

Dual-Track Federalism: State System of Austria-Hungary as an Attempt to Transition From Empire to Early European Integration

Evgeny Aleksandrovich Belkanov

Ural State Law University
Yekaterinburg, Russia
belkanovea@mail.ru

Abstract — The authors of the article examine the state system of Austria-Hungary, which can be described as dual federalism and described as an attempt to transition from the Empire to early European integration. The study of Austro-Hungarian statehood shows that the existence of well-developed legal norms does not ensure the success of the integration project if the legislator does not find effective legal procedures for resolving conflicts such as the federation's interference in the affairs of its subjects, the actual assignment of powers by the federation to the subjects, and the assignment of powers by the subjects of the federation to the federation.

Keywords — state system, federation, empire, integration, Austria-Hungary, European Union.

I. INTRODUCTION

Absolute majority of the modern federations are republics. Certain exceptions, such as Belgium and the United Arab Emirates, confirm this rule rather than refute it. The study of mainstream modern federalism is also attributed in most cases to the development of republican perceptions of the formation of statehood after independence by the North American colonies of Great Britain.

However, while federalism in the American colonies was built on the idea of forming an initial federal state, in Europe the ideas of the federal state system were seen as not so much as a fundamental, but as a kind of post-imperial compromise, allowing either to preserve or in some way modernize the empire, preserving the monarchy, or to convert the monarchy into a republic relatively painlessly.

Both approaches to post-imperial federalism were implemented for less than sixty years in the Austrian Empire, which passed both the formation of special, "imperial and royal" federalism and the formation of a federal republic.

II. METHODS AND MATERIALS

At the same time, questions about the development and implementation of the ideas of this unique dual federation, as well as the final reasons for the actual failure of the Austro

Hungarian project is mainly interested in representatives of historical science, whereas in jurisprudence this interest is not so great, and this is despite the fact that the Danube monarchy developed more than the original form of state structure, influenced both in many ways the development of Russian federalism doctrines in the 19th century and the formation of ideas for European integration.

The authors of the article examine the state system of Austria-Hungary, which can be described as dual federalism and described as an attempt to transition from the Empire to early European integration.

We set a number of tasks in our research, including:

- to study the history of the formation of ideas of federalism in Austria-Hungary,
- to consider the transition from the Austrian Empire to Austria-Hungary between 1847 and 1918 from the point of view of legal registration of relations between parts of the state.

The purpose of our work is to examine the state system of Austria-Hungary, which can be described as dual federalism and described as an attempt to transition from the Empire to early European integration.

The methods used in this research are such scientific research methods as comparative-historical, contrastive-comparative, generalization, abstraction, formalization, analysis, synthesis, etc.

III. RESULTS

Most researchers note that the development of federalist ideas in the Austrian Empire was greatly influenced by the social and political problems that existed in it between 1848 and 1867.

However, the real prerequisites for the formation of dual federalism began to form almost a century and a half earlier. The land of the House of Habsburg was a unique conglomerate of feudal properties, which formally united only the right of their inheritance by representatives of this family.

In 1723 Charles VI tried to resolve this issue in a very feudal spirit - by issuing a law on succession (which was

especially important due to the absence of heirs to the male throne), called Pragmatic Sanction¹.

In terms of state structure, it is important that Charles VI twice proclaimed the Pragmatic Sanction - in 1723 as King of Hungary, and in 1724 - already as Archduke of Austria and owner of other crown lands of the House of Habsburgs. Thus, already at the time of the formation of the Austrian Empire, there was an idea that there were two relatively separate parts in the single empire - Austria and Hungary itself, besides, the status of those parts of the empire that were predominantly inhabited by the Slavic population, such as the Czech Republic, although formally continued to be called the kingdom, but in fact was nothing more than an administrative-territorial unit, was not quite clear.

This legal uncertainty of the Pragmatic Sanction eventually led to Prussia managed to take advantage of a number of formal reasons to conquer Silesia from the Austrian Empire in two wars.

