

Relevant Issues of Immunity in the CIS

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Abstract: This article considers one of the most pressing questions of the legal status of the Members of Parliament that is immunity. Citizens of CIS countries are guaranteed by the Basic Law about the inviolability of the person. The right of habeas corpus applies to MPs, in addition to that, their status as representatives of the people in power are protected by additional measures. Immunity of deputies is not their personal privilege. It is established for optimal implementation of the state power and has a state-legal character. However, among many voters, this privilege is associated with the possibility of a deputy to escape responsibility by using their immunity. This thesis includes a comparative analysis of the legislation of the CIS countries, Kazakhstan, Russia and Uzbekistan, where the criminal procedure legislation is introduced as an institute, which governs criminal proceedings in respect of certain categories of officials, which significantly complicated the prevention of crimes committed by this category of executive officers, which also includes the MPs. The analysis of the examined rules showed lack of indication at the fact that the deputy may enjoy immunity from prosecution only in cases when it comes to their direct activities related to their status. The most effective use of limited immunity is designated to the deputy in the U.S. Constitution, where the immune system, first, imposes restrictions only on the case of finding the parliamentarians in the House or the repetition in it or out of it and secondly, exceptions to immunity cover all cases of wrongful behavior. Consequently, it can be argued that the inviolability of American Parliamentarians is narrower than of the elected representatives in many other countries, including the case study in this thesis. Thus, given that almost all the constitutions of the CIS state the equality of all citizens before the law, it is necessary to limit the immunity of deputies out of their parliamentary activities or clarify the articles of the Criminal Code to which the immunity of parliamentarians does not apply. It should be taken into account that each new provision in the concept of deputy immunity creates deviation from the observance of the constitutional principle of equality for all before the law and the courts. Securing by the legislation of the immunity guarantees, in excess of constitutional provisions, can not be considered reasonable and fair.

Key words: Member of Parliament • Parliamentary immunity • Personal integrity • Parliamentary immunity
• The legal status of the deputy • The responsibility for the abuse of power

INTRODUCTION

The problem of deputy immunity is highly relevant today. Almost all the constitutions of the CIS countries base immunity of deputies on personal immunity. The personal immunity is guaranteed to CIS citizens by the fundamental law. The right of personal immunity extends to the deputies, besides, their status as representatives of the people in the bodies of power is protected by additional measures. Deputies' immunity is not their personal privilege. It is established for optimal implementation of the governmental power and is the state-legal in nature.

Constantly emerging proposal to repeal the deputy immunity as regards to prosecution meets a growing awareness among ordinary voters, as they associate it with possible avoidance of responsibility by the deputy referring to his immunity. However, the specificity of the status is that the deputy is a representative of the people, expresses their interests in Parliament and as the official should be protected from undue political persecution. An integral part of the mandate is the deputy immunity. In foreign countries and traditionally in the laws of most countries of the CIS administrative or criminal proceedings against the deputy were regulated by the legislation. Compared with

the general order of making citizens answerable it had specific features, which were studied in a number of foreign works [1].

According to N.A. Mikhaleva, a deputy in foreign countries of the CIS is the elected representative of the people, authorized to exercise the legislative power and other functions provided by the Constitution and current legislation, in the representative body of government-the legislature (parliament) or a local authority [2, p. 182].

Consider the legal status of deputies by the example of the legislation of the Russian Federation, the Republic of Kazakhstan and Uzbekistan.

In Russia the deputy of State Duma is the elected representative of the people, authorized to exercise the legislative power in the State Duma and the other powers provided for by federal law [3, p. 207].

The powers of the deputies of the State Duma are determined by the Constitution of the Russian Federation, the Federal Law "On the status of a member of the Federation Council and the status of deputies of the State Duma of the Federal Assembly of the Russian Federation" [4], the Federal Law "On General Principles of Organization (representative) and executive bodies of state power of the subjects of the Russian Federation" [5], as well as other federal laws.

The authority and the status of deputies in the Republic of Kazakhstan are determined by the Constitution of Kazakhstan, by the Decree of the President, that has the force of the constitutional law "On the Parliament of the Republic of Kazakhstan and the status of its deputies" from 16.10.95, the [6] and other laws and regulations. Parliament deputy's powers begin from the moment of the registration as a Parliament deputy by the Central Electoral Commission of the Republic. At the first session of the Parliament during the joint meeting of the Chambers, the deputies take oath to the people of Kazakhstan. Administration of oath is realized by the President in the presence of the members of the Government, the Constitutional Council and the Supreme Court.

