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MANDATES OF PARLIAMENTARIANS IN BELARUS AND IN SOME STATES OF EUROPEAN UNION: COMPARATIVE ASPECT

In European legal science a traditional division of the parliamentarian's representative mandate into two types currently prevails: a free and imperative mandate. The type of a mandate determines the character of cooperation of an elected representative with his electorate. The author of the article analyzed the key points of those concepts in Republic of Belarus and in some states of EU in comparative feature. The conclusion is made that the gradual transition to the normative regulation of the Chamber of representatives' deputy status, the member of Republic Council, promoting the establishment of mixed type of parliamentarian's mandate in Republic of Belarus is preferable. A number of progressive characteristics of the mixed type of mandate the parliamentarians are stated.

In European legal science a traditional division of the parliamentarian's representative mandate into two types currently prevails: a free and imperative mandate. The type of a mandate determines the character of cooperation of an elected representative with his electorate. Let us analyze the key points of those concepts.

In its most general form a modern concept of imperative mandate (from the Latin imperatives – authoritative [1, c. 247]) determines the character of relations of a member of Parliament with his electors, when the appropriate powers (mandate) are conferred on him only on condition of obligatory fulfillment of commissions (mandates) of his electors. According to that concept the electors are in close correlation with their elected representative and exercise a constant control of his activity. For non-fulfilment of commissions a parliamentarian bears responsibility towards the electors, its defining form being his early recall by the electors. In constitutional law science there exist various viewpoints concerning the elemental composition of that type of mandate. The analysts traditionally perceive in the parliamentarian's imperative mandate structure the presence of three interconnected elements: electors' orders to their representative, parliamentarian's reporting back to the electoral corps and a recall of a parliamentarian by the electors.

It is noteworthy, that Russian scientists who investigated that category [2, c. 637], have come to a conclusion that in the Soviet period many authors were categorical supporters of the parliamentarian's mandate imperativeness. V.F. Kotok [3, c. 55], L.A. Grigorian [4, c. 182] and S.S. Sartayev [5, c. 41] advanced that idea in their works most consistently. Along with that attitude in the period under review there existed another point of view, opposite in its gist. Many state historians thought that in a socialist society there were no reasons to speak about the imperative mandate. Thus, N.I. Cheliapov wrote at the initial stage of formation of the Soviets: «As our institutions are more and more turning into business institutions, the imperative mandate may become only an obstacle in the way of prompt solution of urgent problems» [6, c. 815, 1 081]. The imperative mandate opponents have been convinced that, firstly, the electors are far from expressing their opinion of all the matters, in solution of which a deputy takes part. Secondly, it is possible that when giving an order or expressing their will in any other form, the electors do not possess information on some real circumstances that influence formation of public opinion. Thirdly, the scientists who share the concept of imperative mandate proceed only from relations between district electors



and a deputy, whereas there exist another relations besides them which are no less lasting: relations between a deputy and a representative body, into which he is elected [7, с. 14].

The author of that article thinks that at the present stage – in the XXI century – the imperative model of parliamentarian's representative mandate has nevertheless a whole number of objective advantages and the following may be attributed to the most important of them: constant close relations between a representative and his electors; political and legal responsibility of a parliamentarian toward his electoral corps; the presence of a possibility for a parliamentarian to solve vital problems not solely at the national level, but at the regional level as well.

It should be mentioned, that at present the democratic communities in a number of developed European countries have recognized the need of normative consolidation of the imperative mandate model and have directly consolidated it in their Constitutions. The Constitution of Spain which contains a provision that «the members of General Cortes are bound by the imperative mandate» (part 2 of article 67), can serve as an example of constitutional consolidation of that type of mandate.

But in the Constitution of Belarus the matter of parliamentarian's mandate nature is not directly solved. However, since article 72 of the Constitution of that state and article 9 of the basic Law directly provide for consolidation of a mechanism of parliamentarians' recall, in our opinion the imperative mandate of the above persons should be discussed. [8; 9]. It means that a deputy, who did not justify the electors' confidence, can be recalled on the initiative of at least 20% of electors of the district, from which he was elected. The initiative is expressed in the form of collection of signatures. For those purposes an action group is formed at the election meeting, and the deputy is obligatory invited to that meeting. Signatures are collected similarly to the procedure applied for nomination. The recall is considered completed, if more than half of persons participating in voting voted for it.

