

## On the Legal Status of Members of Parliaments of Countries of the Asian-Pacific Region

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### Abstract

*In recent years modern science of the constitutional law focuses special attention on parliamentarism problems. It is caused by the special role of parliament in socio-political life and also by complexity and contradictoriness of separate parliamentary institutes' development. The article considers such categories as constitutional and legal status of a parliament's member and a deputy's mandate and also their correlation at implementation of parliamentarian's activity. The control, representative and legislative powers of a deputy are members of active discussion. New political and economic conditions, a deputy's mandate evolution, a need of the organization improvement and activity of parliaments, deputies predetermine necessity and importance of the comparative legal research of various aspects of parliamentary experience of the Asian-Pacific region's countries. The further study, the account and efficient borrowing of positive experience of the legal regulation of the different status sides of parliamentarians and effective practice of their work will promote parliamentarism's development and parliaments' activity optimization.*

**Keywords:** deputy, parliament, legal status, deputy mandate, Asian-Pacific region.

### 1. Introduction

The role of the elected representative in political life of society and state is great, their main task is to fix in laws interests and will of the majority of the citizens that expresses the point of a deputy's mandate. That is why the constitutional institute of the popular representation is inseparably connected with the parliamentarian's legal status.

The XXI century is "an Asian century" that is why, as many authors think, the research, the consideration of experience of the work organization of countries of the Asian-Pacific region (APR) within the comparative jurisprudence is indispensable (Charlton, S. E. M., 2010, pages 1-2).

The Constitutional Court of the Russian Federation more than once emphasized in its decisions the correlation between deputy's mandate characteristics and its nature and questions of the deputy's status, and in general keeps to the idea according to which both a deputy and the parliament are the people representatives. It follows from the article 3 of the Constitution of the Russian Federation according to which a carrier of the sovereignty and the only source of the power in Russia are its multinational people which carries out the power directly and also through the public authorities. In Russia the Federal Assembly, that is the representative and the legislative body consisting of two chambers- the Federation Council and the State Duma, plays an important role.

Chronologically the contents of the elected representative's mandate initially had an imperative character and gained distribution in the Middle Ages that was connected with dissociation of the states in the feudalism era and formation of class - representative bodies. Coherence of a deputy by the orders and instructions of the voters was typical both for Constitutions of the USSR and RSFSR. The constitution of Russia of 1993 does not mention about the character of a deputy's mandate. The Constitutional Court of the Russian Federation by its the Resolution from 12 April, 2002 N 9-P allowed deputies of the State Duma of the Russian Federation to be guided at implementation of the powers only by the Constitution of the Russian Federation and their conscience. Evolution of a deputy's mandate had led to the fact that in the modern democratic states the principle of the free deputy's mandate recognizing the parliamentarian as the elected representative of all people who has to be guided in his activity by conscience and not to be connected with any instructions was approved. In turn the imperative mandate remained in a number of the post-socialist states and exists in some developing countries (for example, in India).

In practice the concepts of the free and imperative deputy's mandate do not allow fully reveal an originality of the contents of a deputy's mandate and causes a number of questions, such as whether a deputy is in direct connection with

parties which nominated him as a deputy or whether it depends on the other persons who lobby the interests in the parliament.

## **2. Methods and Materials**

Due to the increase of a role and complication of the tasks facing people's deputies it is more and more obvious that improvement of the legal status of a deputy can be reached only on the basis of comprehensive use of scientific knowledge in this area.

For the goals achievement it is necessary to reveal and prove specifics of the concept "the status of a deputy" and "a deputy", the constitutional and legal nature of the popular representation, to compare and generalize experience of the constitutional and legal regulation of activity of bodies of the national representation in Russia and countries of the Asian-Pacific region.

As the methodological basis for specification of a conceptual framework in the concept of national representation dialectic, historical and comparative - legal methods which allow to show a place of the representative power in aspects of statics and dynamics, and also a method of the system and structural analysis allowing to open in details the legal model of a deputy's activity have the defining value.

## **3. Results and Discussion**

In the modern theory of the constitutional law there are some definitions characterizing a deputy as the subject of the public relations: a deputy's status, a deputy's legal status, a deputy's legal position, the legal mode, a deputy's constitutional status. It is necessary to mention that these concepts are still debatable in the Russian legal science.

The Latin word "status" in translation means "situation", "state". The term "status" in the constitutional law is understood as the position of body, organization, association, official issued by the regulatory act (Avakyan, 2001, p. 191). In other words the status characterizes their nature, the place in the system of public relations, rights and duties, the order of their realization and acts or the made actions thus adopted (Korenev, 2009, p. 17).

