Confederation as a Form of Government Structure and its Features: Theoretical and Historical Analysis

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Abstract: This article is devoted to the history of confederative state formation. The historical analysis of the essence of state system forms, state and legal relations, arising during formation and development of confederation in its historic manifestations and opportunities in modern conditions, allows the author to think that today the confederation does not rule out common legislative, executive and judicial bodies, constitution, single citizenship, single monetary system, single army, budget and customs system. The author comes to the original conclusion that the sovereignty of the state, the confederation member, differs from the one of the state, being the subject of international organization. Besides according to the author, the significant difference of confederation from other forms of the state is that it is created for reaching certain limited objectives within the limits of specific historic period.

Key words: Confederation • Forms of state system • Types of state associations • Union of sovereign states

INTRODUCTION

Issues of development of the state is closely related to the general question of the form of the state and in particular the question of the form of government structure. In connection with this question of studying the features of forms of government structure is extremely important.

In law science the form of government structure is considered as a way of territorial organization of the state or states forming the union. In other words, the form of government is defined as the way the relationship of the state and its component parts (areas), characterizing the territorial organization of state power.

Historically, the three "classical" form of government structure had been formed: the unitary state, the federal state (federation) and the confederation. In modern law science question of confederation is debatable. The main question is this: is the confederation the form of government structure, or is a form of association of the commonwealth, without state elements? Confederation is a fairly rare form of government structure. Percentage of confederations is quite low in today’s world and in the historical context. We should note that the confederation is understudied as an independent institution of the modern theory of state and law.

Defining the confederation as a form of government structure, we believe that such questions as the preservation of the sovereignty of States, which are members of the confederation; questions of the legal basis of creating the confederation; issues relating to the activities of the confederation bodies; issues of creating a single economic space; introduction of a common currency and a common citizenship institute as well as issues of integration require special attention.

Confederation is created on a contractual basis for the integration of independent states for a specific purpose. In the modern world, integration is becoming stable patterns of development of interstate relations, passing to a new level, which requires its theoretical
understanding. Functioning of the European Union (EU), the creation of the Commonwealth of Independent States (CIS) in the post-Union area, union of Russia and Belarus, the establishment of the Customs Union (CU) encouraged to apply to the theoretical study of the legal problems of integration within the confederation. We should note that at the present time on the political map of the world, there are 193 independent states.

The Main Part: This research is the initiative. A great contribution to the development of twinning states and confederations made by scientists of pre-revolutionary Russia: V.M. Hessen, H. Jelinek, F. Kistiakowsky, F.F. Kokoshkin, N.M. Korkunov, J. Majewski, V. Khvostov, etc.

To problem of state form and form of government structure was dedicated many works of Soviet and modern Russian legal scholars, among whom can be identified M.I. Baytin, A.B. Vengerov, L.V. Grechko, B.M. Lazarev, V.V. Lazarev, S.V. Lipen, M.N. Marchenko, V.C. Nersesyants, Yu. Tikhomirov, B.N. Topornin, A.F. Cherdantsev, V.E. Chirkin, I.L. Bachilo, L.A. Morozov, V.A. Chetverin, etc. However, in most cases, their work touches upon the theme of the confederation when referring to matters of state forms, global problems of mankind, the development of international organizations. Comprehensive studies on the legal nature of the confederations in the light of the general theory of law are absent.

We note that in law science the interest to new stages in the development of forms of state-territorial system in European countries has grown [1]. The question about the future of the Union is outstanding. In this case there are two opposing hypotheses - decentralization and separation of the EU countries in the further integration of the cultural and economic space. The question of whether European Union can be attributed to the Confederation of states is relevant [2].

