others) are examined.

Paragraph 2 of Chapter 2 “Implementation of the competence of the constituent units of the Russian Federation in regional legislation” provides a comprehensive quantitative analysis of all current legislation of 30 constituent units of the Russian Federation. This legislation is divided into 27 groups of legislation – according to branches of law and spheres of public life.

Based on the author's classification of regional laws into typical, mixed and unique, conclusions based on the practice of regional legislating are presented about the real autonomy of the constituent units of the Russian Federation in various branches of law and spheres of public life.

In paragraph 3 of Chapter 2 “Emergency powers of the authorities of the constituent units of the Russian Federation in the context of the spread of a new coronavirus infection” the latest legal aspects of regional emergency powers in the context of countering coronavirus infection are examined in comparison with foreign federations. The previous regional practice of dealing with emergency situations is noted, the problems and shortcomings of regulating the emergency powers of the constituent units of the Russian Federation are explored, and ways to eliminate them are proposed, including the author's test for the proportionality of emergency restrictions imposed by regional authorities.

In paragraph 4 of Chapter 2 “Features of the development of the competence of special constituent units of the Russian Federation” the peculiarity of the asymmetry of the Russian Federation at the present stage is noted; the reasons for this asymmetry are seen in reasons of an infrastructural nature. The special regional powers that the federal legislator grants to cities of federal significance and separately to the city of Moscow are analyzed. The cases of the Republic of Crimea and the city of Sevastopol, which were granted special powers not by the federal legislator, but by the federal executive

authorities - on the basis of an agreement on the transfer of powers, are analyzed separately.

In conclusion, the results of the dissertation research are summed up.

PUBLICATIONS ON THE TOPIC OF THE RESEARCH

Publications in journals included into the HSE University list (list B and D):

1) *Merkulenko A.A.* Emergency powers of the authorities of the constituent units of the federation (states) in Russia, the USA and Brazil amid the spread of a new coronavirus infection // *Comparative Constitutional Review*. 2021. No. 3 (142). P. 86 – 107. (In Russ.).

2) *Chaplinskiy A.V., Merkulenko A.A.* The sub-constitutional model of distribution of competence between the Russian Federation and its constituent units: centralization vs autonomy of regions // *Journal of Russian Law*. 2022. No. 26(1). P. 142—157. (In Russ.).

3) *Merkulenko, A.A.* Limits of legislative powers of the constituent units of the Russian Federation and its exercise // *Proceedings of the Institute of State and Law of the RAS*. Vol. 17. No. 6. P. 28–60. (In Russ.).

4) *Merkulenko A. A.* Becoming of the competence of the regions of the Russian Federation: from soviet times to the adoption of the constitution of the Russian Federation of 1993 // *Proceedings of Voronezh State University. Series: Law*. 2022. No. 2 (49). P. 24–36.

5) *Merkulenko A.A.* Division of Subjects of Jurisdiction and Powers between the Center, Regions and Municipalities in Constitutions of Federal and Decentralized Countries // *Perm University Herald. Juridical Sciences*. 2023. Issue 1(59). P. 73–96. (In Russ.).