

The Reasons and Factors of Emergence of the Mandate of Members of Parliament (Legal - Comparative Analysis)

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Abstract -The nature of the deputy mandate in many respects causes constitutional legal status of the deputy, the deputy's rights and obligations, guarantee and responsibility. By means of this legal category the nature, the place of legal entities in the system of the public relations, their rights and duties in relation to other subjects and so forth is defined.

Keywords - The Legal Status, Rights And Responsibilities, Mandate Relationship, The Mandate Of The Deputy, Warranty.

The deputy mandate plays essential role in defining role of the deputy as Member of Parliament and it is considered as an important legal status of the deputy. The mandate of deputy appears in relations deputy with the voters and while expressing freely willing and desires of nation. The mandate clarifies representative functions of deputy, peculiarities of rights and duties, interactive relations of the deputy with electorate, function of deputy affairs and types of the deputy's responsibilities.

The Doctor of Juridical Sciences, professor O.T. Husanov emphasized that deputies "the main goal may be achieved only by working out the existing skills, knowledge, experience of deputies' and also to consider political parties' interests. Therefore, their main duty is to be aware of peoples' desire and consider it in law making processes" [1].

In the XV-XVI centuries, there was advisory body under the king of the France, which had a layer-representative character. In accordance with the established procedure, each class of people select their deputies, as a guarantor of the voters, they had to adhere strictly to peoples'

instructions. The deputies could have called in advance and at the end of sessions, the deputies were obligated to report the voters' demand and orders. In the Middle Ages, the main elections which held in the main areas of France, the demand of the voters had taken into consideration by deputies and they noted them into the books [2].

Based on the historical developments of parliament, there are two types of mandate, which are differentiated by an imperative mandate and the liberal mandate. The word of mandate is derived from Latin, which is "mandatum" that means "assignment" [3]. It is a legislative paper that indicates the rights and obligations of deputy.

According to the Russian lawyer A.A. Bezuglov, he claimed that in the legal status of the deputy, along with the rights and obligations, the political and legal aspects of the nature of the deputy mandate, duration of the parliamentary mandate, guarantees of deputy powers and accountability [4].

Indeed, the deputy mandate is an important criterion for defining deputies' affairs. Thereby, it determines the necessary interest limits of nation and voters.

The problem of the deputy mandate is related to the position in whose demand showed, participation of deputy in the decision-making process of the parliament and defense the interest of electorate.

The scholar of the Russian Federation the doctor of juridical sciences, professor S.A.Avakyan defined essence of imperative deputy as "to define the imperative deputy there might be three elements: the electorates' demands, the report of deputy in front of deputy's electorate and recalling back the deputy" [5]. There is uncertainty in professor S.Avakyan's view, and there is question whether three elements that mentioned above should be or any of three is sufficient.

According to the doctor of juridical sciences O.Z.Muhammadjonov cited that while the imperative mandate is denied, the party mandate, which substitutes the deputy to the party, instead of giving it the opportunity to act in accordance with deputy's conscience and beliefs, not in the interests of the party, but on national interests, is recognized. This is a very complicated issue and should be resolved in the legislation that defines the status of a party member "[6].

The imperative mandate conception also creates serious objections to the idea of the imperative mandate, even when we understand that a member of the parliament fulfills the direct demand of his/her electorate and in the rest of cases, the member of the parliament is to act freely. If the member of the parliament considers the will of his/her electorate to be contrary to the national interests, in that case the deputy should fulfill demand or resigned from deputy status place or the deputy should be recalled back.

The researcher A.Tokvil cited that the deputies are given plans and specific tasks that they should fulfill them by electorates after election in the United States. The electorate guide the deputies how to accomplish the country's prosperity and hope that deputies conduct their personal wishes"[7]. It comes out that electorate through contributing their shares to countries development while expressing their own interests.

According to the constitutions of democratic and developed countries, the parliament and its members are representatives of the nation and no one can impose on them. This is a feature to describe the free mandate. In this regard, the doctor of juridical sciences, professor

A.A.Azizkhojayev proposed following: "The people carry out the power by means of their elected representatives - through the deputies of the Oliy Majlis. They take their powers from the electorates and represent the interests of the people in their affairs"[8].

