

ABSTRACT

This PhD. thesis is dedicated to the legal regulation of instruments presenting guarantees of the independence of the member of parliament during the performance of his/her functions. The aim of this thesis is in particular to present a comprehensive picture of the topic concerning protection of independent performance of the parliamentary mandate, evaluate the Czech legal regulation in force and, last but not the least, to find an answer to the question to what extent is the Czech legal regulation in force complete and effective as well as present possible alternatives de lege ferenda.

Member of parliament must be independent with regard to all aspects of the exercise of his/her mandate. Independency of the member of parliament is necessary precondition for his/her ability to exercise the mandate in such a way, which will enable him/her to face external pressures, not only from the state bodies, but also from other subjects or phenomena. Instruments protecting independent performance of the mandate also support the possibility of members of parliament to fulfil their role freely and as a result to constitute working parliament.

Presented PhD. thesis deals with the topic of parliamentary immunity, particular focus is put on the part presenting protection of freedom of voting and freedom of speech, definition of functions incompatible with the exercise of parliamentary mandate (or with the mandate itself), measures preventing possible conflict of interests and if the situation of conflict of interests arises it deals with procedures leading to its settlement and last but not least with topic of fixing appropriate salaries and allowances of the members of parliament.

The thesis focuses on the legal regulation in force in the Czech Republic and compares it with legal regulation in force in other selected countries of the European legal culture. The author tries to choose such a legal regulation that represents different approach to the analysed question. Relevant legal regulation representing Central European legal system, Romanesque legal system and Nordic legal system were included in the comparison. That is the reason why the legal regulation in force

in the Federal Republic of Germany, the Slovak Republic, the Republic of Poland, the French Republic, the Republic of Finland, the Kingdom of Spain, the Kingdom of Belgium and the Kingdom of Netherlands were chosen.

Besides detailed analysis of particular topics the thesis is devoted to the historical context as well as to the question of values. Some rights serving as guarantees of the independent performance of the parliamentary mandate can come into conflict with those having different purposes (e. g. conflict between the parliamentary immunity and the right to equality or the right of access to a court). Others must have the question of their legitimacy fully justified (e. g. the extent of indemnities and allowances).

In the introduction of this thesis several hypotheses are defined. The first hypothesis is as follows: Legal regulation of the guarantees of the independent performance of the functions of the deputy or senator of the Parliament of the Czech Republic is adequate with regard to the extent of legal instruments. This hypothesis is closely interlinked to the second one: Legal regulation of these instruments does not fulfil its purpose entirely as its scope does not correspond with the needs required for ensuring the independent exercise of the parliamentary mandate. In the conclusion of the thesis both hypothesis are confirmed.

Presented PhD. thesis is divided into four chapters. The first one, which is the most extensive, is dedicated to the topic of parliamentary immunity. It focuses on both parts of parliamentary immunity known as irresponsibility and inviolability (immunity for penal as well as minor offences) with the aim to analyse this subject clearly trying to take in account all its aspects. Parliamentary immunity is comprehended as an instrument designated for the protection of the parliament as a whole and individual members of parliament are protected purely for the reason that they are its members – i. e. because of their function. The core of this chapter is dedicated to the legal regulation of the parliamentary immunity laid down in the article 27 of the Constitution of the Czech Republic, including legal interpretation of particular legal provisions taking in account the opinions of the Czech researchers as well as analysing relevant decisions of the Constitutional Court of the Czech Republic, the Supreme Court of the Czech Republic and the Supreme Administrative Court. It also points out the relevant parts

of the legal regulation of parliamentary immunity in foreign countries for comparison. Using comparative method the thesis outlines possible different approaches to the particular topics connected with the use of parliamentary immunity. The practice of the European Court of Human Rights is taken in the consideration as well, because for several times this Court dealt with alleged violation of the right of access to a court under article 6 §1 of the European Convention on Human Rights due to application of the parliamentary immunity. This chapter focuses also on the historical evolution as well as on the amendments proposed in the Parliament of the Czech Republic. Special part of this chapter focuses on the parliamentary immunity in the European Parliament. Although majority of the European states attempts to restrict the extent of the parliamentary immunity (e. g. proposed bills in the Slovak Republic) or to maintain present legal regulation, Parliament of the Italian Republic decided to make such an extent broader, especially concerning personal scope. This chapter also briefly outlines the topic of the immunity of parliamentary buildings.

In the next three chapters the thesis focuses on instruments that have one objective in common. This objective is protection of independent performance of the parliamentary mandate from external influences no matter whether they are coming from insufficient division of powers, influences of personal character or external pressures from other subjects.

The second chapter deals with questions connected with the topic of the incompatibility of functions with the function of the member of parliament focusing on incompatibility with elective functions as well as with other functions. Chapter number three analyses legal regulation of the conflict of personal interest of the member of parliament with the public interest and related obligation represented by submitting declarations in honour. The fourth chapter is dedicated to the parliamentary indemnities and allowances.

Concerning methods used they are the same as in the first chapter of this thesis. Analysis of the legal regulation in force is based especially on available opinions of the law scientists, related judicial decisions and comparative law.