If the initial uncertainty of the Emperor's position as a simultaneous bearer of the imperial crown and the crown of St. Stephen (Hungarian King) seemed a pure formality, during the Revolution of 1848 the Austrian Empire was only able to suppress Hungarian separatism with the military help of the Russian Empire.

This fact, in turn, led to the national compromise searching which lasted eighteen years.

A kind of monarchic federalism was reflected in the Imperial Constitution of the Austrian Empire (*Reichsverfassung für das Kaiserthum Oesterreich*) of 4 March 1849².

§ 1 of this Constitution established that the Austrian Empire consisted of crown lands, with the Kingdom of Hungary becoming only one of twenty crown lands. The name of the kingdoms was also preserved by crown lands such as the Czech Kingdom and even the Kingdom of Galicia and Lodomeria, indicating the loss of feudal importance of the various names of the crown lands.

§ 2 enshrined the following form of state arrangement: "these crown lands form a free, sovereign, indivisible and unified constitutional Austrian hereditary monarchy."

Thus, the form of state structure of the Austrian Empire incorporated both federal elements and elements of the late feudal state structure.

Section 9 of this Constitution established such a specific distribution of powers between the empire and its parts that one could speak of an asymmetric-symmetric federation. In particular, § § 71-76 established a separate scope of powers for each of the crown lands such as the Kingdom of Hungary, Serbian Vojvodina, Kingdom of Croatia and Slovenia, Grand Duchy of Transilvania, Military Border Region, Kingdom of Lombardy and Venice. But § 77 provided for the equality of all other crown lands.

At the same time, the ambivalence of the state structure gave rise to a number of intractable problems.

The first problem was the question of the limits of imperial intervention in crown lands. Formal guarantees of non-intervention of the empire in the competence of crown lands in the Imperial Constitution were so small, that ideologists of the imperial unity revival, such as Prince Schwarzenberg, considered them sufficient reason for gradually limiting the powers of empire's subjects, which was particularly evident in the so-called "New Year's Patent" of December 31, 1851³, which significantly restricted the rights of crown lands in electoral, civil and a number of other branches of law, as well as in the field of judicial organization.

This, in turn, gave rise to a second problem: the desire of the crown lands' parliaments, especially of the Kingdom of Hungary, to actually assign a number of imperial authorities.

The fact is that the revolution of 1848 in the Austrian Empire was characterized by a number of features, among which Hungarian and Czech separatism took a special place. While the Czech national liberation movement was largely limited to linguistic and cultural research, and political demands remained in the second place, in Hungary revolutionary events quickly turned into a military-political conflict with the imperial government, which was suppressed only with the help of Russian troops, whose command accepted the surrender of the Hungarian national government⁴.

The fact that the imperial forces, having suffered a number of failures, were able to reverse the course of the conflict only through foreign intervention led to the emergence of a state of unstable balance, in which the Hungarian Parliament and the Government acted as part of the imperial state apparatus, but under the influence of such bright figures of the revolution and supporters of the independence of Hungary as Lajos Kossuth and Ferenc Deák.

As a result, the Hungarian Parliament's tactics were reduced to constant pressure on the Imperial Government in a relatively respectful request for additional powers, accompanied by vague hints of the possibility of a new uprising.

At first such tactics were not too successful and did not prevent the adoption of the "New Year" patent, but after the collapse of Austria's alliance with Russia, caused by Austria's position of non-interference in the Crimean War, it began to give its results.

And initially the Hungarian parliamentarians' aspirations looked like an attempt to reach a reasonable compromise with the imperial government in order to solve the third problem, arose after the adoption of the "New Year" patent, and which was that conservative circles of the imperial government so clearly and excessively tried to limit the crown lands' powers and, first of all the Kingdom of Hungary, including its division into five districts and attempts to Germanize the population, that some researchers believe that the Imperial Constitution of 1849 acted only formally⁵.

³ <http://www.verfassungen.at/at-18/silvesterpatent51.html>

⁴ Kontler L. Millennium in the center of Europe. Moscow: The whole world, 2012. P. 331 -332.

