

# Immunity of the deputies of legislative (representative) bodies of the subjects of the Russian Federation in the context of sustainable development

L Konovalova<sup>1\*</sup>, M Mataeva<sup>2</sup> and S Kapsalyamova<sup>3</sup>

<sup>1</sup> Altai State University, 61 Lenina prosp., Barnaul 656049 Russia

<sup>2</sup> Kazakh Humanitarian-Legal Innovation University, 11 Mangilik ate str., Semey 071400 Kazakhstan

<sup>3</sup> L. N. Gumilyov Eurasian National University, 2 Satpayev str., Astana 010008 Kazakhstan

E-mail: vaskova82@yandex.ru

**Abstract.** The article is devoted to the study of the development stages of the immunity institution of the deputies of legislative (representative) bodies in the subjects of the Russian Federation. The paper also devotes sufficient attention to the analysis of opinions on the effectiveness of this institution, because the issues of sustainable development require strong political institutions.

**Keywords:** deputy, immunity of deputies, legislative bodies, institution

## 1. Introduction

One of the conditions for the stable political development of cross-border regions is the effective functioning and rational organization of representative institutions [13, 14, 15]. At the same time, the status of deputies has an important role in ensuring the productive work of representative bodies, including immunity, which is a rather controversial component. The topic of deputies' immunity of legislative (representative) bodies of state power of the subjects of the Russian Federation always causes a sufficiently large public response. On the one hand, the critical perception of this institution is observed by the broad masses of the people. On the other hand, the deputies themselves often complain about their limited immunity compared with the deputies of the federal parliament [16]. Under the influence of the Constitutional Court of the Russian Federation, the federal legislator has repeatedly changed the legal regulation of parliamentary immunity at the level of subjects of the Russian Federation. In this regard, examples of incorrect interpretation of the provisions of the law are found in practice. And the media often provide inaccurate reports of parliamentary immunity, which is based on outdated legislation and misleading citizens.

## 2. Data and Methods

The institute of immunity of deputies of representative bodies of state power of constituent entities of the Russian Federation is governed by the Federal Law of October 6, 1999 (amended on March 18, 2019) "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation" (Federal Law "On General Principles..."),

Criminal Procedure Code of the Russian Federation of December 18, 2001 No. 174-FZ (amended on March 6, 2019) (hereinafter, the Code of Criminal Procedure of the Russian Federation), Code of Administrative Offenses of the Russian Federation of December 30, 2001 (amended on March 18, 2019) No. 195-FZ (the Administrative Code of the Russian Federation). In regional legislation, the rules on the deputies' immunity of this level of government may be also in place. For example, the Law of the Altai Region of December 4, 2000 (as amended on October 31, 2018) No. 76-ZS "On the Status of a Deputy of the Altai Region Legislative Assembly" reproduces the provisions of federal legislation regarding immunity of deputies.

Also, the legal positions of the Constitutional Court of the Russian Federation are of great importance for the development of this institution, including the Resolution of the Constitutional Court of the Russian Federation of February 20, 1996 No. 5-P "On the Case of Verifying the Constitutionality of the Provisions of the First and Second Parts of Article 18, Article 19 and the Second Part of Article 20 of the Federal Law of May 8, 1994 on the Status of a Deputy of the Council of Federation and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation," Resolution of the Constitutional Court of the Russian Federation of November 30, 1995 No. 16-P "On the Case of Verifying the Constitutionality of Articles 23 and 24 of the Temporary Regulation on Ensuring the Activities of Deputies of the Kaliningrad Regional Duma, Approved by the Resolution of the Kaliningrad Regional Duma of July 8, 1994," Resolution of the Constitutional Court of the Russian Federation of April 12, 2002 No. 9-P "On the Case of Verifying the Constitutionality of the Provisions of Articles 13 and 14 of the Federal Law On the General Principles of the Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation in connection with the complaint of citizen of A. P. Bykov, as well as requests of the Supreme Court of the Russian Federation and the Legislative Assembly of the Krasnoyarsk Region."