The question of the future of relations between Russia and Belarus is also relevant. There are three main approaches: the formation of a single state, the existence of two sovereign states and the confederation of Russia and Belarus. Supporters of the third approach, recognizing the difficulty of creating a single state, believe that the most optimal form of cooperation between the countries and the peoples of Russia and Belarus could be a confederation, an example of which is the European Community. Some political scientists even suggest a confederation on the basis of Russia. Such a view, in particular, was made by A.D. Oreshkin. [3] Perspectives of "Russian confederation" considered by political scientist became an occasion for discussion [4].

The question of the classification of form of the Commonwealth of Independent States (CIS), established in the post-Soviet area after crush of USSR and questions of the Customs Union are particularly relevant. It also raises the question of whether the CIS is Confederation or other form of community. We consider it necessary to answer this question in the present thesis work.

Questions of forms of government structure have been disclosed in the works of modern Kazakh scientists, such as E.B. Abdurasulova, M.T. Baymakhanova, S.Z. Zimanova, S.N. Sabikenova, G.S. Sapargalieva, S.S. Sarteva, M.A. Sarsembayeva, A.S. Ibrayeva, E.E.Duysenova, V.A. Malinowski, A. Kopabaeva and other scientists.

Object of research - the state-legal relations arising in the process of formation and development of a confederated union of states in its historical aspects and opportunities in today's conditions.

The purpose and objectives. The purpose of this research is a comprehensive analysis of the confederation as a form of government structure in the theoretical, retrospective and prospective directions.

To realize this goal are to:
- Give a legal description of unions of states;
- Conduct a scientific analysis of types of unions of states;
- Disclose the theoretical principles of the confederation as a form of government structure;
- Highlight the features and differences of confederation from other forms uniting of states;
- Conduct an analysis of the confederations development in historical terms;
- Disclose the scientific views of thinkers of past and present regarding the confederation and its future development;
- Reveal the peculiarities of modern confederations; identify problems of the confederation within in the CIS;
- Identify prospects of the confederation in the future.

Features of the confederations as forms of government structure.

In order to cover the topic of research is necessary to apply scientific methods, such as the method of historical analysis, the method of comparative legal analysis. We believe that the application of these methods will
confirm the validity of a scientific hypothesis advanced by us in the form on the belief that the confederation is a particular form of government structure.

Let's turn to history. There are many historical examples of confederated structures as a form of a union of states, preserving the sovereignty almost full. We should note that they were formed at different stages of the history development, but after a brief existence they completely destructed, or assumed a federal form of government structure.

In the scientific literature there are the following confederations:
- Swiss Confederation in 1291-1798 and 1815-1848;
- Republic of the United Provinces of the Netherlands in 1579-1795;
- The German Confederation in 1815-1866;
- United States of America in 1781-1877;
- Confederates States of America in 1861-1865.

In the ancient world a classic example of a confederation is the Achaean Union. [5] Morgarten, or even 1648 - a year of international recognition [9, p. 102].

We should note the position of the Russian scientist P. Popov. In peer-reviewed study on the confederation, he believes that "the Swiss Confederation was to merge 22 independent, loosely coupled entities (cantons). Act recorded legal nature of Switzerland, was the agreement in 1815, according to which the cantons had their own coin, their nationality, concluded trade agreements with foreign countries on their own behalf and also determined the forms of the internal management.

In order to ensure the effectiveness of the federal government, Council members gave each other an oath to protect and safeguard the interests of the United Union Vale, Lehman, Aargau, Bellinzona, Lugano, Retsiya, Sargans, Thurgau and St. Gallen), was introduced a constitution (compiled by the model of the French Constitution in 1795) [11, p. 130].

Furthermore, the Swiss Confederation has developed as follows: "In the spring of 1798, French troops entered Switzerland, March 5 they occupied Bern. Confederation of 13 cantons was destructed. April 12 in Aargau with the support of France was proclaimed Helvetic Republic (part of it, along with the previous 13 cantons entered Vale, Lehman, Aargau, Bellinzona, Lugano, Retsiya, Sargans, Thurgau and St. Gallen), was introduced a constitution (compiled by the model of the French Constitution in 1795) [11, p. 130].

