

Four constitutional applications to the practice of international relations by federal states

Doi: 10.23918/ilic9.62

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Abstract

It is well known that the constitutions of States are concerned with the identification of institutions competent to exercise external relations.

In general, countries are classified in terms of internal composition to simple states and Composite States, and one of the most famous types of Composite States known are federal states.

It is also known that the practice of these relations varies in both types of countries.

In simple states, there is one authority that is competent to practice international relations. But, in the federal states differ among themselves in giving powers to the regions that make up those states in the practice of some of those relations which the federal authorities assume the burden of managing them.

Keywords: constitutional law, federalism, international relations.

Introduction: What is federalism?

The concept of federalism in its content is based on two opposing elements (autonomy and union) and the interconnection between these two elements constitutes the unity of the real concept of the federal state which is the result of reconciling between two contradictory desires (formation of a state on the one hand and maintain autonomy for member units on the other hand)⁽¹⁾.

Federalism is a national political system under which two or more governments assume sovereignty and power over the homeland and its people.

Countries with federal political systems are controlled by two governments: the first is the central government; and the other is the government that controls the political units of that state, often called states, countries, or regions.

These governments are independent each according to their state, but the important thing is that these states or small political units give up part of their political powers to the central government, relying on it for the public interest.

Federalism is an old idea. It was clearly embodied in the Greek era in the coalition of the Greek Republic under the supervision of Amphictyony Council⁽²⁾ and Achaean League which was a combined group of Greek cities. Athenian & Delian League as Achaean union composed of several regions administrated by the city state, which can be described as one of the best kinds of real unions in the third century BC.

One of the characteristics of the federal state exists in two levels of governments that are federal government and governments of units that form federalism i.e., there are three authorities (legislative, executive, and judicial) at the level of federal government as well as the existence of such three authorities at the level of their constituent units.

Since the federal state has two levels of government authorities, and since the constitution by which the union is established provides for the competencies of the authorities at two levels (federal authority and constituent units) so the division of constitutional competencies in the federal state is considered one of the most distinctive characteristics of such system, but dividing of these constitutional competencies differ from one state to another depending on the political and social

⁽¹⁾ William Histaspas Stewart, Concepts of federalism, University Press of America, 1984.

⁽²⁾ https://en.wikipedia.org/wiki/Amphictyonic_League.

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factors, etc., which were behind the emergence of this union, and the strength or weakness of the feeling of union among the federal constituent units. The powers of the federal authorities strongly increase with strength of this feeling and decreases with its weakness⁽¹⁾.

Models of the Federal constitutions

The right for the federal regions to exercise international relations depends on the authority granted to them by the federal constitution.

The federal constitutions differ among themselves in the expansion or restriction in this area.

To find out how the federal constitutions dealt with this matter, we have considered taking examples of some federal states, such as the Constitution of the United States of America, the Constitution of the German Federation, the Constitution of the Swiss Confederation, and the Constitution of the Belgian Union.

First - The Constitution of the United States of America

The Constitution of the United States of America in 1787 is considered one of the oldest constitutions written in the modern era and has been subjected to many amendments up to (27) amendments, beginning from 1789 to 1987 and the basic structure in the US Constitution On the basis of a federal state in which the authority is in the hands of the president of state and federal government⁽²⁾.

The US Constitution has succeeded to the possible extent in reducing the powers of the authorities so as not to interfere with the freedoms of individuals. Under the separation of powers stipulated in the Constitution of the Union (states) members protection by means of dividing the union authority into three branches (Legislative, executive and judicial), as well as the division of Congress into two councils, which would avoid the pressure that the Representative Council can practice on the other authorities, i.e. trying to establish a balance between the authorities so that it can regulate the functioning of the state in a way that achieves public interest for the people.

It is worth noting that the United States Congress consists of 435 members of the House of Representatives. The States has been divided according to its population as per the law of 1929. The term of membership in this Council is two years, and the council is insoluble.

There is Senate that consist of (100) members as two members per state. In other words, the states are represented equally in this council regardless of their population. Regarding the foreign policy of the United States of America, the Constitution has regulated many of the constitutional provisions relating to the conduct of foreign affairs through the State Department under the Foreign Service Act of 13 August 1946, the functions of the US Foreign Service and the rights of its employees.

