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### THE MODELS OF MANDATES OF THE PARLIAMENTARIANS IN BELARUS AND IN THE EU: COMPARATIVE LEGAL ASPECT

#### | Abstract

- ▶ *Goal* – to analyze and compare the key points of concepts of representative mandates in Belarus and in the EU.
- ▶ *Research methodology* – the basis of the work is the comparative-legal method of research, as well as other methods of scientific knowledge.
- ▶ *Score/results* – in European legal science, there is a traditional division of the parliamentarian's representative mandate into two types that currently prevail: a free and imperative mandate. The type of a mandate determines the character of cooperation of an elected representative with his electorate. A number of progressive characteristics of the mixed type of parliamentarian's mandate are stated.
- ▶ *Originality/value* – it is concluded that the gradual transition to the normative regulation and promotion of the mixed (hybrid) type of parliamentarian's mandate in Republic of Belarus is preferable.

| **Key words:** mandates of parliamentarians, free mandate, imperative mandate, hybrid deputy mandate, Parliament, Belarus, Poland, EU.

#### 1. Introduction

In European legal science, there is a traditional division of the parliamentarian's representative mandate into two types that currently prevails: a free and

imperative mandate. The type of mandate determines the character of cooperation of an elected representative with his electorate. Let us analyze the key points of those concepts.

## 2. Imperative mandate of the member of the Parliament

In its most general form, a modern concept of imperative mandate (from the Latin word “imperatives” – authoritative) determines the character of relations of a member of Parliament with his electors, when the appropriate powers (mandate) are conferred onto him only on condition of obligatory fulfillment of commissions (mandates) of his electors. According to the aforementioned concept, the electors are in close contact with their elected representative and exercise a constant control over 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, various viewpoints exist concerning the elemental composition of that type of mandate. In the parliamentarian’s imperative mandate structure, analysts traditionally perceive the presence of three interconnected elements: the electors’ orders to their representative, the parliamentarian’s report back to the electorate, and the elector’s recall of a parliamentarian.

The authors of this article think that at the present stage – in the XXI century – the imperative model of a parliamentarian’s representative mandate nevertheless has a number of objective advantages, including constant close relations between a representative and his electors, political and legal responsibility of a parliamentarian toward his electorate, and 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 for 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 a constitutional consolidation of that type of mandate.

But in the Constitution of Belarus, the matter of the nature of the parliamentarian’s mandate is not directly solved. However, since article 72 of the

Constitution and article 9 of the basic Law [Zakon...] directly provide a consolidation mechanism for parliamentary recall, in our opinion, the imperative mandate of the above persons should be discussed.

### 3. Free (facultative) mandate of the member of the Parliament

As for the concept of a 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; and 4) the approval of parliamentarian’s activity is not required in the mandate realization [Prelo, 1957: 437]. In connection with the foregoing information, 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, including in the Constitutions of Italy, France, and Poland (the Constitution of Germany is rather an exception than a rule in this respect; according to it, the free mandate holders are solely members of the Bundestag, or the lower chamber of German Parliament).

For instance, article 104 of the Polish Constitution directly consolidates the free mandate of deputies of Polish Parliament. 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. According to the deputy’s oath, members of Polish Parliament have a right to decide on their own what is useful “for prosperity of the Motherland and benefit of its citizens”.

Yet, realization 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 the 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 a parliamentarian’s free mandate has some merits. One of the weightiest of them is an absolute elimination of the possibility for a parliamentarian to defend only purely narrow corporate interests. These merits are determined by the fact that a holder of the free mandate represents, as stressed above, the whole nation. 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. I see the main drawback of the above-mentioned theory being that in the 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 previously). Indeed he represents a certain social community, such as a local group of persons invested in the vote, and which from a position of the theory of “free deputy mandate” he is not obliged to represent.

#### 4. A mixed (hybrid) deputy mandate

The Russian scientist P.A. Astafichev is an opponent of the classification of parliamentary mandates, including the two main models of representative mandates that are widespread in constitutional law science. The analyst negates the model of both free and imperative mandates and sees expediency in increasing the degree of cooperation between a representative and electors [Astafichev, 2006: 228].

Not negating the above-mentioned position in full, it seems that in the XXI century, the freedom of a 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 ramifications 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 a parliamentarian’s activity, the absence of a parliamentarian’s responsibility towards his electors, etc.

In our opinion, those defects of a parliamentarian’s free mandate are leveled by the concept of a semi-free mandate, which currently is at the stage of its theoretical formation in constitutional law science. N.V. Vitruk was one of the first to voice the key moments of that concept in the framework of countries part of the Commonwealth of Independent States (CIS). The Russian scientist thinks that a deputy mandate 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 those orders. A deputy recall is possible following a deputy’s culpable non-fulfilment of his duties, including non-fulfilment by reason of loss of links with the electors or after actions that tarnish the honor and dignity of the deputy position [Osoboe

*mnenie...*]. Thus, the features of both imperative and free mandates make up the essence of the semi-free mandate, ergo creating its synonymic name: a mixed (hybrid) deputy mandate.

In its most general form “mixed deputy mandate” is identified with the availability of the following elements: an election program of a Parliamentary candidate, a parliamentarian’s report to the electorate, and the elector’s recall of a parliamentarian. 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 electorate.

## 5. Conclusions

On the basis of the preceding article, the author thinks that the parliamentarian’s mixed mandate model, which has already been consolidated in the legislation of a number of developed European states, will hardly take into account the organizational peculiarities of the legislative branch in Belarus. Another important factor should not be neglected: just like every theoretical model, the above-mentioned mandate concept has both advantages (to our mind, they prevail in the category under review) and drawbacks. The most predominant disadvantage is the fact that the mandate is only at the stage of theoretical and legislative formation. Nevertheless, in order to harmonize the system of relations between a parliamentarian and his electors, it seems necessary to carry out a partial implementation of proven works in the field of legislative regulation based on the mixed mandate concept. Furthermore, the aforementioned arguments make it possible to draw the conclusion that at the present stage of Byelorussian state development, it is reasonable to perform a gradual transition to such normative regulation of Byelorussian Parliament members, more specifically the Chamber of Representatives deputies and the Council of Republic members, which would promote the formation of a mixed mandate model in Belarus. Hence, some Byelorussian legislative provisions, which regulate the relations that make up the essence of the mandate, should receive a new interpretation and be subjected to an appropriate revision. The author of this work believes that in this case, there is a possibility to get a parliamentarian’s mandate model that will enable a Byelorussian Parliament member to do the following: come objectively nearer to his electors, substantially represent their interests in the legislative body of the state, and serve the highest amount of Byelorussian people productively.

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