Switzerland became a centralized unitary state. Simultaneously in Switzerland the struggle between Federalists and Unitarians took place. In February 1802 was adopted a new, so-called Malmaison constitution.

Referring to the history of Ancient Rome is possible, for example, to meet instead of the term "Roman allies" the term "Roman Federates." Roman allies for some time remained sovereign in the city-state system of the Ancient World, having installed its sovereignty in relation to Rome. In other words, some time Rome represented the confederation. But with spread of the Latin and Italian citizenship the confederation has evolved into the federation and with leadership of Romans, quickly became an empire [8, p. 508].

In the middle Ages, a classic example of the confederation was the Swiss Confederation. Most of the authors based on the fact that in Switzerland there was a confederation with the emergence of a confederated union on the basis of the contract in 1291 three cantons - Uri, Schwyz and Unterwalden. Some authors consider formation of the confederation year of 1315 (the year of the victory of the cantons over Austrian troops in Morgarten), or even 1648 - a year of international recognition [9, p. 102].

The latest works of Russian scientists as examples of recognition [9, p. 102].

Also, as a confederation can be given an example of Union of Greek Republics under the auspices of the Amphictyony Council. The members of this Union preserved the character of independent and sovereign states, had an equal voice in the federal council. The powers of the Council were to: raise and resolve any issues which its members considered necessary for the good of the whole of Greece; to declare and wage war; impose a fine on the instigator, use all the available force of the confederation against disobedient and the taking of new members. Amphictyony Council was established to protect the religion and untold wealth owned the Temple of Apollo. Temple of Apollo have jurisdiction on all disputed matters between the local people and arrived there for the advice of the oracle. In order to ensure the effectiveness of the federal government, Council members gave each other an oath to protect and safeguard the interests of the United Union policies together, punish oath offenders and sacrilegious persons, desecrated holy temple [7, p. 494].

Thus, the confederations in antiquity were unions of small states and these confederations usually did not exist long. Policies contained in them were poleis (city-state), but had an overall federal council, i.e. was the confederation in its purest form.
(from the name of Malmaison, where negotiations of Unitarian with Federalists took place), which gave the cantons limited self-government [12, p. 102].

February 19, 1803, Napoleon I issued a "Certificate of meditation" which restored (with some modifications) government structure of Switzerland existed before 1798. In addition to the previous 13 cantons the Union included Grisons, Aargau, Thurgau, St. Galdlen, Vaud, Ticino "[12, p. 18].

Thus, we can see that the process of formation and development of the confederation was not homogeneous. An example of the Swiss Union is very revealing: confederation proved enduring because it is constantly evolving in the direction of the federation. Federation was formed long before it was legally enshrined by the Constitution. The evolution continues. Today, as the researchers note, Switzerland, in fact - a unitary state with a highly developed self-government. I.e. Swiss Union always had a tendency towards convergence, whereby confederation did not fall apart [12, p. 18].

The noteworthy is the fact that Swiss Constitution begins with the words: "We, people of cantons..." that provides a basis to speak of peculiar decentralized communal and cantonal loyalty, organically supplemented by the entire confederation loyalty as well [13, p. 25].

Referring to the experience of the United States. The existing Confederation of the United States of America before conversion of it into a federal state was the subject of many studies, both domestic and foreign researchers [14, p. 108].

Confederation of U.S. was not a government in the proper sense of the word. It was not a federal state, but a union of independent states. Therefore, the Articles of Confederation were some kind of international agreement and not the fundamental law of a single state. Although confederated union of sovereign American states was not a state, but within it laid some of the economic, political and psychological foundations of the American reality, the legal basis of which was later the Constitution in 1787.

Legal implementation of the federal state in the U.S.A. unanimously associated with the Constitution in 1787. However, with respect to the federal structure of state in the United States before the Civil War in 1861-1865 there are differences in the scientific literature. Some authors argue that the U.S.A. continued to be the Confederation [15-16].