The US Constitution has been included the regulations related to the foreign affairs that concern the Union's authorities, as well as provisions linked to the foreign affairs of the state authority⁽³⁾:

A - The powers of the Federal Central Government in the fields of international relations: paragraph 2 of the article No. 3 of the Constitution of the United States of America states that the President has the powers to conclude treaties by advice provided by the Senate and the approval by two-thirds of its present members. Paragraph 2 of the article No. 3 also states that the President nominates ambassadors and consuls and appoints them through the advice and approval of the Senate. As reflected in the articles of the Constitution that the president presides the federal government in the aspect of its relations with the foreign countries, and the president appoints ambassadors and consuls after approval by the Senate, as well as the president meets foreign ambassadors and others in cooperation with the Foreign Minister.

The President administers all official contacts with foreign governments. As for the treaty, the Senate has the right to reject the treaty concluded by the president, as example, what happened

⁽¹⁾ Daniel Judah Elazar, *Federalism: An Overview*, HSRC Publishers, 1995.

⁽²⁾ Mark Tushnet, *The Constitution of the United States of America: A Contextual Analysis*, Bloomsbury Publishing, Portland, 2009.

⁽³⁾ The United States of America Constitution, 1789 (rev. 1992).

when President Wilson signed the Charter of the League of Nations on behalf of the United States of America in 1919 and after his return; the Senate refused to ratify his work and had negative consequences on international relations. To avoid rejection and opposition by the Senate, the president can conclude agreements with foreign countries in the form of executive agreement without going through the Senate.

Despite the broad powers granted to the president in the field of international relations, the constitution has limited the president's powers in foreign policymaking and implementation by requiring the approval of some senior officials' appointment. The constitution states on approval of two-thirds of the Senate to treaties concluded.

As for the reception of foreign envoys, the followed procedure is that the delegated country to send assigning document to the Minister of Foreign Affairs who in turn transmits and presents it to the President before the issuance of the approval, then the President signs the approval and ratified by the Minister of Foreign Affairs bearing the seal of the United States of America.

B. The powers of the American States in the field of international relations: In the American political system, the federal government enjoys specific powers represented in foreign policy and regulation of trade between the United States and other countries, coin and the granting of citizenship to immigrants as well as forming the armed forces.

Except of these, the constitution granted broad powers to the American states, as the states can exercise their powers provided that they do not contradict the powers that the central government can exercise.

In the context of international relations, there is no constitutional restriction on the powers of the states government to participate in international representation and to enhance the international relations in affairs that concern the states. However, the constitution imposed a restriction on the powers of the states to conclude treaties; paragraph 10 of the article no. 1 of the constitution states that: "Any state may not enter into a treaty, alliance or coalition." It further states: "No state without the consent of Congress shall enter into any agreement or settlement with another state, or a foreign state, or participate in a war except in the case of actual invasion or in the event of imminent danger could not be delayed". This means that agreements and contracts concluded by the member states are possible after the approval of Congress.

Second - The Constitution of the German Union⁽¹⁾

In 1949 the western Germany became the Federal Republic of Germany which includes 11 federal states. The reunification of Germany in 1990 led to the joining of five new federal states. The Federation currently consists of 16 federal states with a population of more than 80 million.

The political system in Germany is based on a parliamentary political system represented by two-legislative authorities of two councils: The Bund Stag and the Bundesrat, the bilateral executive authority from the Republic President (Federal President) and the Federal Government (Federal Prime Minister or Chancellor and Ministers).

Because of the federal structure of the German state, the states have their powers of legislative, executive, and judicial power and the constitution defines their powers within the federal constitution.

The article 30 of the German Basic Law states that⁽²⁾: "Except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the Länder".

Accordingly, constitutional provisions relating to the foreign affairs are the powers of the federal central government included in the Basic Law which defined the authorized authority to exercise them, as well as it defined the powers of the states and their right to practice foreign affairs, and in accordance with the provisions of the constitution.

⁽¹⁾ Georg Vanberg, *The Politics of Constitutional Review in Germany*, Cambridge University press, 2005.

⁽²⁾ The Germany Constitution, 1949 (rev. 2014).

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The basic law of the German union includes the provisions relating to the foreign affairs of the Union authorities, as well as the provisions relating to foreign affairs concerning the powers of the states:

A - The powers of the Federal Government in the field of international relations: The German Basic Law on foreign affairs and defense in paragraph one within the exclusive legislative power's Federal states: Care of relations with foreign countries, as well as the federal president shall represent the Federal Union in matters of international law and the approval on envoys Diplomats, and the president may appoint ambassadors to foreign countries. The Federal President also has the right to conclude treaties with foreign countries on behalf of the Union.

If a treaty is to affect the interests of the states, the opinion of the state concerned must be taken long before.

B - The powers of the federal states in the field of international relations: the state has powers to legislate in matters that the basic law has not stated that it is the powers of the central federal authority, including foreign policy.