Separate exemptions from the general rules of accountability for certain groups of citizens are provided for in certain international instruments, for example, in the United Nations Convention against Corruption of October 31, 2003, the Vienna Convention on Consular Relations of April 24, 1963, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of November 7, 2002. They do not concern the deputies of the legislative authorities of the subjects of the Russian Federation, but they are important for comparing models of legal regulation. Also, in terms of analyzing the immunity of deputies, individual decisions of the European Court of Human Rights are of great interest.

The methodological basis of the research was formed by modern methods of cognition, in particular, general scientific (system, structural-functional, historical), as well as general logical and private-scientific methods (for example, formal legal, comparative law, etc.).

### **3. Results**

Based on the analysis of the above materials, we have identified the following stages in the development of the legislation of post-Soviet Russia on the immunity of deputies of legislative bodies of constituent entities of the Russian Federation.

Stage 1 includes the period from 1993 to 1999. This period is characterized by the fact that at the federal level there was no legal document providing the immunity to a deputy of the legislative (representative) authority of the subject of the Russian Federation. The Constitution of the Russian Federation is also silent about this. Therefore, the authorities of the subjects of the Russian Federation, continuing the Soviet tradition of the presence of immunity of deputies at all levels of government, fixed it in their legislation on their own initiative. As a rule, the inviolability of deputies of the regional parliament was established in the sphere of criminal, criminal-procedural, administrative, and administrative-procedural law. Special conditions of their involvement in criminal and administrative responsibility, including those concerning the procedure for detention, arrest, search, personal search, and interrogation were established. On November 30, 1995, the Constitutional Court of the Russian

Federation declared this practice unconstitutional in its Decree No. 16-P, indicating the possibility of regulating the institution of immunity exclusively at the federal level.

Stage 2 covers the period from 1999 to 2002. With the adoption on October 6, 1999 of the Federal Law “On General Principles ...”, the federal legislator established immunity for deputies of legislative (representative) bodies of state power of the constituent entities of the Russian Federation. At the same time, in order to attract a deputy to criminal or administrative liability imposed by a court, the consent of the legislative (representative) body of state power of a constituent member of the Russian Federation had to be obtained on the proposal of the prosecutor of the constituent member of the Russian Federation.

Stage 3 includes the period from April 2002 to present. On April 12, 2002, the Constitutional Court of the Russian Federation recognized the above provisions of the Federal Law “On General Principles ...” as not constitutional. In its Resolution No. 9-P of April 12, 2002, the body of constitutional justice indicated that the federal legislator, by enshrining the principle of immunity of deputies of legislative (representative) bodies of state power of the subjects of the Russian Federation, cannot exempt them from criminal and administrative liability imposed by a court order. But the federal legislator has the right to provide special conditions for bringing them to such responsibility. The introduction of a federal law, in addition to the Constitution of the Russian Federation, of such a condition as the consent of the parliament of a constituent entity of the Russian Federation to bring a deputy to criminal or administrative liability imposed in court, to the use of arrest and other measures of procedural coercion in the course of prosecution for such offenses would essentially mean the exclusion of judicial prerogatives and the provision of judicial functions to the Parliament. However, according to the Constitution of the Russian Federation, this is unacceptable.

Therefore, since 2002, the of deputies’ immunity has received a new interpretation. The immunity of deputies is considered not as the inadmissibility of bringing a deputy to justice without the consent of the Parliament, but as a complicated procedure for bringing to justice.

At the same time, the complicated procedure for bringing deputies to the legislative bodies of the constituent entities of the Russian Federation to responsibility under the influence of the legal positions of the Constitutional Court of the Russian Federation has changed several times since 2002 in the Code of Criminal Procedure of the Russian Federation towards easing the procedure. If initially the decision to initiate a criminal case against a deputy of the regional parliament or to bring him as an accused person was taken by the prosecutor of the subject of the Russian Federation with the consent of the panel consisting of three judges of the Supreme Court of the republic or any regional court. In contrast, the specifics of bringing a regional deputy lies today only in the fact that the criminal case against him is initiated by the head of the investigative body of the Investigative Committee of the Russian Federation in the subject of the Russian Federation.

