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# **Point of Law. Comparative Legal Analysis of the Legal Status of Deputies of Belgium and France with Parliamentarians of the Russian Federation**

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## **Abstract**

The article deals with theoretical and legal problems of constitutional guarantees of parliamentary activity on the example of

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Belgium and France. The authors believe that the combination of legal guarantees with the need for legal responsibility of modern parliamentarians as representatives of the people is most harmoniously enshrined in French legislation, which is advisable to use as a model when reforming the system of people's representation of the Russian Federation.

**Keywords:** Human rights and freedoms, Parliament, Deputies, Kingdom of Belgium, Republic of France, Constitution

## Punto De Ley. Análisis Jurídico Comparativo Del Estado Legal De Los Diputados De Bélgica Y Francia Con Parlamentarios De La Federación De Rusia

### Resumen

El artículo aborda los problemas teóricos y legales de las garantías constitucionales de la actividad parlamentaria en el ejemplo de Bélgica y Francia. Los autores creen que la combinación de garantías legales con la necesidad de responsabilidad legal de los parlamentarios modernos como representantes del pueblo está más armoniosamente consagrada en la legislación francesa, que es aconsejable usar como modelo al reformar el sistema de representación popular de la Federación Rusa. .

**Palabras clave:** Derechos humanos y libertades, Parlamento, Diputados, Reino de Bélgica, República de Francia, Constitución

### 1. INTRODUCTION

One of the most interesting examples of securing guarantees of parliamentary activity in the framework of the Romanesque

parliamentary model is the Kingdom of Belgium and the Republic of France. The Federal Parliament of Belgium consists of two chambers: the Senate and the House of representatives.

Chambers differ in their composition and competence. The house of representatives consists of 150 parliamentarians ([http://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK](http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK). 2020), elected by universal direct vote for 5 years ([http://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK](http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK). 2020). The Senate consists of 60 senators, 50 of whom are appointed by regional parliaments, and 10 are co-opted, that is, introduced into the Senate by decision of its members without holding additional elections. The Senate is the embodiment of the unity of all the linguistic communities and districts of Belgium, each of which is represented by its own member of the Senate, which ensures that the opinions and will of each of these entities are included in Federal policy.

The house of representatives is authorized to issue any laws. The Senate is limited in its powers and has the right to regulate an exhaustive list of issues, including: constitutional reform, lawmaking in the field of public administration, the budget, and so on. On a limited range of issues, the Senate can amend bills, but the House of Representatives will have the final say in any case. The activity of the Federal Parliament of Belgium is not limited to its legislative function. For example, the House of representatives, which, as we have already understood, has more powers than the Senate, also gives and denies

confidence in the government, considers the government's report, takes part in international parliamentary meetings, and so on.

## **2. METHODOLOGY**

Methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

## **3. RESULTS and DISCUSSION**

Not all countries have a single normative act that regulates the legal status of parliamentarians or directly guarantees their activities. As a rule, this is a set of independent acts that regulate certain aspects of guarantees of parliamentary activity and the regulations of the respective chambers of parliaments. Thus, the Senate has an act of December 17, 2013 regulating the organization and functioning of the

chamber, its functions, conflict resolution, and ethical rules. This act does not have a special Chapter or section devoted to the rights or privileges of members of the Senate, but a number of rights are mentioned in passing throughout the Regulations. The same can be found in the House of Representatives act of October 02, 2003.

It is also worth noting that the Federal Parliament of Belgium has issued a special act that systematizes all the rights of parliamentarians. This act promotes greater openness of the Parliament's activities and aims to inform people about the organization and activities of the Parliament, the legal status of parliamentarians, elections, dissolution and composition of the Federal chambers. Chapter 4 of this act - "Legal Status of Members of Parliament" - regulates issues of parliamentary privileges, incompatibilities and allowances, which are also enshrined in the Belgian Constitution.

Members of Parliament enjoy special rights and immunities so that they can perform their functions freely. The most important guarantees for the activities of Belgian parliamentarians are freedom of speech and inviolability ([http://www.senate.be/english/federal\\_parliament\\_en.html](http://www.senate.be/english/federal_parliament_en.html). 2020). Freedom of speech is provided for in article 58 of the Belgian Constitution, according to which members of the chambers may not be prosecuted or detained for expressing opinions and voting related to the exercise of their powers ([http://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK](http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK). 2020). It is noteworthy that this privilege is also applied

at the end of the session, as well as after the person ceases to be a Member of Parliament.

