

Abstract

Representative mandate derived from general elections in Poland.

Problems associated with its

Civilization development of our times is characterized by ultra-technologization, hasty rhythm of life, easy social and interpersonal communication, free flow of information in the society, fast exchange of news, making use of technologies serving manipulation of contents. The changes are the main reason why systematizing of contents concerning mandates originating from general election should be subjected to analysis, which exposes their patterns the most proper for specific circumstances. This is of legislative importance, but is also significant because of psycho-social conditions and human needs.

Global changes sometimes bring about tragic repercussions. In the face of the observed increasing of destructive social-political powers and tendencies numerous problems tend to be bothering. Ultimately this is translated into their location in the centre of interest of doctrine, jurisprudence, science, philosophy as well as media and citizens themselves. The priority becomes questions about functions performed by given persons. Dissertation entitled „Representative mandate derived from general elections in Poland. Problems associated with its” is an original elaboration of the problem within the range of social sciences (legal, sociological, political) and humanities (history, philosophy). There are tackled detailed problem matters concerning expiry of the mandate of the President of the Republic of Poland, deputy, senator, councilman, mayor and MEP. The main hypothesis of the dissertation was formulated in the following way: theory and practice within the range of obtainment and expiry of the mandate of the President of the Republic of Poland, deputy, senator, councilman, mayor and MEP is highly varied and changing over time, adequately to multiple social-political, economic, technological, religious conditions.

The aim of the dissertation is conclusions derived from the comparative analysis of the connection between the mandate and particular guardian of power within the range of obtainment and expiry of the mandate; whereas the final assumption is systemizing of the hitherto existing knowledge. Particular solutions have their source in the way of understanding the notion „mandate”. In the Polish constitutionalism we distinguish the imperative mandate and free mandate, referred to as representative. Both concepts exclude each other. However in the Polish law they appeared interchangeably. The

imperative mandate (or limitative, related, restricted) is awarded to the deputy by the citizens who elected him. This means that he is immediately addicted to them. This is expressed in the institution of injunctions and prohibitions the fulfillment of which the deputy is legally obliged. If he does not complete the tasks, he can be dismissed before the end of the term of office. The free mandate assumes that the deputy is a representative of the Nation – the collective entity. The deputy has freedom in taking decisions and actions. The voters do not transfer any instructions to him nor do they formulate injunctions and cannot dismiss him before the end of the term of office. The representative is supposed to act according to the generally accepted social good which not always coincides with the people's will. To the general premises enabling the expiry of the mandate there belong: death, loss of voting rights, waiver of the mandate, expiry of the term of office, liquidation of the authority, non-candidacy, annulment of the election, failure to submit a property declaration, recall by referendum, performing or taking up functions incompatible with the mandate, deemed unfit to perform the functions or inability to hold the position. Expiry of the mandates can be autonomic - automatic as a result of the statement of such state of affairs by the proper authority, following the decision of voters in the form of referendum.

Global political changes forced the author of the dissertation to refer to the parent content of the notion „mandate” and to elaborate the problem in the context of both historical and contemporary development. Thus the considerations were supplemented by encyclopaedic and dictionary content. The text includes a historical analysis of different models of mandates, corresponding to the European cultural zone: imperative, free, mixed and their variants – British, French, Polish, socialist. In this light there is discussed the problem of the need to work out an optimum procedure of representative elections and possibility to implement it in social-political practice. It is wondered in what conditions the Nation, assuming the shape of particular voters from particular constituencies, should have a right to deprive the representative of the mandate. There was made an attempt to characterize the difference between the imperative and free mandate. There are analyzed regulations concerning the representative mandate in Poland in the historical and contemporary context. The problem of mandates coming from general election appears as significant mainly because over relatively short time the election law has changed. In this light the comments *de lege lata* and conclusions *de lege ferenda* become of an exceptional character.

The problem of mandates from public election is of a complex social character and is connected with the size of the legal acts. In the dissertation the sources in the form of legal documents are reached for – historical and currently in force. They are, among others: The Constitution of the Republic of Poland, the Election Code, a series of ordinary acts (e.g. The Act on Exercising the Mandate of Deputy and Senator) and regulations (of Sejm and Senate) as well as jurisprudence. There is no single legal act which regulates all the questions connected with the representative mandate, its obtainment and loss. Some documents refer to them directly (e.g. obtainment of the mandate by the President RP) and others should be analyzed *per analogiam* (e.g. the loss of mandate by a mayor). There are also referred to critical editions of sources. The literature is recalled, complemented by indispensable encyclopaedic and dictionary elaborations. The literature is extensive and varied in the aspect of treatment in different fields and disciplines of science. In the author's opinion this constitutes a clear indication how socially significant the problem of mandate is. The problem is tackled by both researchers of well-established scientific position and by the generation of young scientists.. Hence in the dissertation there are references to both works by acknowledged classics and to the texts by students or PhD students. The author takes into account the interdisciplinarity of the elaboration, wide scientific and social interest in the problem, topicality of the problem. All these threads have been linked and exposed by the proper choice of literature.