The administrative and legal component of parliamentary immunity does not actually exist. The Code on Administrative Offenses of the Russian Federation and the Federal Law “On General Principles ...” refer to certain norms of federal law providing for the peculiarities of bringing deputies to the legislative bodies of the subjects of the Russian Federation to administrative responsibility. However, they are absent to date. The Constitutional Court of the Russian Federation does not allow solving these issues at the level of the subjects of the Russian Federation. Therefore, deputies of legislative bodies of power of the subjects of the Russian Federation are brought to administrative responsibility on a general basis.

Thus, in recent years, the immunity limits for deputies of legislative (representative) bodies of state power of subjects of the Russian Federation have been significantly reduced. This fact should be noted as a positive trend. The fact is that in the classical version (i.e., when the consent of the parliament is required for bringing to criminal or administrative responsibility), the institute of deputy’s non-responsibility creates possibilities for corruption.

For example, when the wide parliamentary immunity existed in 1993 at all levels of government, the law enforcement agencies tried to bring to justice at least three hundred deputies of various levels of government (on charges of murder, beatings, fraud, bribery). Only 46 people turned out to be

defendants [1]. In the first half of 2008, after limiting immunity for regional and local deputies, it was possible to institute criminal proceedings against 359 deputies of municipalities and 30 deputies of the subjects of the Russian Federation [2]. In 2018, according to the data of the Investigative Committee of the Russian Federation, 10 deputies of the legislative bodies of power of the subjects of the Russian Federation were brought in for corruption crimes. Recently, in the Altai Region as a cross-border region, the facts of bringing two deputies of the Altai Region Legislative Assembly to criminal responsibility in cases involving fraud were widely discussed publically [3, 4].

#### **4. Discussion**

Not everyone accepts a tendency towards narrowing the parliamentary immunity. For example, there was an appeal to the Constitutional Court of the Russian Federation on the part of individual deputies of the legislative bodies of the subjects of the Russian Federation. They appealed to the fact that the exclusion of judicial control over the initiation of a criminal case against parliamentarians of the subjects of the Russian Federation or involving them as accused infringes the independence of the legislative bodies of the subjects of the Russian Federation. And also, this circumstance violates the equality in the application of the principles of separation of powers and the independence of legislative bodies throughout the territory of the Russian Federation. However, the Constitutional Court of the Russian Federation did not agree with such arguments. In its definitions, the body of constitutional control of the Russian Federation indicated the following. The abolition of preliminary judicial control over the initiation of a criminal case against a deputy of the regional parliament or bringing him as an accused one do not mean the abolition of a special, complicated procedure of criminal proceedings in respect of this category of persons as a guarantee of deputy immunity. The resolution of this issue falls within the competence of a special official, who is the head of the investigative body of the Investigative Committee at the Prosecutor's Office of the Russian Federation on the subject of the Russian Federation.

In support of its position, the Constitutional Court referred not only to the Constitution of the Russian Federation, which relates criminal procedural legislation to the exclusive jurisdiction of the Russian Federation, but also to the UN Convention of October 31, 2003 Against Corruption. According to this Convention, a state party must ensure a proper balance between any immunities or jurisdictional privileges granted to its public officials in connection with the exercise of their functions, as well as the ability to conduct effective investigations, prosecutions, and adjudication of crimes of necessity.

In legal science, the immunity of parliamentarians is considered mainly as a positive institution, as the most important guarantee of the activities of deputies [5, 6]. Of course, it should not be forgotten that immunity is one of the most politicized legal means. Not without reason, the Prosecutor's Office of the Russian Federation and the Supreme Court of the Russian Federation have repeatedly proposed to cancel the immunity of deputies. The President of the Russian Federation has launched a similar initiative [7]. However, the issue of parliamentary immunity is not resolved fundamentally. Although, in recent years, the number of cases is increasing when even members of the federal parliament are held accountable [8].

At the global level, there has been a tendency to abandon the institution of parliamentary immunity by some countries (Canada, the Netherlands), which proceed from the general premise that the parliament members are sufficiently protected from unreasonable criminal prosecution by common law [9]. In the same countries where the institution of immunity continues to exist, attempts are being made to restrict it (Austria, Japan, USA). In Kyrgyzstan, a bill is being considered on abolishing the immunity status even from the ex-presidents [10].

Based on the practice of the European Court of Human Rights, the provision of parliamentary immunity falls within the limits of discretion granted to the state. However, the exceptions accompanying parliamentary immunity are legal only if they are related to the work of a deputy and constitute not a personal privilege, but the principle of political legislation aimed at protecting not the individual, but the function that he or she performs [11].