Article 59 of the Belgian Constitution defines and details the principle of parliamentary immunity. Thus, members of chambers may not be arrested or tried during the session without the permission of the relevant chamber, except in the case of red-handed detention at the scene of a crime. However, the Constitution also provides for cases of criminal prosecution during the session. Only employees of the Prosecutor's office have this right. In this case, the member of the chamber against whom the prosecution is initiated has the right, at any stage of the investigation, to require the chamber to make a mandatory decision for the authorities to suspend the prosecution. Consideration of these issues in the chamber requires the mandatory presence of the Chairman of the chamber or a person authorized by him ([http://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK](http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK). 2020).

The material and organizational guarantees of members of the Belgian Parliament are provided for in articles 66 and 71 of the Belgian Constitution. Thus, according to article 66, each member of the House of Representatives receives a remuneration of 12,000 francs per year. On the territory of their country, they are allowed to freely use all vehicles that are operated by the state or regions. Also, within the meaning of this rule, representatives are guaranteed pensions and insurance, deductions for which are made from the remuneration of members

([http://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/](http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/)



[GrondwetUK](#). 2020). Also, deputies have the right to reimbursement of expenses in the amount of 28 % of remuneration and the right to additional income in the amount of no more than half of remuneration ([http://www.senate.be/english/federal\\_parliament\\_en.html](http://www.senate.be/english/federal_parliament_en.html). 2020)

Article 71 regulates these guarantees in relation to members of the Senate and stipulates the following. Senators do not receive remuneration, but are entitled to reimbursement of their expenses in the amount of 4,000 francs per year. Within the state, senators also have the right to use vehicles for free ([http://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/](http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/) [GrondwetUK](#). 2020). In addition to the above, members of both houses have the right to offices in the Parliament building, an assistant paid by the house, and to set off the term of office in the length of service ([http://www.senate.be/english/federal\\_parliament\\_en.html](http://www.senate.be/english/federal_parliament_en.html). 2020).

In General, Belgian parliamentarians have fairly modest guarantees of activity, which is why a rare exception is the fact of using their rights as personal privileges.

Of particular interest is the consideration of guarantees for the activities of French parliamentarians. The French Parliament also consists of two chambers: the Senate and the National Assembly. (<http://lawers-ssu.narod.ru/subjects/constzs/france.htm>. 2020). According to article 24 of the French Constitution and the French Electoral code, members of the National Assembly are elected by direct vote for a 5-year term of 577 people, and senators are elected by indirect vote for a 6-year term of 326 people (<https://www.legifrance.gouv.fr/affichCode>. 2020). Moreover, every 3

years to ensure stability, the Senate is updated by half, which is why all senators are divided into two parts (<https://www.legifrance.gouv.fr/affichCode>. 2020). The national Assembly is a body of national representation. The Senate also provides representation exclusively for the territorial collectives of the country and the French living outside of France.

In General, the competence of the chambers is similar. Differences exist only in the legislative process and areas of parliamentary control. We will not go into details because of the different subject matter of the study. Let's go directly to guarantees of Deputy Activity. As noted on the official website of the French Senate, "implementing the Deputy mandate, the Senator participates in the exercise of national sovereignty. It makes laws and controls the actions of the government. For this purpose, as a member of the protected status, it is endowed with a number of rights, which are considered not as privileges, but as tools for ensuring its independence and freedom to carry out its mission. This is the function, in particular, of parliamentary immunity and benefits, which are based on the Constitution itself" (SEREGIN A.V., CHERKASOVA M. A. 2020).

In order for a parliamentarian to be protected from pressure, they are guaranteed immunity. According to article 26 of the French Constitution, "a member of Parliament may not be prosecuted, searched, arrested, detained, or tried for expressing an opinion or voting in the exercise of his functions. A Member of Parliament may only be subjected to criminal or police arrest or other preventive or freedom-limiting measures with the permission of the Bureau of the

chamber in which he or she is a member. This permission is not required in the event of a red-handed arrest at the scene of a crime or a final conviction. Detention, preventive or freedom-limiting measures, or prosecution of a Member of Parliament shall be suspended during the session if the chamber in which he is a member so requests. “(<http://lawyers-ssu.narod.ru/subjects/constzs/france.htm>. 2020).