⁵ Kontler L. Millennium in the center of Europe. Moscow: The whole world, 2012. P. 341 -343.

¹ <http://www.verfassungen.at/Oesterreich-Ungarn/index.htm>

² <http://www.verfassungen.at/at-18/verfassung49-i.html>

However, later these aspirations turned into attempts at a kind of revenge for defeat in the revolution of 1848 -1849, which consisted in the constant demand to obtain as many powers as possible within the framework of a formally unified empire, the main ideologists of which were Jozef Etvesh and Ferenc Deak⁶.

Attempts to counter the gradual transition of de facto state powers to crown lands were not the most successful. D.S. Stenkin describes them as follows: "On October 20, 1860, at the direction of Emperor Franz-Joseph, a special decree "Oktoberdiplom" was published on the introduction of a new Constitution. It contained provisions of a new constitution for the state in the form of a constitutional monarchy. According to this document, the Reichsrat - Imperial (State) Council ("Reichsrat"), which, in fact, was a narrow circle of persons who were especially close to the Emperor and were part of the law-broadcasting body under the Emperor, turned into a representative assembly. However, the Imperial Council's legislative power was not full. The spheres of foreign and military policy still remained exclusively in the power of the Emperor. As a result of universal dissatisfaction with the October Diploma, it was replaced by the February Patent (germ. - "Februarpatent"), which was adopted on 26 February 1861.

The new octroated act was of a pronounced centralist character and expressed interests more to the Austrian aristocracy. It is no accident that the State device established by the February patent met with sharp criticism in Hungary and Galicia as unnecessarily centralist. After the adoption of the February patent, the Hungarian Sejm, elected on the basis of the new Constitution, refused by majority to send representatives from the Hungarian Kingdom to the Reichsrat. On August 21, 1861, the Sejm was dissolved and a state of siege was imposed in Hungary. Following the example of Hungary, Representative Assemblies of Venice, Transilias and Croatia did not participate in the elections of the Austrian Reichsrat. Czech and then Polish MPs came out of Reichsrat.⁷

Thus, in the early sixties of the nineteenth century, there was a situation in which both the imperial center and the crown lands (especially the Kingdom of Hungary) were interested in solving such problems as:

- The limits of imperial intervention in crown lands;
- De facto assignment of Imperial Centre powers by crown lands;
- De facto assignment of crown lands by the imperial centre;
- Lack of legal procedures for resolving these conflicts.

The searching for a solution to this problem, undertaken by the intellectual elite of the Austrian Empire, led to two options for further development of the state structure, which were based on the same idea.

⁶ Teves L. the Concept of national politics of Jozef etves and the constitutional-national tradition of Ferenc Deak's "party", 1860-1868 / Slavic Studies, 2014, no. 6. P. 7 – 9.

⁷ Stenkin D. S. Constitutional development of Hungary in the middle of the XIX century / Actual problems of Humanities and natural Sciences. 2016, no. 6-2. P. 160.

The first option involved the de facto unification of the three national entities (the "three crowns") within a single empire. The empire was supposed to consist of three relatively separate parts - German, Hungarian and Slavic.

The second, ultimately prevailing, option was more conservative and involved the unification of two territorial entities within a single empire, German and Hungarian. Under this division, the territorial representation of the Slavic peoples, the Romanian population of Transilias and then the Muslim population of Bosnia and Herzegovina was not ensured. In this version, the creation of so-called "political" nations - German and Hungarian - was envisaged. Thus, the Czech suddenly learned for themselves that they treated the German political nation as a population of Bohemia. As a result, instead of forming a political nation, a mass of nationalist segments of the population were formed, especially among Germans, Hungarians and Czechs⁸.

In the end, the numerous political and scientific studies that followed the crisis of 1861 led to the adoption on 21 December 1867 of the "Basic State Law on Common Affairs Relating to All Lands of the Austrian Monarchy and Ways of Treating Them"⁹ (often referred to as the Austro-Hungarian Compromise). There are still rather heated discussions in Austrian society about this law. And a large part of Austrian political scientists tend to think that the Austro-Hungarian monarchy resulting from the adoption of this law in terms of state structure was not just a federation, but also an early project of the European Union¹⁰.