In the dissertation the „dogmatic method” was used (understood as the dogmatic-analytical method.). It consists of three elements: linguistic interpretation, systemic interpretation and functional interpretation. Its deficiencies forced complementing the research by applying historical method. Finally, making use of comparative method (Lat. *compare* - „compare”) enabled reaching the main aim of the research – systematization of the hitherto existing knowledge. The synthesis of the three research methods (dogmatic, historical and comparative) constitutes *judicial method* and directs the research thought to the content of the legal norm. As in all fields of life as in the legal sciences searching for „the new” requires overcoming stereotypes, fanaticism, customs, orthodoxy.

Applying the dogmatic method one obtains the legal knowledge in the static approach. In the approach directed at modifications the law is investigated by means of the historical and comparative method. It is the researcher who can afford applying varied procedures of solving legal problems. In-depth analytical studies of law are connected with interdisciplinarity and with referring to a wide and desired context of the approach.

In the case of studies presented in this dissertation the superior goal is discovering interdependencies between different legal systems. They can be read out and interpreted making use of the comparative method. Coming out of interpretation of regulations of the Polish law and taking into account evolution of the ideas the gathered material has been subjected to the comparative method. In the comparative-legal research of the method: the dogmatic and historical methods are of auxiliary character. Thus in the present dissertation law is analyzed from a distance. It is described without the dogmatic discourse. Neither are searched for interpretation solutions in the ongoing interpretation disputes.

The contribution of the present dissertation to the existing state of research is marked by systematization and holistic view of the extensive interdisciplinary knowledge concerning representation and mandates and obtainment and loss of the mandates by the President of RP, deputy, senator, councilman and mayor as well as MEP. The author concentrates on, analyzes, and evaluates all legal acts referring to the chosen subject. Due to historical references he shows that representation and mandate models are not *constans*; they undergo changes according to ,mainly political-social context.

The analysis of the title problem induced the author to take into account in his considerations historical-philosophical threads. The way of fulfillment of the mandate in different epochs and accompanying moral values and ideals of freedom, justice, equality, truth, good, social usefulness is determined by social-political, economic, technological, religious changes. Significant are also changes taking place in citizens' consciousness, referring to duties and privileges connected with representation of their interests. The theoretical dimension is translated into its practical application. In some sense the representatives created by citizens take care of the society. Thus they should possess not only knowledge but also wisdom within the range of creating new solutions and passing legal acts which reflect the worldview of not only representatives but also voters. In the procedure of fulfillment of the mandate there reveal motivations and the potential of the society who evolve to new forms of social-political existence.

According to the scheme of formal-logical concluding the first chapter of the dissertation is of general theoretical character. It is devoted to the linguistic interpretation within the range of the problem formulated in the title of the research problem. The interpretation was performed taking into account natural (common) language, legal language (formulating normative acts), legal language (formulating norms and legal regulations). In the next chapter there were analyzed consequences resulting from

particular construction of the representative mandate. Next the question was referred to of obtainment and loss of the mandate in Great Britain, France and Poland. Particular attention deserve solutions used in Europe as on their example it is possible to observe the character of changes in the concepts of mandate: from imperative to free. It was noticed that representation of only one particular social group and possibility of depriving the representative of the mandate at any moment are factors destabilizing the whole electoral system. Thus it is justified to analyze solutions once used in Great Britain and France in the context of the situation of Poland in that time. The research – in the case of Poland – concerned not only the deputy mandate but also, so called, socialist mandate (before the system changes took place in 1989 and Poland was incorporated into the west). The final chapters of the dissertation concern procedural solutions (being in force in Poland) of problems connected with the function of the public trustee: obtainment and loss of this status. Their particular significance is decided about by the fact that in the democratic state of law the will of collective sovereign is translated into taking decisions in their name.

From the above it follows that institutionalized representatives of the society should fulfill their mission in the juridically concretized way, due to the significance of their mission. So there should be expressed a general view that in the light of the presented formal-logical content layout the doctrinal clarification of the questions connected with obtainment or loss of the mandate is needed and fully justified in the state.

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