French parliamentarians are also provided with financial and social guarantees, including:

1) The right to remuneration (parliamentary allowance), which is based on the law of France of 13 December 1958 "on compensation for members of Parliament" includes three elements: the basic allowance, a living allowance of 3% of the basic allowance, and a functional allowance of 25% of the two previous payments. As a result, in 2016, the monthly total amount of the benefit is 7,142. 75 euros, but after paying all the necessary contributions-5,385. 67 euros;

2) Social protection consists of material support for parliamentarians in the event of injury to health in the exercise of their powers, pregnancy and childbirth, death, and retirement. The Senate has even created a Pension Fund for former senators, which provides decent support for senators who have retired. So, on July 1, 2016, the size of the former Senator's monthly pension was about € 4467;

3) Organizational guarantees. They, as in all other countries, consist in technical support for the work of parliamentarians (SEREGIN A.V., CHERKASOVA M. A. 2020).

This exhausts the list of guarantees of French parliamentarians. However, it should be noted that in the presence of such a modest list

of guarantees of activity, French parliamentarians are provided with a lot of responsibilities and strict control over their activities. A distinctive feature of the institution of guarantees of parliamentary activity in France is that members of the French Parliament are not granted a number of rights that are mandatory in other countries. So, parliamentarians "pay for housing, medical care and pay taxes in full" (Chirkin.E. 2002). At the same time, there are no obvious abuses of their position or abuse of authority by French parliamentarians, which can be recommended as an example for reforming the legal status of deputies of the State Duma and members of the Federation Council of the Federal Assembly of the Russian Federation

#### **4. CONCLUSION**

All our research is aimed at finding the best option for the content of guarantees of parliamentary activity in Russia. To do this, we have analyzed the experience of several countries in this area. In General, the countries analyzed differ from each other in terms of the amount of guarantees provided (quantitative criteria). However, in some countries we have found a qualitatively different approach to providing a number of guarantees, the implementation of which we will try to justify further.

What claims are usually made to Russian parliamentarians? As a rule, the discontent of Russian citizens with regard to Russian parliamentarians is reduced to the fact that the latter abuse their powers

and violate the rights of citizens, do not have the appropriate knowledge and qualities to carry out such important work, while receiving a large salary and various compensations for their activities.

It is obvious that abuse of authority only occurs when the authority allows it to be abused, and there is no appropriate control. In our opinion, in comparison with other countries, Russian parliamentarians are provided with a relatively high level of guarantees for their activities, which, in principle, opens up scope for abuse. However, with proper control and suppression of such phenomena, there would be no abuse. Unfortunately, the status of a parliamentarian in Russia is perceived as something sacred and a priori inviolable. This is due to the fact that, first of all, our society has a fairly low level of legal culture and the concept of "parliamentary immunity" is interpreted in an absolute sense. Secondly, according to a number of researchers, there is a practice of not holding parliamentarians accountable for violations of citizens' rights. Of course, confirmation of this is difficult to find, because if the cases were not initiated or were terminated, then the appropriate formal grounds were found. By the way, the latter is the biggest problem of the Romano-German legal family, since the basis of everything in it is formalism. Third, the centuries – old experience of subordination to people who have power has had such a strong impact on the consciousness of peoples that now, being absolutely free, people still perceive, for example, deputies not as servants of the people, but as an elite class whose will is the "law".

In our opinion, it is necessary to qualitatively change the guarantees for the activities of Russian parliamentarians, as well as to

establish strict control over the scope of their implementation. It is necessary to take into account the positive experience of other countries and make the following changes.

1) In View of the fact that the guarantee of inviolability has the greatest influence on the behavior of parliamentarians, it is necessary to strictly define its scope. Of course, the Decision of the constitutional court of the Russian Federation determines that this guarantee applies only when it comes to the exercise of the powers of a parliamentarian. But the problem is that this concept can be summed up very much, and thus parliamentarians remain unpunished for their crimes, violating the principle of equality of all before the law and the court, as well as the rights of victims.

Since the guarantee in question causes many problems, it is necessary to establish a framework similar to the American one, that is, to extend the inviolability at the time of being in session, when going to the chamber and back, except for the Commission of crimes and violations of public order. At the same time, it is necessary to provide an additional mechanism for depriving parliamentarians of immunity, since it is possible that the "sense of solidarity" does not allow members of the chambers to deprive their colleagues of immunity.

2) Part 10 of article 27 of the Federal law "on the status of a member of the Federation Council and the status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation" provides that if a Deputy is not elected to the state Duma of a new convocation, he is paid a one-time allowance in the amount of his

monthly remuneration. And article 26 of this law establishes the right of a Deputy to receive benefits in the amount of three times the remuneration of a Deputy and so on in the event of the dissolution of the state Duma.

Of course, no citizen would approve of such regulations. What do MPs get compensated for? For unjustified expectations to be elected, or perhaps for wasting time on the election campaign?