In particular, Stefan Mae, in proof of this thesis, gives the following passage from Joseph Roth 's novella "The Bust of the Emperor" - "Count Morstin served in the dragoons in his youth. He did not consider himself a Polish, an Italian, a Polish aristocrat, or an aristocrat of the Italian rite. No, like many of his peers in the former crown lands of the Austro-Hungarian monarchy, he was one of the most noble and pure-blooded types of Austrian, that is: he spoke almost all European languages equally well, in almost all European countries he felt like home, his friends and relatives lived everywhere in a wide and colorful world. It was the imperial and royal monarchy that was the smaller model of the colorful world, and so it was the count 's only homeland."¹¹

It should be notified that the perception of Austria-Hungary as a kind of primary project of the European Union has quite serious legal grounds.

Thus, according to § 1 of the Basic Law of December 21, 1867, the exclusive competence of the Empire consisted of only three spheres:

- a) foreign affairs;
- b) military, including naval affairs;
- c) general finance.

⁸ Johann Dvořák. Wege in den großen Krieg. Wien: Verlag des ÖGB GmbH, 2016. S. 20-22.

⁹ <http://www.verfassungen.at/Oesterreich-Ungarn/index.htm>.

¹⁰ May Stefan. Der gesprengte «Völkerkerker» / https://www.deutschlandfunkkultur.de/die-k-u-k-monarchie-eine-fruehe-eu-der-gesprengte.976.de.html?dram:article_id=431906.

¹¹ Ibid.

According to § 2, the scope of joint competence (with the authority being distinguished by special agreement) was:

- 1) trade affairs, in particular customs legislation;
- 2) legislation on indirect taxes related to industrial production;
- 3) establishment of coin system and monetary rate;
- 4) the procedure for the operation of railways when the interests of both parts of the empire are affected;
- 5) establishing a system of state security.

The expenditure part of the imperial budget was established by an agreement between the Reichsrat and the Sejm (the highest legislature body of the Hungarian Kingdom). Other issues within the exclusive competence of the Empire were decided by the delegations of the Reichsrat and the Sejm, except for the defence issues decided by the Emperor.

In addition, a single currency was used throughout the empire - first gulden, and since 1892 krone¹².

It is curious, that the name "land of the Hungarian crown" was used for Hungary, there was no even a clear name for the Austrian part of the empire and a streamlined name was used: "kingdoms and lands represented in the Reichsrat."

Austria-Hungary thus effectively became a treaty federation, formally remaining an empire.

Meanwhile, the exclusive competence of the European Union under article 3 of the Treaty on the Functioning of the European Union¹³ includes:

- a) Customs union;
- b) establishing competition rules necessary for the functioning of the domestic market;
- c) monetary policy towards Member States whose monetary unit is the euro;
- d) Conservation of marine biological resources as part of the overall fisheries policy;
- e) Common trade policy.

The joint competence of the European Union and its member States under article 4 of the Treaty includes:

- a) domestic market;
- b) social policy;
- c) economic, social and territorial cohesion;
- d) Agriculture and fisheries, except for the conservation of marine biological resources;
- e) environment;
- f) consumer protection;
- g) transport;
- h) trans-European networks;
- i) energy;
- j) space of freedom, security and justice;
- k) Common health safety concerns.

In accordance with articles 4 and 6 of the Treaty, the States members of the European Union shall coordinate their activities in the following areas:

- a) protection and improvement of human health;
- b) industry;
- c) culture;
- d) tourism;
- e) education, vocational training, youth and sports;
- f) civil defense;
- g) administrative cooperation;
- h) economic policy;
- i) scientific research, technological development and space;
- j) support for development and humanitarian assistance;
- k) Common health safety concerns.

In addition, according to Article 5 of this Agreement, a single currency unit - Euro - is established for the European Union.