In accordance with the Constitution of the Republic of Uzbekistan Oliy Majlis is the supreme state representative body exercising the legislative power [7]. The Constitution of the Republic of Uzbekistan and the Constitutional Law "On the Oliy Majlis of the Republic of Uzbekistan" adopted on its basis clearly define the powers and responsibilities of Parliament and ensure the strengthening of the foundations of our statehood.

Equally important in organization of the parliament activities is the Law "On the Status of Deputies in the Republic of Uzbekistan" [8]. This legislative act establishes the most important powers of a deputy of the Oliy Majlis, defines their relationship with political parties and local representative bodies, the rights and duties in Parliament and in the electoral district. The document also defines the right of a deputy to the association in the official fraction blocks and deputy groups, guarantees the protection of the rights, dignity and honor of the deputy.

Institute of deputy immunity (parliamentary immunity) originated from the Anglo-Saxon law, since the proclamation of the Bill of Rights in 1689, according to which the parliamentarians of the House of Lords, as well as the House of Commons, could not be prosecuted for the activities and statements in the Parliament [9]. In subsequent years, the institute has spread to most European countries. At present, only in three European countries (the UK, the Netherlands and Ireland) the criminal prosecution of parliamentarians is realized on a general basis (without special preferences), based on the principle of equality of all before the law [10]. In some other countries, such as France, the parliamentarians are protected by the norms of the Constitution against arrest and detention by the law enforcement agencies [11].

It should be noted that the deputies' immunity has existed in the parliaments of many countries. Immunity from prosecution acts as a guarantor of political pluralism and freedom of expression of the people's representatives and as a protection against attempts to prosecute deputies for their beliefs. One of the essential elements of the legal status of the deputy is immunity as a guarantee of parliamentary activities.

A.V. Malko and S.J. Sumenkov identified the following signs of immunity:

- They create a special legal regime, facilitate the provision of relevant stakeholders and expand opportunities to address the different interests.
- Immunities are designed to realize legal rights, to impel certain behavior and indicate a positive legal motivation.
- Immunities are guarantees of socially useful activities, contributing to the implementation of certain duties.
- The mentioned measures are specific lawful exceptions established under special legal regulations.

- These are forms of differentiation of the legal ordering of social relationships [12, p. 16].

Some foreign countries, in one way or another recognize the right to institute specialized criminal and administrative proceedings against deputies. Representative bodies and deputies have to adopt not only wise and just laws, but also to control the expenditure of financial and material resources and to criticize the illegal actions and decisions of the executive bodies. To ensure independent parliamentary activities it is necessary to protect parliamentarians from unfounded attacks, possible prosecution for expressing an opinion, the result of a parliamentary vote or other activity. These deputies need the parliamentary immunity, or in other words deputy immunity, which is not the personal privilege, but a part of their public-law status.

In accordance with the RF Constitution the procedure of assigning parliamentary immunity has undergone significant changes. The constitutional basis of parliamentarians' immunity is Article 98 of the Constitution of RF, which established a framework of possible limitations on criminal procedure and administrative law for the members of Russian parliament. When securing this privilege in the Federal Law deputies have greatly expanded the boundaries of their immunity from prosecution, virtually eliminating the possibility of application in respect of any measures of law enforcement. The relevant provision of the Federal law has been subjected to review by the Constitutional Court of the Russian Federation [13, p. 28].

Thus, the public is concerned about the fact that in Russian conditions inviolability of deputies became a kind of refuge for criminals or individuals, shouldering their way into power through bribery, or deputies practically appointed by the heads of executive authorities. Thus, the immunity from prosecution has become a commodity in the market of corruption services. A legal deadlock was formed, on the one hand, the unconditional importance of parliamentary immunity for bona fide members and on the other hand, speculation and abuse of democratic institutions. These circumstances were noted in the report of the Group of States against Corruption (GRECO) and the Russian Federation was requested to develop specific criteria for the resolution of questions about the deprivation of immunity [14]. The connection between immunity and corruption in government is noted researchers not only for Russia, but also for some Western countries [15].

For comparison, consider the articles of the basic law of the studied countries providing immunity of deputies. In Art. 98 of the RF Constitution the parliamentary immunity is regulated as follows: "1. The members of the Federation Council and the State Duma shall possess immunity for the duration of their terms of office. They may not be detained, arrested, searched, except in cases of detention in flagrant offense and shall not be searched, except in cases when it is required by federal law to ensure the safety of other people. 2. The deprivation of immunity is submitted for consideration by the Attorney General of the Russian Federation and is approved by the corresponding Chamber of the Federal Assembly" [16].