Initially, the U.S.A. was a confederation. However, the U.S. Constitution was based on the idea of the transformation of the United States from the confederation into a federal state. This idea is reflected in the U.S. Senate, certain principles in the Congress were based on it and presidential power was based on it. USA took the path of evolution from the confederation into the federation. Civil War in U.S.A. between the North "Federalists" and the South "Confederates" has led to the victory of the Federalists. As a result, the U.S.A. became a federation. USA is itself an example of sequence evolution of the confederation into a federation. [17, p.5]

The political movement of the American elite, which was able to initiate and build a strong nation-wide state, is called the federalist. The representatives of this movement developed the U.S. Constitution in 1787.

As you know, the U.S.A. confederation was formed by British colonies.

Processes aimed at creating a confederation, but without separation from the British Empire occurred in other colonies of Great Britain. Canada and Australia went to federation through confederation [18, p. 73].

Historical analysis of the origin and development of the confederated formations and experience of such history suggests that this form is largely a transition either to the complete disintegration of the confederated union (Austria-Hungary, Syria, Egypt, Senegal and the Gambia, etc.), or to a federal form of government structure (USA, Germany, Switzerland). In fact, combining the features of both international law and the state organization, the confederated union under the influence of one or another reason loses the balance needed to preserve it.

Economic and ethnic factors have crucial meaning in the origin and development of confederation. Suggestion of R.V. Popov is efficient: "... the only condition that provides transformation of confederation into a federation is the presence of the economic basis of the integration of economic systems of its subjects into a single economic space" [10, p. 56].

Only such factors could bring down a wave of centrifugal tendencies and integrate confederation together.

Despite a long history of existence, the confederation is not outdated, confederated unions are possible and are being created at the present stage. As Yu.A.Tikhomirov rightly pointed, the confederation is the starting point for the classification of the forms of association of sovereign states [19, p. 16].

That is why, in our view, the doctrine has not developed a common position on the legal nature of the characteristic features of the confederation. We should note that in the legal literature, there are different opinions regarding the confederation. Thus, according to some
authors, the confederation is not a form of government structure, because the issue is not one thing, but the several sovereign states and union (associations) of states created by international treaty to achieve specific goals [20, p. 108].

In some works it is emphasized that the confederation - is not a state, but the form the international association of states [21, p. 12].

In the 90 years of the twentieth century in the Russian legal doctrine the international legal character of the confederation is more strongly emphasized. According to N.A. Ushakov, the confederation of states - a special association (union) of states retaining their quality of sovereign entities, endowed with certain supranational qualities, allowing it to act as a subject of international legal relations in this supranational quality [22, p. 14].

According to supporters of the international legal concept, the confederation can be defined as a union of states, based on an international agreement between two or more states. This position is shared by B.M. Lazarev. Just stand in solidarity with him M. Pröll and J. Bulo determining the confederation as long set confederation of states, whose members put such goals as security and peace, but also limit the power of domestic executive and representative bodies [23, p. 72].

According to M. Fosira, such transformation differs the confederation from all other known organized forms and makes it a party to international relations [24, p. 63].

B.E. Lazarev believes that the confederation - it's just a union of states in which there is no new, larger state: the relationship of the states in the confederation governed by international law [23, p. 72].

A.V. Lafitsky claims that the confederations as a form of a union of states, preserving the sovereignty in full, now practically do not exist anywhere. Referring to the historical experience of the confederations, it indicates that this form is a transition either to a complete disintegration of the union, or to form a federal unit. In fact, combining the features of both international law and state legal organization, it loses balance needed to preserve it under the influence of different reasons [25, p. 15].

The concept of confederation, which has developed in Western science gives F. Ermacora in the article "The Confederation and other Unions of states". This article was written for the 12-volume Encyclopedia of international law. F Ermacora notes that since XIX century as confederations were called formations, as designated by states to achieve common goals. Under extreme uncertainty and vagueness of the concept of confederation important thing is that it is "an association of two or more sovereign states in which sovereignty of members is preserved" [26].