It is worth noting that this issue was partly considered by the Constitutional Court of the Russian Federation. According to the Decision of the constitutional Court of the Russian Federation of 5 April 2013 No. 7-P "on business about check of constitutionality of the fourth paragraph of article 6 of the Labor code of the Russian Federation in connection with the request of the Arkhangelsk regional meeting of deputies" lump sum compensation "is intended to guarantee the constitutional right of a person to freely dispose of their abilities to work, choose the type of activity and profession" (Resolution of the constitutional Court of the Russian Federation, 2013), which corresponds to the position set forth by part 1 of article 37 of the Constitution.

Accordingly, the constitutional Court of the Russian Federation recognized these provisions as corresponding to the Constitution of the Russian Federation. However, we dare to note that in other countries such a guarantee is rare. And it would be more appropriate to exclude this rule, while preserving budget funds.

3) According to the indicated Resolution of the constitutional Court of the Russian Federation, in view of the existing restrictions for

deputies to engage in other paid activities, they must provide appropriate material and financial guarantees of Deputy Activity, which, in particular, includes remuneration. Of course, remuneration is one of the most important guarantees of the activity of parliamentarians, but given that it consists of official salary, salary for class rank and other additional payments, as well as monthly incentives, it is impossible to understand what the final amount of remuneration is. This circumstance gives rise to a lot of false information and discontent of citizens regarding the allegedly inflated remuneration of parliamentarians.

In fact, Russian parliamentarians receive average remuneration in comparison with parliamentarians from other countries. For example, members of the national Council of Austria receive remuneration in the amount of 8,755. 80 euros per month (about 525,000 rubles), members of the German Bundestag – 9,082 euros per month (about 545,000 rubles). Russian parliamentarians receive an average of 350 000 – 400 000 rubles monthly.

However, it is not so much the amount of remuneration that matters, but the number of parliamentarians and the total amount spent on them. As you know, the number of deputies of the state Duma is 450, and the maximum number of members of the Federation Council is 187 (2 representatives from 85 subjects of the Russian Federation and 10% appointed by the President of the Russian Federation). As a result, a minimum of 222,950,000 rubles is spent monthly on both houses of Parliament (637 people) (calculated based on the minimum remuneration of 350,000 rubles). At the same time, the Federal



Assembly of Austria, which consists of 244 members, spends 112,161,798 rubles a month, which is half as much as in Russia.

After analyzing the experience of other countries, we can conclude that it is more appropriate to set the final and uniform remuneration for all parliamentarians and fix it in a single act. Thus, greater transparency of parliamentarians' income will be achieved, and anyone who wants to get reliable information and form an objective opinion will be able to do so.

4) When considering guarantees for the activities of Russian parliamentarians, we found that parliamentarians are guaranteed a fairly high pension provision. Thus, the additional payment to the pension, depending on the term of office, is 55% or 75% of the remuneration. At the same time, we note that in 2016, changes came into force, according to which the term of office required for such an additional payment increased, which significantly narrowed the circle of its recipients. But still, even in this situation, the situation is not the best. Over the past two decades, a large number of parliamentarians have been replaced, and, again, providing all of them with surcharges in this amount, our budget is suffering great losses. However, a large number of Russians receive a pension of less than 10,000 rubles per month.

We believe that it is necessary to reduce the surcharge regardless of the term of office. At the same time, of course, the term of authority for receiving the surcharge must remain at the same level or be extended.

5) As we remember, parliamentarians have the right to have up to 7 assistants paid by the state. As a result, it takes a decent amount of money from the country's budget to pay for the assistants that all 637 parliamentarians can have.

In this case, we are particularly interested in the Austrian regulation of the issue under consideration. Recall that Austrian parliamentarians receive compensation for the payment of assistants in the amount of no more than 100% of the remuneration of a civil servant (4,482.39 euros per month), and there is an exhaustive list of issues on which it is possible to use the work of assistants, as well as a number of restrictions on their status. We believe that Russia should establish the same regulation of this issue. It is necessary to determine the amount of compensation for the remuneration of assistants paid to parliamentarians, regardless of the number of assistants, as well as to set restrictions on the status of assistants, for example, lack of family ties. 6) Significant expenditures of budget funds are also made on providing parliamentarians with housing and transport services. Of course, the existence of these guarantees is justified. Most members of Parliament do not live in Moscow and they need to have a living space. And since they represent certain territories of the country that they periodically need to visit, the right to transport services is also of great importance for parliamentarians.

### **Conflict of interest**

The author confirms that the data do not contain any conflict of interest.

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