

## FEDERALISM IN BRAZIL AND THE DISTRIBUTION OF SKILLS

### *FEDERALISM IN BRAZIL AND THE DIVISION OF COMPETENCES*

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*Angela Medeiros Ramos***SUMMARY**

The main objective of this article is to analyze the composition and main characteristics of the Federated State, considering that this is the model adopted by the Federative Republic of Brazil. Among the main characteristics are political decentralization, the lack of the right of secession, the sovereignty of the federal State, among others. With regard to political decentralization and the autonomy of federated entities, the division of competences will be discussed in accordance with the provisions of the 1988 Federal Constitution. **Keywords:** Political Decentralization. Division of Competence.

**ABSTRACT**

The main objective of this article is to analyze the composition and main characteristics of the Federated State, considering that this is the model adopted by the Federative Republic of Brazil. Among the main characteristics are political decentralization, the lack of the right of secession, the sovereignty of the federal state, among others. Regarding political decentralization and the autonomy of federal entities, it will be addressed with regard to the division of powers in accordance with the provisions of the Federal Constitution of 1988.

**Keywords:** Federated State. Politics Decentralization. Division of Competence.

**1. INTRODUCTION**

The federative form of the State, considered as an immutable clause, is provided for in several sections of the constitutional text, being established as an immutable principle of the Brazilian State. In this scenario, federalism's main characteristic is the autonomy of federated entities, enabling the division of functions between the Union, States, Federal District and Municipalities and, at the same time, establishing the sovereignty of the State as a whole.

Throughout the development of the theme, this article discusses the numerous aspects of federalism, highlighting some peculiar points of this model. To this end, the main constitutional articles on the subject were studied, as well as some examples that were treated by the jurisprudence of the Superior Courts.

## 2 FEDERALISM IN THE 1988 CONSTITUTION

The main literary works prescribe that the federated State is one formed by different autonomous political entities that, in an indissoluble bond, form a unit, different from the units that compose it, which is the sovereign State. One of its main characteristics is that there is no hierarchical subordination between the political entities that together form the State, as they are all positioned at the same hierarchical level, for the autonomous exercise of the powers attributed to them by the Federal Constitution. In this sense, the federated State can be conceptualized as a model of political decentralization. The 1988 Federal Constitution expressly included in several articles the federative form of the Brazilian State and its main objectives. Let's look at some of them:

Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, constitutes a Democratic State of Law and its foundations are: [...]

Art. 3 The fundamental objectives of the Federative Republic of Brazil are: I - building a free, fair and supportive society; II - guarantee national development; III - eradicate poverty and marginalization and reduce social and regional inequalities; IV - promote the good of all, without prejudice based on origin, race, sex, color, age and any other forms of discrimination.

Art. 60. The Constitution may be amended upon proposal: [...]§ 4 The proposed amendment aimed at abolishing: I - the federative form of State will not be subject to deliberation; [...] (BRAZIL, 1988).

According to Pedro Lenza, despite the peculiarities existing in each federated state, there are many points in common between all types of federation, such as: political decentralization, the division of competences between entities, the existence of a rigid Constitution as legal basis (institutional stability), non-existence of the right of secession (indissolubility of the federative bond), sovereignty of the federated State, possibility of intervention, self-organization of Member States, revenue sharing, among others. (2018, p. 485).

The federated system can be divided into some classifications based on certain characteristics of this form of state. In this sense, with regard to Brazilian federalism, Pedro Lenza observes that it is a model formed by the disaggregation of a unitary State into a new model, starting with the Proclamation of the Republic, when the disaggregation and formation of entities occurred. The author also points out that federalism in Brazil is of the cooperative type, that is, there is a true rapprochement between entities due to the existence of common and competing competencies between them. (2018, p. 484).

As José Afonso da Silva conceptualizes in his work “Curso de Direito Constitucional Positivo”, establishing a federated State means establishing parity between entities supported by the prohibition of creating preferences between one federated entity and another, or between Municipalities and States, or between the States and the Federal District. (2005, p. 476). Therefore, the federative form of the Brazilian State presupposes harmony and cooperation between the Union, States, Federal District and Municipalities, as expressly provided for in the constitutional text.

## 2.1 THE DISTRIBUTION OF COMPETENCES IN THE BRAZILIAN MODEL

According to José Afonso da Silva, competence “is the power legally attributed to an entity or a body or agent of the Public Power to issue decisions”. Competences, in turn, “are the different types of power that state bodies or entities use to carry out their functions”, adds the aforementioned author. (2005, p. 479).

The 1988 Federal Constitution divided the different activities of the State among the federated entities. In this sense, the constituent legislator used as a criterion or basis for the distribution of competences between entities the so-called principle of preponderance of interests, that is, the granting of competence was given in accordance with the predominant interest regarding the respective matter. Thus, it was understood that there are issues that should essentially be treated in a uniform manner throughout the country, which form the competence of the Union, while others could be regulated by state or municipal laws due to the prevalence of regional or local interest. The DF, due to the prohibition of its division into municipalities, was granted, as a rule, state and municipal powers.

Thus, the competence of the Union is expressly provided for in articles 21 and 22 of the Federal Constitution, that of the Municipalities is mainly provided for in article 30 of the aforementioned norm, and the States have the residual or remaining competence, as provided for in article 25, paragraph 1, also of the Constitution. In this context, let's look at some examples from jurisprudence:

It is UNCONSTITUTIONAL for a state law that prohibits the commercialization, in that Member State, of imported products that have not been subjected to analysis for chemical residues of pesticides. This is because this law deals with foreign trade, a matter whose jurisdiction is exclusive to the Union, under the terms of art. 22, VIII, of CF/88. (STF. Plenary. ADI 3813/RS, Rel. Min. Dias Toffoli, judged on 2/12/2015. Information 774).

Binding summary 46-STF: The definition of crimes of responsibility and the establishment of the respective process and judgment standards are the exclusive legislative competence of the Union.

Finally, it is important to emphasize that this is not an inflexible, immutable model of division of competences, as even though, as a rule, the Municipalities are responsible for managing matters of local interest, it is possible for other entities to deal with the topic. As an example, the exploration of piped gas is a matter of local interest, but was granted to the States, as expressly provided for in article 25, paragraph 2 of the Federal Constitution.

## **FINAL CONSIDERATIONS**

For all of the above, the strong presence of federalism in the constitutional text is clear, bearing in mind that in several passages it contains express norms that demonstrate the autonomy of entities, the division of functions between them, the distribution of revenues in order to improve the provision of public policies, the sovereignty of the federal State, among others.

In summary, the Federative Republic of Brazil, composed of autonomous political entities, adopted the federative form of State, which is a politically decentralized model, with the competencies expressly defined by the Federal Constitution. However, despite the expressed divisions of functions, entities need to get closer and cooperate with each other.

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