Consequently, if the question of achieving military unity is excluded, the powers of the modern European Union exceed those of the Empire in Austria-Hungary. However, the need for a single European army is increasingly being discussed¹⁴.

IV. CONCLUSION

Thus, in terms of the legal formalization of relations between parts of the State, The transition from the Austrian Empire to Austria-Hungary, which took place between 1847 and 1918, was a period of original and poorly studied reform of the state structure, in which two periods can be distinguished, the first of which lasted from 1849 to 1867 and represented the period of a highly original monarchist federation, And the second, which lasted from 1867 to 1918, became a period of treaty federalism, which became the provost of European integration.

The failure suffered by the Austro-Hungarian integration project is due to many reasons not in the field of jurisprudence. Among these reasons there are the non-balanced distribution of expenditure on national needs among parts of the Empire, the extremely unfortunate idea of two "political" nations, which gave rise to extreme forms of nationalism, the bureaucratic obliqueness of the state apparatus, and the economic inequality of various parts of the empire, and sometimes a mindless following in the fairway of German foreign policy and, finally, World War I, which entailed both a lot of economic problems and the rise of separatism, which finally destroyed the twin monarchy.

It seems that similar features are gradually forming in the modern European Union. First of all, they should include the refusal to take into account the opinion of the European Union's "junior" partners, the growing apparatus and the increase in the number of bureaucratic procedures, and foreign policy dependence. It is unknown whether European Union structures will be able to overcome these trends, but Brexit should be as formidable a warning to them as the 1861 crisis for the Austrian Empire.

The study of Austro-Hungarian statehood as such shows that the existence of well-developed legal norms does not in itself ensure the success of the integration project, in case the

¹² Sokolovsky K. I. Features of the national currency of Austria-Hungary / Electronic version. Mode of access: <http://fismo.kubsu.ru/2017/06/13/sokolovskij-k.i.-osobennosti.html>.

¹³ <https://eulaw.edu.ru/spisok-dokumentov-po-pravu-evropejskogo-soyuza/uchreditelnye-dokumenty/dogovor-o-funktsionirovanii-evropejskogo-soyuza-novaya-redaktsiya/>.

¹⁴ Kuznetsov E. European army: myth or reality? Electronic version. Mode of access: <https://eurasia.expert/evropeyskaya-armiya-mif-ili-realnost>.

legislator does not find effective legal procedures for the settlement of such conflicts as the interference of the federation in the affairs of its subjects, the actual appropriation by the federation of the powers of the subjects, the appropriation by the subjects of the federation of the powers of the federation.

References

- [1] Berg L., "The establishment of legal rules as an element of the system of legal influence: An instrumental approach", *BRICS Law Journal*, no.5 (3), 2018, pp. 114-134.
- [2] Dvořák J., "Wege in den großen Krieg", Wien: Verlag des ÖGB GmbH, 2016, pp. 20-22.
- [3] Kontler L., "Millennium in the center of Europe". Moscow: the Whole world, 2012, 656 p.
- [4] Kuznetsov E., "European army: myth or reality?", electronic version, mode of access: <https://eurasia.expert/evropeyskaya-armiya-mif-ili-realnost>.
- [5] Teves L., "The concept of national politics of Jozef etwes and the constitutional-national tradition of Ferenc Deak's "party", 1860-1868", *Slavic Studies*, 2014, no. 6.
- [6] Sokolovsky K. I., "Features of the national currency of Austria-Hungary", electronic version, mode of access: <http://fismo.kubsu.ru/2017/06/13/sokolovskijj-k.i.-osobennosti.html>.
- [7] Stenkin D. S., "Constitutional development of Hungary in the middle of the XIX century", *Actual problems of Humanities and natural Sciences*, 2016, no. 6-2.
- [8] Stefan M., "Der gesprengte «Völkerkerker»", electronic version, mode of access: https://deutschlandfunkkultur.de/die-k-u-k-monarchie-eine-fruehe-cu-der-gesprengte.976.de.html?dram:article_id=431906.