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PARLIAMENTARY IMMUNITY AS A PARLIAMENTARY PRIVILEGE

Introduction. Parliamentary privileges are an essential part of the parliamentary democracy. They exist to enable parliaments to perform their functions effectively. The term 'privilege', in relation to parliamentary privilege, refers to an immunity from the ordinary law, which is recognized by the law as a right of the houses and their members. Privilege in this restricted and special sense is often confused with privilege in the colloquial sense of a special benefit or special arrangement. The word 'immunity' is best used in relation to privilege in the sense of immunity under the law. The concept of parliamentary privileges includes deputy inviolability.

Review of recent publications. Issues of deputy inviolability are hotly debated in scientific circles. The theoretical basis of the work were the scientific works of such modern domestic and foreign researchers as O. Bondarchuk, S. Linetskyi, V. Sirenko and others.

Objectives of the paper. The purpose of the study is to clarify the features of deputy inviolability as a parliamentary privilege.

Results of the research. Deputy inviolability is a privilege of English origin, which consisted in the fact that members of parliament should enjoy judicial privileges. The French Charter of 1814 formulated the definition of inviolability [1: 512]. It states that a deputy may not be prosecuted during a session without the consent of the chamber to which he or she belongs except in cases when a deputy is taken in flagrante delicto. Inviolability aims to eliminate the possibility of putting pressure on a deputy in order to change terminate the nature of his activities or even to discredit the parliamentarian in the eyes of voters [2: 54]. However, it is not a ground for release of deputies from administrative and criminal liability or punishment.

"Deputy inviolability" is correlated with the notion of "deputy immunity" and "deputy indemnity" as a whole and as a part. Thus, there are two components of constitutional inviolability in constitutional law: immunity and indemnity. [3: 114]

Immunity characterizes the legal inviolability of the elected representative. A member of parliament must have a higher level of legal protection as compared to an ordinary citizen. He always has political opponents and haters both inside and outside parliament. Therefore, he needs protection from pressure on him, unjustified detentions, arrests and criminal prosecutions. Otherwise, he will not be able to take an independent position and represent the interests of the people. The deputy inviolability of the elected representative in full is relevant to the actions performed by a deputy in the exercise of his deputy powers [4: 27]. Only in this case it is impossible to arrest him, to detain, to carry out a search of occupied residential and office space, inspect luggage, transport. Under other conditions, precautionary measures (detention, arrest) may be applied to him, without the consent of parliament. The limits of parliamentary immunity are defined differently in different states. In some states, immunity precludes only criminal prosecution, in others – also the participation of a deputy in civil proceedings. In many states, the content of immunity is only a ban on the detention or arrest of a deputy, in others – a ban on instituting criminal proceedings against a deputy, to conduct investigative actions. [5]

Indemnity means that a deputy is not legally responsible for his statements, the position expressed during the vote, other actions in the exercise of powers. It includes protection against criminal and administrative penalties for acts committed in the implementation of parliamentary duties (mostly for expressing one's position, voting, etc.). For example, in Belgium, Canada, Denmark, Germany, Hungary, France, Italy, Portugal, Great Britain, and Switzerland, indemnity provides protection from all forms of persecution; in New Zealand – from civil, but not criminal; in Slovenia, from criminal but not civil prosecution [6].

The status of a People’s Deputy of Ukraine is determined by the Constitution and laws of Ukraine. An important constitutional guarantee is parliamentary immunity, which has a purpose – to ensure the smooth and effective implementation of the People’s Deputy of Ukraine. It is not a personal privilege, but has a public law character [7]. According to the provisions of part two of Article 80 of the Constitution of Ukraine [8], people’s deputies of Ukraine are not legally responsible for the results of voting or statements in the parliament and its bodies, except for liability for insult or slander. This means that a People’s Deputy of Ukraine cannot be prosecuted for these actions even after the termination of his / her powers [9]. Thus, people’s deputies of Ukraine have only deputy indemnity. Constitutional provisions on the existence of deputy immunity were excluded in 2019.

Conclusion. The problem of the concept of the institution of indemnity remains one of the most pressing in constitutional law. In a number of deputy guarantees this institute occupies a special place. It serves as a barrier to the illegal prosecution of people's elected deputies. The existence of this institution causes such a problem as the use of his indemnity by a deputy for criminal purposes. Therefore, the institution of parliamentary indemnity should not be absolute. Thus, the process of bringing a deputy to administrative or criminal responsibility should be carried out according to a clearly defined mechanism.

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COMMITTING A CRIME BY INACTION

Introduction. The concept of crime combines action and inaction as two forms of harm to public relations protected by the Criminal Code and other laws of Ukraine in the legislation. They are combined into a common term – deed.

The problem of inaction is important not only for lawyers, but also for ordinary citizens who are not involved in jurisprudence. This topic requires a deep research.

Review of recent publications. Such scientists have dealt with problems related to inaction as a way of committing a crime A. A. Ter-Akopov, N. D. Sergievsky, P. D. Kalmykov, A. F. Berner, O. V. Lokhvitsky, A. A. Piontkovsky, V. B. Malinin, M.I. Bazhanov, O.K. Gamkrelidze, A.I. Kovaleva, V.N. Kudryavtseva, N. F. Kuznetsova, A. B. Naumova, E. F. Pobegailo and others.

Objectives of the paper. The object of this is inaction as a way of committing a crime, and comparison of inaction with action.

Results of the research. Inaction is a phenomenon of criminal law, which can be seen as a passive form of committing crime [1: 2]. Inaction, compared to action, may be more satisfactory in the context of criminal law, it is easier to avoid criminal liability for inaction than for action. But if inaction is defined as a separate concept, it will lead to its separation from the action, which is completely wrong, because these terms are equivalent to forms of wrongdoing.

If we talk about the place of inaction in criminal law, it is considered simply as another form of external expression of socially dangerous acts. So inaction is identified with the action. For all legal and social reasons, inaction, as well as the action is socially dangerous, illegal, and is considered act of will.

Thus, criminal liability for socially dangerous inaction is based on the presence of a certain obligation of a person to act in certain situations. And of course, for this inaction to be qualified as a criminal offense, it is necessary that there are two