It was pointed out that the legislative powers of the member states of the Union can conclude foreign treaties within the limits of their legislative powers and with the consent of the federal government.

It also gives the states the right to govern by a local constitution, and states are not limited to matters that fall within the powers of the state. But also, those that have the same legislative power when the Federal Central Authority refrains from enacting legislation.

It is clear that:

a) - Before concluding any agreement that would affect the interests of a state, it must listen to the point of view of the state concerned.

b) - States may conclude treaties with foreign countries with the consent of the federal government on affairs for which the legislation is within the powers of the states.

Third - The Constitution of the Swiss union⁽¹⁾

The political system in Switzerland has been based on a federal union since 1848. The population of Switzerland is about 7 million and comprising 26 constituent units called (cantons).

The federal legislature in Switzerland, which is called (The union assembly), composed of two legislative councils one them is elected on the basis of population in general and it is called national council while the other council is called cantons council and this council , which includes representatives of the various districts , is composed of (46) representatives of the counties , and although under the constitutional distribution of the authorities is granted a large part of the authorities to the federal government, There is indeed a great deal of decentralization because the Constitution makes the federal government highly dependent on the cantons.

The entities engaged in external representation according to the provisions of the Swiss Constitution are⁽²⁾:

Counties, the federal council, and the federal assembly.

The Constitution includes the provisions of the provinces, the Federal Council and the Federal Assembly in the field of international relations, as follows:

A - Constitutional provisions relating to foreign affairs which fall within the jurisdiction of the counties: The Swiss Constitution has given the counties power to represent the international community, and their right to exercise all affairs that have not been delegated to the Union.

In the field of foreign affairs of Switzerland, the counties share with the Union authorities in making decisions related to foreign affairs affecting their competence or the appointment of public and vital interests in the counties and before the final decision of the Union is settled.

In this case, the Union must accelerate the involvement of the counties' representative in the conduct of negotiations related to the political affairs of the counties.

⁽¹⁾ Thomas Fleiner, Alexander Misic & Nicole Töpperwien, Swiss Constitutional Law, Kluwer Law International, 2005.

⁽²⁾ The Switzerland Constitution, 1999 (rev. 2014).

As for treaties, the Federal Constitution granted the counties the power to conclude international treaties with foreign countries within their jurisdiction, provided that their content does not conflict with public rights and freedoms within the Union or any other county, including the treaties on neighboring, borders and police.

B- Constitutional provisions relating to the competence of the Federal Assembly in the conduct of foreign affairs: These provisions confirm the Federal Council's authority to supervise and maintain international relations and the formulation of foreign policy.

And the ratification of international treaties concluded by the Federal Councils, and which fall within the jurisdiction of the law or the text of an international treaty. The Federal Assembly also has the power to maintain relations between the Union and the counties as well as the ratification of treaties concluded by the Union Government with the outside in case of opposition by the Federal Council or a district.

C. The constitutional provisions relating to the competence of the Federal Council in the field of international relations: The Federal Council is the main body for the conduct of foreign affairs of Switzerland, while respecting the right of the Federal Assembly to represent the State abroad in the field of international relations with foreign countries and has the management of negotiations with these other countries in ratifying all international treaties and submitting them to the federal authority. The Federal Council nominates the staff of the diplomatic and consular corps and receives the staff of foreign countries.

Fourth - The Constitution of the Belgian Union⁽¹⁾

Belgium was transformed from a country of a unified administration system into federal system after one hundred and seventy years of constitutional monarchy in 1994.

Under the federal system in Belgium, it consists of groups and regions consisting of three groups: The French group, the Flemish group, and the German group, and three regions: The Walloon, the Flanders and the Brussels metropolitan area, and four regions according to languages: The French-speaking region, Dutch-speaking region, the capital language and German-speaking region. The Federal Parliament consists of two councils: The House of Representatives and the Senate. According to the provisions of the Belgian Constitution, the foreign policy and international representation are the responsibility of the King with participation of the regions and constitutional groups.

Thus, the Constitution has conferred comprehensive powers on groups and territories in international cooperation and the conclusion of agreements concerning their affairs.

Conclusions

1. The constitutions of States are responsible for determining the competent authorities that exercise the international relations.
- 2 - The concept of federalism in its content is based on two opposing elements (autonomy) and (Union).
3. States with federal political systems have two governments: the first is the central government, and the other is the government that controls the political units forming that state and often referred to as states, countries, or regions.
4. The federal territories right to exercise international relations depends on the authority conferred on them by the federal constitution, and the federal constitutions are different.

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