Commenting on this article M.V. Baglaj notes that the parliamentary immunity does not mean the release from the liability for offenses, including criminal or administrative, if the offense was not committed in connection with the implementation of proper parliamentary activities. The extended understanding of immunity in such cases would lead to a distortion of public and legal nature of the parliamentary immunity and turn it into a personal privilege, which would mean, on the one hand, the unlawful removal of the constitutional principle of equality of all before the law and on the other-a violation of constitutional rights of the victims of crime and abuse of power. Therefore, within the limitations prescribed by the Constitution of the Russian Federation, the judicial proceedings in respect of the member of parliament is allowed at the stage of preliminary investigation or proceedings in administrative law until a decision to refer the case to the court in accordance with the provisions of the Criminal Code and the Criminal Procedure Code, the Code of the Russian Federation on Administrative Offences without the consent of the Chambers of the Federal Assembly of [17, p. 595].

In the Republic of Kazakhstan Sec. 4 Article 52 of the Constitution states: the Parliament deputy during the term of office may not be arrested, brought to court, subjected to measures of administrative punishment imposed judicially and held criminally liable without the consent of the House, except in cases of flagrant offense or execution of serious crimes [6]. It should be clarified that the deputy loses immunity without the consent of Parliament in case of his detention in the scene of a crime or grave crimes.

The comments to the Constitution state that it does not mention the events of serious crimes executed by the deputies and stipulated by the criminal laws of the

Republic of Kazakhstan. It is assumed that in case of serious crimes executed by the Member of Parliament the Parliament's consent is not required, as well as in case of the gravest crimes [18, p. 241].

Art. 88 of the Constitution of Uzbekistan states: "The Member of the Oliy Majlis enjoys immunity. He can not be prosecuted, detained or subjected to administrative punishment imposed judicially, without the consent of the Oliy Majlis "[7]. This article is similar to Art. 98 of the Constitution of the Russian Federation, except for the fact that Uzbekistan does not provide for deprivation of immunity of deputies during the arrest at the scene of crime.

The considered rules of the constitutional law do not specify that the deputy may enjoy immunity from prosecution only in cases when it comes to the direct activities related to their status. The most effective use of limited immunity of the deputy is designated in the U.S. Constitution.

Section 6 Art. I of the U.S. Constitution guarantees the members of both houses of Congress immunity from prosecution, meaning that they may not be arrested during their attendance at the session of their respective House, as well as during following to the room and returning from it, except in cases of treason, felony and breach of the public order [19]. Thus, it should be noted that the article under investigation, first, imposes limitations only on the cases of parliamentarian's presence in the chamber, following to or returning from it. Second, the exceptions to immunity in principle cover all cases of illegal behavior [20]. In the research works of the American authors it is indicated that none of the judgments of U.S. courts have ever recognized the MP right of legitimate resistance to arrest by a police officer [21]. Similar rules are established in the constitutions of some states in relation to their legislators [22]. Therefore, it can be argued that the immunity of American Parliamentarians is the most restricted compared with the elected representatives of the people in many other countries, including those studied in this paper. Even being so much limited the immunity of parliamentarians is criticized in the American media [23].

Given that almost all the constitutions of the CIS countries state the equality of all citizens before the law, it is necessary to limit the immunity of deputies out of their parliamentary activities or clarify the articles of the Criminal Code that immunity of parliamentarians does not apply to.

Theoretical and legal nature of the immunity of parliamentarians has not been studied in full yet. For the many years of existence of the studied institute the deputy immunity is seen as indispensable and the main privilege, pointing to the special status of the deputy, which is persistently preserved and protected by all generations of people's elected representatives.

Exploring topical issues of deputies' immunity in the legal literature, the legal scholars pay a lot of attention to the analysis of the conceptual provisions of this institution as an integral element of the status of any member of parliament, during making MP answerable. Meanwhile, most often the expediency of application and the scope of the institute of parliamentary immunity are considered only indirectly, but they also require a separate and deep study.

Today the trend of further development of the institution of parliamentary immunity is obvious, at that, the main focus is the increasing expansion of liability measures and types of investigations not applicable to the parliamentarians without obtaining the consent of the prosecution. In spite of this it is important to bear in mind that each introduction of a new provision in the concept of deputy immunity ever more increases the deviation from observance of the constitutional principle of equality of all before the law and the courts. Securing the guarantees of immunity in legislation in the scope exceeding even constitutional provisions, can not be considered reasonable and fair.

The practice of most countries shows that there may be cases of illegal prosecution of deputies for their active opposition to corruption at the local level, against the illegal actions of officials and etc. The struggle with it should be realized not by the increasing expansion of the guarantees of immunity, but by creating mechanisms for the inevitable liability for those who organize the illegal persecution of the deputy. The most important element of a true immunity of deputies should be broad support of their activities by voters and their public service.

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