

A treaty as a factor of sustainable development of a cross-border region

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Abstract. Contractual regulations provide flexibility and contribute to building a consensus on the legal status of the cross-border regions. The format of the Commonwealth of Independent States involves an active use of contractual regulation. The paper focuses on the legal nature of the regulatory contract, which allows to use recommendatory norms agreed by all parties in the law-making process. The authors state that the legal consensus on the most controversial issues of interstate communication is achieved through a regulatory legal agreement.

Keywords: treaty, agreement, regulatory agreement, contractual regulation, law

1. Introduction

In the modern period, the role of contractual regulation increases significantly, and regulatory agreements are rapidly entering the arsenal of the most branches of law. This trend is caused by the expansion of dispositiveness at all stages of legal regulation, without which self-regulation of the transitional legal system is unthinkable. Along with normative regulations, regulatory agreements become the leading sources of transitional law. Thus, along with the traditional function of the contract as a special legal fact at the stage of emergence, change, and termination of legal relations, the importance of contracts occurs at the stage of creating the regulatory framework for further legal regulation. In the countries of the Commonwealth of Independent States (CIS), the role of the regulatory contract is associated with the principles of cooperation and good neighborliness.

2. Materials and Methods

A number of studies were conducted in the last decade by representatives of the branch of legal sciences [1]. The studies were devoted to the analysis of regulatory contracts, their role in the legal regulation. In general, the authors of scientific studies prefer to use a well-developed tool of formal legal methods of cognition. The originality of the article is to use informal cultural and moral research methods.

3. Results

The increasing role of regulatory agreements in transitional time is due to the fact that this is a flexible legal form in which various social relations can take shape. For their normal development, coordination of the interests and will of the participants is especially important. Expanding the scope of using the contract to adequately enhance the role of self-regulation of the transitional society. Achieving a social harmony (the most important task of the transition stage of development) requires

the maximum consideration and coordination of the various actors' interests. Hence, there is an increase in the role and value of mechanisms that contribute to the development of agreed solutions.

The contemporary general theory of law should not only recognize the special place of normative contracts in the system of sources of law, but it should also determine their regulatory capabilities in the transitional period.

First of all, a normative contract cannot be considered a type of regulatory act, since it is not a unilateral legal act. The agreement expresses the agreed will of several subjects, when at least one of the parties has the right to establish the norms of law. According to V. V. Ivanov, a normative contract is "a joint legal act, formalizing the expression of agreed separate wills of subjects of law-making aimed at establishing legal norms" [3]. The nature of the normative content of the contract requires the harmonization of legal decisions of two or more parties, which gives legitimacy to the consolidation of regulations. If a regulatory agreement expresses the coordination of several subjects of law-making activity, then the unified will of one subject, namely the state authority, is emphasized in a regulatory legal act.

Contractual practice is a way to achieve a compromise of interests, allowing to take into account the peculiarity of the living conditions of the subjects who concluded it. As a rule, a normative contract establishes norms directly, by calculating the behavior of the contracting parties. The contract as a reciprocal, voluntary will of the subjects is one of the most optimal sources of the right to a transitional period. Since it most productively contributes to the achievement of consensus in a transitional society, it provides self-governance and helps to protect the federal control system from disintegration (if contractual regulation does not replace the legislator and does not prevent the implementation of laws).

Summarizing the above characteristics, we can draw the following conclusion. A normative contract is a special legal document resulting from the reconciliation of the interests and will of certain legal entities, which is designed directly to regulate the activities of the contracting parties. In its action, this contract is secured not only by the obligations of the subjects of the contract, but also by state protection. In this case, the mutual nature of the contractual regulatory framework for its participants is emphasized. Otherwise, the parties to the regulatory contract will be able to dictate their will to those who are not directly represented. In addition, in this definition, the opportunity to act as a party to a regulatory contract is recognized not only for the subjects of law-making (as is customary in the newest special literature), but also for other subjects of law. This opportunity is given on condition that one of the parties is represented by the subject of state rulemaking.

Second, a variety of intra-federal, international, administrative, and collective agreements can be attributed to the types of regulatory agreements that are actively used in the transitional period. The role of this source of law in transitional conditions can be characterized by the example of intra-federal treaties.