In the widest sense in modern jurisprudence the legal status is defined as a legally fixed position of the personality in society (Matuzova and Malko, 2004, p. 180). However the legal status of the personality is not a static category, as it is known the legal status is expressed in difficult connections which are between the state and the individual (Lukasheva, 1996, p. 28). Thus, the legal status is first of all connected with the concept of activity of the personality. The sense of the last category is that the person has to be active in realization of the legitimate interests.

The legal status has in its basis the actual social status that is the real position of the person in the system of the public relations. Practically the person has opportunities and duties as the result of difficult interaction between certain people, personality and society. It predetermined serious distinctions in the legal, financial, and social status of citizens. The most important organic part of the social status is the legal status.

Democracy as complete power belonging to the people makes a core of the constitutional system. The people carry out the power, as we know, in two forms of democracy: direct and representative. The last one is first of all realized through the parliament and other electoral bodies. Unfortunately, the executive power actually dominates quite often (Kabyshev, 2012, p. 123-124) that does not promote a successful decision of the parliament and deputies of the problems of Russia and certain citizens. In this regard the separate analysis is demanded by an institute of the government's responsibility in relation to the parliament which gleams can be seen in the amendment establishing the annual report of the Government in relation to the State Duma of the Russian Federation. According to some authors' opinion, in practice it is no more than the decorative formality which does not provide the original responsibility of the government in relation to the supreme legislative and representative bodies of the government of Russia (Bobrova, 2010, p. 307).

Speaking about the legal status of a deputy, there are no doubts that it has to be fixed by the law. Otherwise the matter will only concern the public status. The rights and duties which are the parts of the legal status are regulated by the law because it does not only provide the rights and duties, but also establishes responsibility for their non-performance or improper execution. We have to agree with many authors who refer to the integral elements of the legal status of a deputy of the government supreme body of the Russian Federation not only the rights and duties, but also guarantees of activity of a deputy and his responsibility.

Guarantees of a deputy's activity are called the conditions established by the law and prerequisites of execution of the tasks, functions and powers by deputies. Constitutionals allocate some groups of guarantees of the parliamentarians which are necessary for effective work: organizational, material, guarantees of the labor rights and

security of person (Avakyan, 2015, p. 174-178).

It is fair to believe that not all public relations, in which the parliamentarian enters at implementation of the activity, can be considered as legal relationships. Therefore the status of a deputy is defined not only by rules of the law, but also by rules of political parties' work where it participates, by the established practices, customs, traditions, norms of morals, etc.

If the status of a deputy is fixed both by legal and other norms, then the legal status is settled only by the legal norms. The constitutional status of a deputy should be considered in narrower sense. Specifics of the constitutional status are caused by appointment and the nature of the Constitution which is urged to fix the fundamental, leading beginnings of the state organization and society and to govern the main and the most essential public relations.

For identification of essence of the legal nature of the status of the parliamentarian the bases of its emergence are important. The source of powers of a deputy is a will of his voters; in this regard such category as "a deputy's mandate" needs a special interpretation and research. The concept of the legal status of a deputy should be distinguished from the concept of a deputy's mandate which defines the nature of relationships between the parliamentarian and the voters whom it presents in public authority and civil society. A deputy's mandate is an element, a component of the constitutional - legal status of the parliamentarian (Nudnenko, 2004, p. 56).

In our opinion a mandate is the steadier policy - legal element than other elements of the legal status of a deputy which can change when saving of the available deputy's mandate.

The foreign authors, considering the status of a deputy, first of all address to providing his mandate as positions in a representative body with the corresponding rights and duties (Marc V., 2000, p. 13.). In some of the countries which we study a mandate is connected with a day of announcement of elections results (Japan). In a number of the countries (Mexico, Indonesia) the beginning of the action of a mandate coincides with holding a ceremony of adoption of the oath. Senators of the Upper House of Parliament of Philippines enter a position in midday of the day following behind a day of their election.

Constitutions of a number of Asia-Pacific countries, as a rule, define an essence of the constitutional and legal contents of a deputy's mandate, establishing its fundamental principles to which first belongs the elective principle as the basis of obtaining a mandate. The principle of representation is consolidated (Art. 97 of the Constitution of the Socialist Republic of Vietnam, the deputy of National Assembly expressing the will and interests of the people, is a representative not only of voters of the district, but also all people of the country).