As for the concept of free or facultative mandate (from the French term «*facultatif*», which means «possible, optional»), its essence according to M. Prelo is as follows: 1) the mandate is general; 2) the mandate is not imperative; 3) the mandate is not subject to recall; 4) in the mandate realization the approval of parliamentarian's activity is not required [10, с. 437]. In connection with the foregoing it should be emphasized that the free mandate model is regarded as a priority model in the legal science of many European states. It should also be noted that the parliamentarian's free mandate is consolidated practically in all the states of the European Union: for instance, in the Constitutions of Italy, France, Poland (the Constitution of Germany is rather an exception than a rule in this respect: according to it the free mandate holders are solely the members of Bundestag – the lower chamber of Parliament of that state).

For instance, article 104 of Polish Constitution directly consolidates the free mandate of deputies of Polish Parliament [11]. It is specified in part 1 of that article that deputies are representatives of the people, but they are not bound by the instructions of the electors. Members of Polish Parliament have a right to decide on their own, what according to the deputy's oath is useful «for prosperity of the Motherland and benefit of its citizens».

Yet, realisation of the above duties of Polish parliamentarians is not backed by any legal sanctions, and the consequences of their breach may be of political type only (for example, according to article 104 of Polish Constitution the refusal of adjuration means renunciation of the mandate). In addition, in practice a parliamentarian's party affiliation exerts a considerable influence on the stand taken by him in the Polish Parliament.

Undoubtedly, the model of parliamentarian's free mandate has some merits. One of the most weighty of them is an absolute elimination of a possibility for that person to defend only purely narrow corporate interests, the merit is determined by the fact, that a holder



of that type of mandate represents, as stressed above, the whole nation (people). At the same time, the thesis of «infallibility» of the free mandate concept which is widespread in the constitutional theory of many developed states, gives rise to doubts. We see the main drawback of the above-mentioned theory in the fact, that in allotment of the free mandate to a parliamentarian, that elective person does not in the least represent the whole people or nation in the *objective* reality (as required by the representative mandate model considered by us). *Indeed* he represents a certain social community – a local group of persons invested with the vote, and from a position of the above theory and therefore of the appropriate legislative statutes, he is not obliged to represent it.

A Russian scientist P.A. Astafichev is the opponent of the classification of parliamentary mandates that is widespread in the constitutional law science, that classification including two main models of representative mandate. The analyst negates the model of both free and imperative mandates and sees expediency in construction of levels of relations between a representative and electors by increasing a degree of their cooperation [12, с. 228].

Not negating the above-mentioned position in full, it seems that in the XXI century the freedom of parliamentarian's mandate must not be rendered absolute. At the present stage of development of society and state the theoretical postulates about the representative's free mandate are fully exhausted. We believe that the above concept has a number of other negative moments besides those mentioned before: the absence of juridical links between the electors and their representative; the absence of normative consolidated means of electors' control of parliamentarian's activity; the absence of responsibility of a parliamentarian towards his electors etc.

In our opinion those defects of parliamentarian's free mandate are leveled by the concept of a semi-free mandate, which at present is at the stage of its theoretical formation in the constitutional law science. N.V. Vitruk was one of the first to voice the key moments of that concept in the framework of CIS countries. The Russian scientist thinks that a mandate of deputies of the representative (legislative) bodies of state authority may be regarded as semi-free, if it is not strictly bound by orders of the electors and a possibility to recall a deputy for non-fulfilment of their orders. A deputy recall is possible in pursuance of a deputy's regular culpable non-fulfilment of his deputy's duties, including non-fulfilment by reason of loss of any links with the electors, as well as in pursuance of actions, which tarnish honour and dignity of the deputy [13, с. 5]. Thus, the features of both imperative and free mandates make the essence of the semi-free mandate – hence comes its synonymic name: a mixed (hybrid) deputy mandate.

In the most general form that category is identified with the availability of the following elements: an election program of a Parliamentary candidate; a parliamentarian's reporting to the electoral corps; a recall of a parliamentarian by the electors. The foregoing list indicates that the parliamentarian's semi-free mandate differs from the imperative mandate owing to the absence of only one inherent element: compulsory orders of the electoral corps.