Already in the period of the first cycle of the Russian transition of the 20th century, in the 1920s, constituent union agreements were actively concluded, in particular, between the RSFSR and the Khorezm Soviet People's Republic on September 13, 1920, between the RSFSR and the Soviet Socialist Republic of Georgia on May 21, 1921. Functional agreements were also concluded between the Council of People's Commissars of the RSFSR and the Council of People's Commissars of the Soviet Socialist Republic of Azerbaijan (September 30, 1920) on the integration of the management of food policy, mail, telegraph, telephone, financial, and other matters. The Treaty on the Formation of the Union of Soviet Socialist Republics was signed on December 30, 1922. This practice was continued in the period of the formation of the foundations of the new Russian statehood, which was expressed in the Federal Treaty of March 31, 1992 and series of vertical and horizontal contracts.

In the 1990s, the treaties of the Russian Federation with individual subjects of the Federation on the delimitation of competencies and powers between their government bodies became widespread. Initially, the idea of concluding bilateral agreements of this kind arose because of the unwillingness of individual subjects to sign a common Federal agreement (Republic of Tatarstan, Chechen Republic). Thus, the conclusion on February 15, 1994 of the Treaty of the Russian Federation and the Republic of

Tatarstan on the delimitation of competencies and the mutual delegation of powers between state authorities was considered as a forced individual measure, as an exception to the general rule for a subject of the Federation that did not sign in 1992 [2]. When the Russian Federation agreed to conclude the Treaty with the Kabardino-Balkarian Republic on July 1, 1994, which participated in the signing of the Federative Treaty, it became obvious that the exception becomes the rule. At the initial stage of the treaty process (1994-1995), contracts were concluded only with the republics. The number of such contracts exceeded 40 by 1996. More than that, there were more than 2000 agreements. Despite the relatively short history of using intra-federal treaties, they occupied a rather significant place among other sources of law. Are such large volumes of contractual practice in regulating federal relations justified? Can the intra-federal agreements have a priority over federal laws and the laws of the subjects of the Federation?

Third, the practice of using contractual forms for the development of federal relations shows the following. Where the relevant law (federal or regional) was attempted to be replaced by an intra-federal agreement, there the inequality of the subjects of the Federation was fixed, and the competence of the center was inadequately narrowed. The aspirations of individual subjects of the Federation (primarily republics) to obtain broader powers were satisfied through these Treaties. These individual subjects wanted greater powers than those granted by law and which other subjects equally possessed. The intra-federal treaties were abounded with preferences, privileges, and various kinds of additional rights. The entities that have signed such agreements had acquired a different status if compared to other subjects of the Federation and gained some privileged position, for example, in the area of tax deductions to the federal budget, the return of budget funds to the budgets of subjects. As a result, citizens of some regions were in incomparably worse economic conditions than others, not because they worked worse, but because they lived in areas with poor economic conditions. This situation grossly violates human rights and the principle of equality of the subjects of the Federation. Building up such a contractual process can lead to additional instability of a transitional society, since the inequality of the subjects of the Federation leads to the inequality of citizens living in different regions. Article 1 of the Treaty prepared by the Legislative Assembly of St. Petersburg is indicative: "If a federal law, other regulatory acts of general validity, as well as agreements concluded by the Russian Federation with the subjects of the Federation, establish provisions containing the rights, privileges, advantages for individual subjects of the Russian Federation, then these provisions of legal acts apply in relation to St. Petersburg".

In the text of the intra-federal treaties, a lot of provisions are contained, which are definitely at odds with the Constitution of the Russian Federation and expand the subjects of competence and powers of the subjects. Thus, the clause "k" of Part 1, Article 72 of the Constitution of the Russian Federation refers to the joint jurisdiction of the Federation and its subjects to land, water, forestry legislation, as well as legislation on subsoil and environmental protection. In the Treaty of the Russian Federation and the Republic of Tatarstan on the delimitation of the objects of competence and mutual delegation of powers between the state authorities of February 15, 1994, the issues of ownership, use, and disposal of land, mineral resources, and other natural resources are referred only to the powers of the state authorities of the Republic of Tatarstan. In the Treaty, the special nature of relations between Russia and Tatarstan is emphasized. Thus, according to the provisions of the Treaty, the Republic of Tatarstan is united with the Russian Federation and does not form the Federation together with its other subjects. In the face of its government bodies, Tatarstan participates in the activities of international organizations and independently carries out foreign economic activity. This Treaty does not have a provision stating that Tatarstan is a republic within the Russian Federation, but the Treaty proclaims its sovereign status. In the literature, the opinion was expressed that the Treaty between the Russian Federation and the Republic of Tatarstan does not recall the federal authorities agreement on the redistribution of powers, but the agreement between independent states (which is also studied by B. S. Ebzeev, L. M. Karapetyan). However, it is also important to take into account that the very redistribution of powers on the basis of intra-federal treaties is unconstitutional (Part 3, Article 11 of the Constitution of the Russian Federation).

