

FREE MANDATE OF A PUBLIC REPRESENTATIVE

Building of representative democracy an effective system depends on the type of a mandate that means a concept which incorporated building of relationships between authority and voters. Fixation of a different mandate type in legislation determines parliamentary legal status, his representative functions and dependence on voters' will degree. Thus, the science of constitutional law generally allocates imperative and free types of mandate.

A free type of mandate, which has passed a historical development since the establishment of classical parliamentary to nowadays, became the most spread in the democratic countries. Its first legal fixation of the principle of free mandate was acquired during the Great French revolution in the National Assembly decrees in 1897, by which parliamentarians were free from obligation to comply with voters instructions. These instructions were banned altogether later.

Establishing of a free mandate defines that parliament is an institution of the government and has a delegated authority to realize sovereignty on behalf of the whole nation. As a result, assignments, instructions or orders of electorate to a deputy lose their imperative meaning as a deputy represents not his own separate district, but the whole nation. Free mandate forbids making pressure on deputies under the influence of responsibility in form of recall and thereby strengthens the status of a deputy.

Among the scientists of the pre-revolutionary period, which justify the need for a free mandate we can distinguish B. Chicherin, who confirmed that the attorney is assigned for the execution of not a private will of a trustee, but to discuss and solve common cases. Attorney is guided not so much by the

benefit of voters, but by the benefits of the state. A representative acts independently of the voters, and sometimes must even take actions incompatible with their will and interest, since private desires and opinions of voters may contradict the general welfare. Similar views followed M. Druzhynin and S. Kotlyarevsky – protection interests of some community of persons, class or location can't be the task of a parliamentarian.

M. Prelo generalized a content of free mandate as follows:

- 1) a general mandate (deputies are elected by districts, but they represent the entire nation);
- 2) a mandate isn't imperative, but it's optional (its implementation is free from compulsion);
- 3) a mandate isn't a subject to revocation; mandate in its implementation requires a coordination.

Based on the proposed by M. Prelo free mandate understanding and analyzing of parliamentarians status of constitutional regulation, we can conclude the consolidation on the constitutional level of various components of the free mandate in more than twenty-five European countries. All these European constitutions contain a reference to certain elements of free mandate. For example, the Constitutions of Iceland (art. 48), Poland (art. 104), Slovakia (art. 73), Republic of Slovenia (art. 82), Czech Republic (art. 26), Austria (art. 56) Basic Law of the Federal Republic of Germany (art. 38) state that deputies are not associated with any orders or instructions. Some constitutions focus on the fact that deputies are representatives of the state and the nation (art. 152 Portuguese Constitution, art. 80 Constitution of Turkey) and can't be recalled by voters (Constitution of Latvia p. 14 of Section II). However, we shouldn't consider the doctrine of the free mandate like an absolute. In the conditions of a right to recall and binding with voters orders absence, a deputy as a representative of the people can't manage without getting in touch with voters and interacting with them. That's why in modern constitutional law the requirements to define relationships between parliamentarians and voters can be seen. For example, the Constitution of Japan (art. 15) says that all people have the right to elect officials and remove them from the office. In the DPRK Constitution (art. 8), although it doesn't contain provisions for the voters to recall deputies, however, a regulation about the responsibility of parliamentarians to their constituents for their actions is contained.

Nowadays among scientists' points of view we can distinguish Y. Todyka, who analyzed the free mandate functioning. He considered that the deputy's actions in the parliament should be based on their own reasons in interests of the people and such mandate can provide discrepancy nationwide and for local interests. Accordingly, in such a situation it's foreseen the giving of preference to the general interest. Therefore, the free mandate doesn't provide the possibility of recall, and the deputies are

responsible for their actions not to the voters of district but to the people in general. V. Kuznyetsova emphasizes the dominance of free type mandate in the theory and practice of constitutional law.

However, the free mandate doesn't mean complete freedom of parliamentarians' action, although, unlike the imperative gives much more opportunities for independent work. Even in the conditions of right to recall and binding with voters orders absence, deputy as a representative of the people can't manage without getting in touch with voters and interacting with them. If such a situation occurred, it would give a result to a gross violation of the democracy principle, namely one of its institutes – representative democracy. Deputies should express the common will of the people, which is embodied in the laws, and it's impossible without keeping connections with the voters.

Upholding free type mandate opens up more opportunities for professional growth of deputies in comparison with the imperative mandate. The deputy, who is convinced that he would continue his professional activities without the threat of withdrawal has an opportunity openly and independently express his opinion. Simultaneously the free mandate significantly reduces the impact of regional lobbying.