## 5. Conclusion

According to the results of the study, we can state that there is a tendency to narrow the immunity of deputies of legislative bodies of the subjects of the Russian Federation. It seems that it should be positively evaluated. As a guarantee of parliamentary activity, one should not perceive immunity as a special procedure for bringing a deputy to justice, but the so-called non-responsibility for the expressed opinion (indemnity). It is necessary to agree with the position of those scholars who see the excessive privilege of the ruling class in parliamentary immunity and suggest that it be abandoned [12]. In the Russian context, the institution of parliamentary immunity (even to a limited extent) creates the illusion of elitism among the deputies. It can be used as a tool to fight the opposition, and it creates conditions for discrediting law enforcement agencies, suggesting mistakes made by investigative structures. However, it is clear that the political system of Russia, in our opinion, would be more stable without such an institution.

## References

- [1] *Whether the deputies need immunity* Available at: <http://prime-crime.msk.ru/korrupcioneri/neobhodimali-deputatam-neprikosnovennost.php> (Accessed 10 01 2019)
- [2] *Who needs parliamentary immunity?* Available at: <http://www.argumenti.ru> (Accessed 10 03 2019)
- [3] *Former deputy of the ACPS Yuri Titov will go to the colony in one of his criminal cases* Available at: <http://barnaul.bezformata.com/listnews/akzs-yurij-titov-otpravitsya/60112771/> (Accessed 10 03 2019)
- [4] *Former deputy of the ACZS faces five years* Available at: <http://r-storona.ru/2017/04/10/eks-deputat-akzs-grozit-pyat-let/> (Accessed 10 03 2019)
- [5] Okulich I P 2003 *Deputy of the legislative (representative) body of state power of the subject of the Russian Federation: legal status. The nature of the mandate. Problems of responsibility.* (Chelyabinsk, Russia)
- [6] Sopeltseva N S 2004 *Immunities in the constitutional law of the Russian Federation* (Chelyabinsk, Russia)
- [7] *Do the deputies need immunity?* Available at: <http://finam.fm/archive-view/109/> (Accessed 10 03 2019)
- [8] Zamakhina T 2018 *The State Duma deprived the immunity of deputy Belousov* Available at: <https://rg.ru/2018/12/06/gosduma-lishila-neprikosnovennosti-deputata-belousova.html> (Accessed 10 03 2019)
- [9] Okulich I P 2003 *Deputy of the legislative (representative) body of state power of the subject of the Russian Federation: legal status. The nature of the mandate. Problems of responsibility Abstract ... cand. legal sciences* (Chelyabinsk, Russia)
- [10] Karimov D 2018 *Presidents will be deprived of immunity* Available at: <https://rg.ru/2018/10/11/byvshih-prezidentov-kirgizii-mogut-lishit-statusa-neprikosnovennosti.html>
- [11] European Court of Human Rights 2008 Information on the ruling of the European Court of Human Rights of July 8, 2008 in the Kart (v. Turkey) case (complaint No. 8917/05) *European Court of Human Rights Bulletin* **12**
- [12] Sumenkov S Yu 2002 *Privileges and immunities as general legal categories* (Dissertation ... Candidate of Juridical Sciences) (Saratov, Russia)
- [13] Bogoviz A V, Zhuravleva T A, Popkova E G, Zarudneva A I, Alpidovskaya M L 2019 Effective tax policy of the state: conceptual foundations and methodology of evaluation *Studies in Systems, Decision and Control* **182** pp 91-98
- [14] Blatter J 2000 Emerging cross-border regions as a step towards sustainable development? Experiences and considerations from examples in Europe and North America *International Journal of Economic Development* **2**(3), pp. 402-432
- [15] Nelles J, and Durand F 2014 Political rescaling and metropolitan governance in cross-border regions: comparing the cross-border metropolitan areas of Lille and Luxembourg *European Urban and Regional Studies*, **21**(1), pp 104-122
- [16] Chekharina V I 2017 Parliamentary liability of deputies *Proceedings of the Institute of State and Law of the RAS* **12**(6), pp. 104-120