Moreover, the candidate of juridical sciences, N.M. Ismailov noted that deputies have professional attitude to their works and they have free mandate in the parliaments of the developed countries. The deputy represents the interests of all citizens of the country and is not directly dependent on the will of their voters "[9].

The researcher from Germany Konrad Hesse pointed out the principle of free mandate based on scientific justification, the deputies are not obligated to support the voters condition and he cited the free mandate comes to uncertainty with states' modern party. Here the point is that the deputy is subject to the party that deputy supports. The deputy is fastened to the party's discipline and issues of parties' factions that would be discussed in the parliament [10].

By supporting the opinion of professor A.A.Azizkhojaev, we claimed that the deputy of the Legislative Chamber by considering direct powers from the voters, during the period of deputy activities and considering the interests of the people, first of all, the deputy should implement his/her affairs.

In order to implement the targets, the deputies should consider their abilities to carry out their activity and clearly expressing their point of views to fulfill their specific activities. Indeed, the deputy's confidence is essential and it causes the voters respect and trust.

It should be noted that these rules are reflected in a few developed countries' laws. In particular, the article 38 of the Federal Republic Germany's the Federal law, deputies of the Bundestag are considered as the representative delegate of people, they are not bound by instructions and their act based on their morals. In the Article 67 of Italy the Constitution, every Member of Parliament expresses the interest of nation and conduct their affairs without the imperative mandate. According to the Article 27 of the French Constitution any kind of imperative mandate is abrogated [11]. It is shown that the representative delegates of nations in parliament act their affairs independently and any imperative mandate is denied.

The essence of free parliamentary mandate might be categorized as following: a) the mandate is considered generally (it means that the elected deputies conduct their

affairs based on interest of whole nation); b) the mandate is not imperative, but it is optional, as it is not compulsory (it is not necessary to consider the electorate's views); c) the mandate cannot be recalled; d) the mandate does not require to support of the mandate provider (the interest of deputies are the same as interest of nations')

For example, in India the deputies cannot leave the political party, cannot vote independently and they cannot vote without consideration of party's interest and it cannot be cancelled deputy's mandate [12].

This approach the deputy's attitude to be dependable to the party is not considered positively. Despite the fact that the imperative mandate has been denied, the party mandate, which substitutes the deputy to the party, does not always allow it to act in accordance with its conscience and beliefs, not in the interests of the party, but on national interests.

The Russian lawyer A.V. Zunov, who defended the conception of independent deputy mandate, researched the legislative status of deputies and concluded an independent mandate is democratic, the deputies do not have any obligation in front of their voters, in return the voters are not able to recall back the deputies. The deputies are paid well and they are free from any obligations [13].

It is required to amend to our laws on basis of the deputy mandate in the Legislative Chamber of Republic of Uzbekistan. The norms of deputy's freedom or imperative mandate are not regulated by the law. Moreover, among the scholars, there is an opinion that parliamentarians have a free mandate in Uzbekistan.

In our opinion, it is necessary to determine under which the mandate of a deputy of the Legislative Chamber is run. For this purpose, it should be amended to the law "On the status of the deputy of the Legislative Chamber and status of the Senator of the Oliy Majlis of the Republic of Uzbekistan" in order to determine specific features of the deputy mandate. Moreover, as we are considered, the deputy's mandate can be formed as half-free mandate, because there are sufficient foundations for imperative and free mandate in our laws.

In particular, the deputies are obligated to report to their electorates that implies of independent mandate in the Article 9 of the law "On the status of the deputy of the Legislative Chamber and status of the Senator of the Oliy Majlis of the Republic of Uzbekistan". Moreover, the Article 9 includes if the deputies are lost the trust of electorates, the deputies might be recalled, which implies the imperative mandate.

In conclusion, the deputy's mandate represents the legal nature of the deputy and it plays an important role for recommending deputy's legal status.

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