The author of the article thinks that, even if the presence of the institution of electors' orders is possible in the above category, it may be present only as an optional element. The explanation of that attitude is as follows: in a narrow-limited range the electors' orders conform in the large to the principles of a developed democratic state. In our opinion, the electors' orders may be applied only strictly within the competence of the appropriate legislative authority, because in case of expansion of the field of application of the above institution there is a high probability of appearance of mutual non-coordination of electors' commissions, and what is more, of their coming into conflict with the most important state programs. That optional element can well be replaced by its structural part obligatory for the mixed



mandate – an election program of a parliamentarian which is subject to implicit fulfillment on the part of the above person in case of his victory in parliamentary elections. Inclusion of that element as an obligatory one into the mixed mandate structure will make it possible in our opinion to achieve a considerable increase of effectiveness of an elected representative's activity in the Parliament. Moreover, such structure of the representative mandate will predetermine to a large extent a conscious and well thought-out choice of his electorate: in that case a parliamentary candidate can gain a victory in elections not because he promised to fulfil specific commissions of his electors, which are urgent perhaps only for a certain local group of persons guided by their own private interests, but because his election program, his views in whole are approved and supported by his electors.

As follows from the foregoing structural theoretical construction, the semi-free mandate concept provides for the availability of institutions of reports and recalls of parliamentarians, characteristic of the imperative mandate model. That fact is quite understandable, because «preserving the institution of reports and recalls of deputies can be explained by... the presence of persons among the deputies, who by their moral, professional and business qualities are unworthy and incapable of representing the will and interests of the electors. The electors should have a right and a possibility to correct a mistake made by them in the election» [14, c. 93]. Undoubtedly, «the principle of honest election is not only that all the candidates should enjoy equal rights, but also that promises given by a candidate should be rigorously fulfilled. It is difficult for the electors to understand metamorphoses, when a candidate announces his adherence to some strategic idea, but when he is elected, his attitude towards that idea changes by 180 degrees» [15, c. 240].

In the framework of the concept under review a thesis is necessary about *an indisputable* fulfillment of parliamentarian's pre-election promises, ensured by both political and legal responsibility. According to the mixed mandate model the political responsibility of a parliamentarian can be manifested in a possible non-election of that person in the next parliamentary election by the electors, who in the previous election supported him and his promises that he never fulfilled as it subsequently turned out. No doubt, a certain mechanism is required to ensure the electors' control of the activity of their representative. That sought-for mechanism is offered by a well-known Byelorussian scientist G.A. Vasilevich, who believes that «in order that everybody could become familiar with a candidate's election program, a collection of programs of those who have gained the election should be published» [15, c. 240]. In the context of the parliamentarian's mixed mandate model it seems obligatory to have an appropriate legislative consolidation of the specific fixation mechanism of Parliament members' election statements.

On the basis of the foregoing, we think that the direct reception of the parliamentarian's mixed mandate model consolidated in the legislation of a number of developed European states will hardly facilitate solution of the task of taking into account the organization peculiarities of a representative branch of the state power in Belarus. Another important factor should not be neglected: as every theoretical model, the above-mentioned concept of parliamentarian's mandate has not only advantages (to our mind, they prevail in the category under review), but also some negative sides, the most important of them consists in its being in the stage of theoretical and legislative formation. Nevertheless, in order to harmonise the system of relations between a parliamentarian and his electors it seems necessary to carry out a partial implementation of proven, based on the mixed mandate concept works in the field of legislative regulation of the above institution. Also, the above-mentioned arguments will make it possible to draw to a conclusion, that at the present stage of Byelorussian state development it is reasonable to perform a gradual transition to such normative regulation of the status



of Byelorussian Parliament members – Chamber of Representatives deputies, Council of Republic members – that would promote the formation of a mixed model of their representative mandate in Belarus. Hence it follows that some Byelorussian legislative provisions, which regulate the relations making the essence of the nature of the above persons' mandate should as a result of that «reforming» receive a new interpretation and therefore, be subjected to an appropriate revision. The author of that work believes that in this case «at the output» there is a possibility to get a parliamentarian's mandate model which on the one hand will enable a Byelorussian Parliament member to come *objectively* nearer to his electors, to represent *substantially* their interests in the legislative body of our state, and on the other hand – to serve *the most* productively the whole of the Byelorussian people.

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***Чмыга О.В.* Мандаты парламентариев в Беларуси и в некоторых государствах Европейского союза: сравнительный аспект**

В современной европейской правовой науке преобладает деление представительского мандата парламентария на несколько типов: свободный и императивный. Природа мандата во многом предопределяет правовой статус парламентария, является, в определенной мере, предпосылкой его статуса. В работе в сравнительном аспекте проанализированы ключевые моменты данных концепций в Беларуси и в некоторых государствах Европейского Союза. Сделан вывод о предпочтительности постепенного перехода к такому нормативному регулированию статуса депутата Палаты представителей, члена Совета Республики, которое содействовало бы становлению в Республике Беларусь смешанной модели представительского мандата парламентария. Отмечен ряд прогрессивных, по мнению автора, характеристик смешанного мандата парламентария.

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