Irresponsibility of a deputy for his opinion and vote at implementation of the mandate is established as the principle of a deputy's mandate. The constitution of Japan concretizes this principle by the instruction that members of both chambers of Parliament "do not have responsibility behind walls of a chamber in connection with the speeches, statements and vote in a chamber" (Art. 51). Art. 105 of the Constitution of India says that nobody can be brought to judicial responsibility for the statement or vote in Parliament and does not have responsibility in connection with publication of the document, results of vote.

A number of constitutions consolidates the principle of parliamentary immunity. So, the Constitution of People's Republic of China in article 74 establishes that deputies of the National People's Congress cannot be arrested or brought to trial without the permission of presidium of session of the National People's Congress, and during the period between sessions - without the permission of Standing committee of the National People's Congress.

The important element of a deputy's mandate is the principle of its incompatibility from a certain sort activity, occupation of separate positions (article 92 of the Constitution of Peru - functions of Congressmen assume a full employment, deputies are forbidden to hold any position during the time when the Congress works.). The article 101 of the Constitution of India establishes that any person cannot be a member of Parliament and a member of any Chamber of State Legislature.

In the modern democratic states a free deputy's mandate recognizing the parliamentarian as the representative of all people who is not connected by any instructions and instructions was approved. At the same time the practice of national representation testifies that a deputy often is in direct dependence on parties which nominated him as the candidate on elections or according to which lists he was elected, and also from others, as a rule, the forces hidden from public control lobbying the interests in parliament. Evolution of domination of political parties in formation of a deputy's mandate finds the reflection in the political encyclopedia which says: "The role of party consists in carrying out the interests between various groups, avoiding questions of democracy, ideology and even own program. The main aim is to provide the greatest number of votes, given for the party or the candidate" (L. McLean, 1996, p. 364).

Political control of parties of a deputy activity finds the reflection and in the text of constitutions of some states (Panama, Papua New Guinea). Article 151 of the Constitution of Panama says that political parties can withdraw the existing deputy mandate, for example, in case of serious violation of the charter, and also ideological and political bases

of party. Considering constituent character of a deputy's mandate and the status of the deputy for providing a political and social order in the country, the relevant provisions of the constitution have to be rather concrete to avoid risk of an abuse of authority (Zdzisław Kędzia and Agata Hauser, 2011, p. 14).

Imperativeness of a deputy's mandate provided the right of a response and also other integral elements of the imperative mandate of the deputy which were affirmed in Constitutions of the USSR and RSFSR. It was generally shown in the constitutional duties of a deputy to consider inquiries of the population of the constituency in the activity, the rights of voters at any time to demand the report of a deputy and opportunity to withdraw it.

Now the imperative mandate is used in such countries of the Asian-Pacific region, as the People's Republic of China, Democratic People's Republic of Korea, Vietnam, India and Vanuatu.

So, the Art. 7 of the Constitution of Vietnam says that a deputy of the National Assembly responds voters or parliament. The deputy of the National Assembly is obliged to support close connections with voters; to be under their control; to collect and to state truthfully to the National Assembly and the interested government bodies of the offer and a wish of voters; to respond to requirements and proposals of voters; to consider complaints and petitions from citizens, to promote their permission, to control it, to advise and help citizens with implementation of the specified rights (Art. 97).

Deputies of the National People's Congress are under control of the bodies which elected them who have the right in the order established by the law to withdraw the elected deputies (Art. 77 of the Constitution of the People's Republic of China).

#### 4. Conclusion

1. The concepts "status" and "legal status" of the parliamentarian are various on the volume and the contents. If it is necessary to understand the actual position determined by the legal and other social norms as the position, the legal status of the parliamentarian is its legal status settled legislatively.
2. Constitutional - legal nature of the institute of the parliamentarian assumes the perfect mechanism of legal regulation of activity and responsibility of representative institutions therefore their sufficient dependence on requirements and citizens' interests is provided.
3. A basic purpose of a deputy's mandate is to ensure democracy in relationship of citizens and their plenipotentiaries at implementation of legislature. Such elements constitutional - legal status of a deputy as the rights, duties, guarantees are way of a specification of a deputy's mandate (free, imperative or mixed).
4. As a matter of experience neighboring countries and historical development of Russia, it is legislatively necessary to develop the main forms of relationship of deputies with the voters, to enter possibility of evaluation of the work of deputies and parliament in general, the right of surgery of citizens into administrative process.

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