4. Discussion

In a number of intra-federal treaties, the priority of the Treaty over subordinate federal legal acts adopted by federal bodies of state power unilaterally in contradiction to this Treaty is enshrined (Article 7 of the Treaty on the delimitation of the objects of competence and powers between the state authorities of the Russian Federation and the state authorities of the Sverdlovsk region of January 1, 1996 and part 2 of article 7 of the Treaty on the delimitation of the objects of competence and powers between the state authorities of the Russian Federation and the state authorities of the Altai region, 1996).

Describing these positions, one can draw attention to a common mistake: many Constitutional Law scholars pose the problem of determining the place of intra-federal treaties in the hierarchy of normative legal acts. But regulatory treaties and regulations are independent with respect to each other sources of law, different in their legal nature. From this, at least, two theoretical conclusions follow. First, the regulatory contract (including the inter-federal one) cannot be considered as a regulatory legal act. Secondly, the provisions of regulatory agreements should not contradict the legislation. The main requirement for the subject, form and content of the regulatory contract is that it does not contradict the legislation in force during the transition period.

In this regard, the following question arises, “Can an inter-federal treaty in transitional time act as a means of compensating for the lack of the necessary laws of the Federation and its subjects?” Due to the specific differences between laws and regulatory agreements, contractual regulation in the area of legislative regulation seems to be untenable. As a rule, when entering into a regulatory agreement, several subjects proceed not from general social interests, unlike the highest representative body. It would be unnatural to believe that the will of two or three parties that signed the regulatory agreement derive from national interests, rather than the interests of these (two or three) parties. In addition, the idea is not feasible that with the adoption of a federal law or a law of a constituent entity of the Federation, the relevant regulatory agreement will cease to operate. The fact is that the intra-federal agreement with any subject of the Federation includes a set of powers (about 40), which are recorded in Article 72 of the Constitution of the Russian Federation. Therefore, a single law, such as the Land Code, cannot lead to the cancellation of the Treaty.

Regulatory agreements should not contradict the current legislation and contain provisions on legislative regulation, both at the federal level and at the level of the subjects of the Federation. The same rule can be applied to the relation “regulatory contract – legal regulatory act.” Thus, the scope of the use of a regulatory contract as a source of law is outside the scope of regulatory acts at all levels. This does not at all exclude the adoption of laws and regulations to facilitate the implementation of the Treaties.

It is the law that should recognize the regulatory contract as a special type of regulatory self-regulation, identify the areas, issues for which solution it is advisable to use contractual regulation, fix the procedure for concluding and executing a regulatory contract, ways of protecting the rights and interests of the parties, responsibility for non-fulfillment of contractual obligations. The need to develop and adopt the Federal Law on Regulatory Legal Contracts is obvious to us. Among other things, this law could provide that any regulatory agreement after its conclusion is sent for ratification to the appropriate supreme legislative body.

5. Conclusion

As the legal order in the Russian Federation is strengthened, regulatory treaties lose their former meaning. The broad practice of contractual relations plays a positive role at the initial stage of transitional transformations when it tries to soften centrifugal tendencies. The paradox of the situation is that, in the name of preserving the integrity of the state, the reformist forces violate the unity of the system of state power and the disproportion of the legal system. On May 12, 1997, the federal government in transitional Russia even went to the signing of the Peace Treaty and the Principles of Relations between the Russian Federation and the Chechen Republic of Ichkeria. The Constitution of the Russian Federation does not mention such a form of treaty as the Peace Treaty between the

Russian Federation and its subject, which is used between independent states. In 1992, the Treaty of Friendship and Cooperation between the Republic of Tatarstan and the Republic of Mari El, and in 1999 between the Republic of Mordovia and the Chuvash Republic were signed.

It can be recognized that the practice of concluding intra-federal treaties led to a violation of the common legal space of the Russian Federation. Its restoration will require ensuring real equality of the subjects of the Federation with each other and in relations with federal government bodies. At the same time, abrupt steps to correct the situation should not be taken. This can only complicate it, cause a new surge of separatism. The excesses of legal practice can be eliminated by evolution.

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