F. Ermacora refers to the confederation all kinds of associations: the union, alliances, unions, etc. - all the things that now united by the term "international organization". Those that contain features of supranational approach to a federal state. As can be seen, views on this form of state association, despite the fact that it is historically almost the very first, are separated quite strongly.

We believe it necessary to identify the main features of the confederation, in accordance with which it can be attributed to a particular form of government. We believe a fair view of Kazakh scientist A.S. Ibrayeva, who notes the following signs of the confederation, allowing classifying the confederation to the form of government.

1 The confederation - is a temporary alliance of sovereign states formed to achieve specific objectives within a certain historical period. The goals may be different: both military and economic and political. That is, it is a union of sovereign states formed for certain purposes (military, etc.) - the U.S.A. in 1776-1787, CIS (Commonwealth of Independent States) at this time.

2 Sovereign states formed a confederation, are the subjects of an international communication, continue to have their own citizenship, systems of power, control and justice.

- The members of the confederation form executive bodies of the confederation.
- In the confederation citizenship of those states which are in a temporary alliance is retained.
- States could agree on a common monetary system on common customs rules, the interstate credit policy at the time of the Alliance. There is free entry and exit of citizens of the confederation without a visa [27, p. 189].

The main disadvantages of a confederation, not allowing it to refer to a form of government are considered such as the absence of a general legislative, executive and judicial organs of their constitution, common law system, a single citizenship, a single monetary system, a single army, a single budget, a common customs system, a unified tax system.

In this regard, one may ask: is it reasonable to consider as universal such traditionally allocated features of the confederation, as no general legislative, executive
CONCLUSIONS

- Confederation is an alliance, a form of association of states, expressing a set of states connected by confederate bonds. According to its legal features the confederation is different from entities such as the state, international organization and the federal state formation.
- Confederation is different from the sovereign state that it is made up of member states, which retain their quality of sovereign entities. This gives supranational confederation qualities, allowing it to act as subject of international legal relations in this supranational quality.
- Subjects of the confederation differ from the subjects included in the international organization. Thus, subjects that are part of an international organization, are always sovereign: they do not provide the organization the right to exercise sovereignty, but merely authorizes it to act on their behalf in a strictly defined area and within a limited range and to this end provide those powers which are deemed necessary.

In addition, the international organization is registered by an international agreement as an ordinary legal entity of public law and confederation, like the state, acquires its legal personality under international law by recognizing it as a subject of international public law by foreign states.

- Confederation is different from the federal government because it is created to achieve certain limited goals within a particular historical period.
- In the confederation, there are special bodies as are necessary to carry out the tasks as specifically stated in the contract acts. Permanent acting bodies of the confederation have no authority. Their acts are recommendations and are addressed, as a rule, not to the citizens but to the authorities of subjects of the confederation. Rules of act adopted by the confederation may become the norm binding on all member states of the confederation, only if the act was to be issued as law by each member confederation;
- In the confederation there are military. They belong to each of the states - members of the confederation, although formally are under the general command;
- Financial resources are derived from contributions of member states of the confederation. Sovereign states, which formed the confederation, are the subjects of
an international legal communication; continue to have their own citizenship, systems of power, control and justice.

- The legal basis of creation the confederation is confederate agreement which is to resolve the issues of creation, as a rule, of a new state, that is the primary subject of international law. The specifics of the Confederate Treaties (as constituent acts of confederal unions) are that they are among the sources of constitutional law, as one of the founding documents of the state, along with the Constitution. However confederate agreement has a dual nature, as being the source of constitutional law, this document can be used also as a source of international law.

- Despite its high status in the constitutional law of the party state confederate agreement can not be (and is not) the only legal basis for a unified state-legal space of confederated union. Thus, the legal basis of confederation in addition to confederate agreement also can be constitutional norms of states united in it.

REFERENCES