PARLIAMENTARY IMMUNITY – FORM OF PROTECTION AND CARE FOR LAWMAKERS

Razvan VIORESCU

DOI: https://doi.org/10.18662/eljpa/2015.0203.10


Published by:
Lumen Publishing House

On behalf of:
Stefan cel Mare University from Suceava, Faculty of Economics and Public Administration, Department of Law and Public Administration
PARLIAMENTARY IMMUNITY – FORM OF PROTECTION AND CARE FOR LAWMAKERS

Razvan VIORESCU

Abstract
Parliamentary immunity is intended to protect and care for lawmakers in contradiction with parliamentary responsibility.

The idea assumes to ensure the necessary Parliament conditions during his mandate, he should enjoy social protection. Narrowly, it may be included in the safeguards of the mandate parliamentary immunities.

This paper seeks to materialize under the normative frame, this concept from which the parliament benefits.

Parliamentary immunity is an institution that cares for both the constitutional law ("the Statute of Deputies and Senators") and for parliamentary law (principally aspects of immunity, including elements of the case resulting from the regulations of the two rooms).

When Romania joined the European Union and has representatives in the European Parliament, parliamentary immunity is necessary in the context of constitutional law compared, at European level.

Keywords:
Parliamentary immunity, lifting the immunity, legislature, rules on immunity

JEL Classification  K10, K30

1 Associate professor, PhD, „Stefan cel Mare” University, Suceava, Romania, razvanv@usv.ro.
INTRODUCTION

The concept of parliamentary immunity, with all legal aspects related to the Member States of the European Union, has evolved constantly. There are European countries where immunity concerns any judicial procedure, states where it concerns only criminal proceedings, except flagrant offense, and states where immunity is not established.

Thus we have an example, the abolition of parliamentary immunity against prosecution from September 2012 (Slovakia) or parliamentary practice aimed adoption at the beginning of each session, a judgment which automatically approves any request would come from the lifting of parliamentary immunity without being consulted the dossier of MP in question (Bundestag -Germany).

HISTORY OF IMMUNITY

The origins of parliamentary immunity constitute the roots of ancient Rome, where the tribunes of the people enjoyed special protection to be able to exercise freely function. Those who violated this prohibition, may be enforced. The origin of parliamentary immunity - as we know it today - is also related to the history of English Parliament, where - in 1397 - House of Commons adopted a law that was criticized the excessive fiscal policy of King Richard II. Later, freedom of expression was guaranteed to parliamentarians - in 1689 - by Article 9 of the Bill of Rights, personal inviolability ("freedom from arrest") being joined with freedom of speech.

France, after the Revolution of 1789, Mirabeau has proposed - and approved the Documents of the Revolution - privilege under which the Assembly members could not be convicted without approval. Subsequently, this principle has been included in the French Constitution of 1791. This model was then taken in almost all European constitutions.

In Romania, the first constitutions that introduced immunity were: the 1866 constitution through art. 51, 52; the 1923 Constitution through art. 54, 55; the 1938 Constitution through art. 56, 57; the 1948 Constitution through art. 59 and 34; the 1965 Constitution through Art. 61; the 1991 Constitution through art. 69; the 2003 Constitution through art. 72.
LEGISLATIVE REGULATIONS ON PARLIAMENTARY IMMUNITY

Parliamentary immunity may take the form of lack of legal liability or the inviolability of MPs. First, concern that an MP cannot be held accountable for his choices or his vote. The second focuses on criminal liability - either in terms of prosecuting or terms, broader the deprivation of liberty.

Robert Myttenaere – in a study of the Inter-Parliamentary Union - provides a shootout between "parliamentary privilege" (freedom of expression) and "parliamentary immunity" ("inviolability").

In literature, the immunity has been highly criticized in terms of legal doctrine as being an anachronistic institution and contrary to the principles of modern constitutional law, particularly the principle of equality before the law. These criticisms were opposed but those who thought that - despite some anomalies resulting largely from abuses regarding this privilege - the reasons that led to the introduction of parliamentary immunity into modern constitutions still exist, although it could have been changed to a certain degree.

Members of Parliament are granted parliamentary immunity in order to provide the necessary protection to complete their task without fear of reprisal.

As shows prof. I. Muraru, the parliamentary immunity is "a guarantee of their mandate and not a privilege of the person, much less a reason for exemption from liability".

Therefore, it represents "the feature of the parliamentary mandate under which a member is protected against possible pressure or abuses that would commit against his person and that ensures its independence, liberty and security of the exercise of the rights and obligations incumbent upon it under the Constitution and laws.

Parliamentary immunity can neither be extended nor restricted by an act under the Constitution, it cannot be suspended and may be taken only by the Chamber and only taking into account the factual and legal basis justifying such measures.

The rules relating to immunities aim to ensure the independence of parliament in fulfilling his mandate and putting it under protection from

---

2 Adrian Năstase, *Despre imunitate parlamentară*, Revista de drept european nr. 2 din 2014, p.127-155
abusive acts or deeds of administrative, judicial or individuals’ authority. These rules constitute exceptions to the common law and therefore cannot be established by regulations of the two chambers.

Art. 191 of the Regulation of the Chamber of Deputies defines parliamentary immunity "MPs enjoy parliamentary immunity from the Certificate attesting to the election, subject to validation."

If we are to outline the scope of this immunity, its composition will consist of: legal irresponsibility and inviolability.

Legal irresponsibility prevents triggering or setting adverse consequences to parliamentary vote or political opinions expressed in the exercise of their mandate. Deputies and Senators cannot be held legally responsible for votes or political opinions expressed in the exercise of the mandate. The constitutional text art. 72 devote a substantive immunity based on absolute, because concerns all acts or deeds of Parliament in exercising its mandate, and all forms of legal liability. It is, however, an immunity with permanent character because its effects extend to the period after termination of the parliamentary mandate. Legal irresponsibility of parliament, as is clear from the constitutional reference, involves two conditions: manifestations of lawmakers to not exceed the mandate specific content, or manifestations to have a direct link with the substance of the mandate.

Parliamentary inviolability is an expression of parliamentary immunity that aims to prevent lawmakers to be denied – physically - the ability to exercise its mandate due to legal action, which could be inspired by political power.

Hence, the except for (or in fact return to the general rule) - the special protection cannot be invoked in cases of flagrante delicto - because, in such cases, in theory, there can be no arbitrariness directed, possibly, by the political power.

The inviolability is therefore "a protection against any legal proceedings". It is "a privilege harder to justify than irresponsibility”.

Revised Constitution, in 2003, allows the prosecution and indictment of lawmakers for criminal acts of "common law", not only in civil cases. On the other hand, the final segment of Article 72 (paragraph 2) covered certain procedural safeguards, supplementing the provisions of art. 23 of the Constitution, on individual freedom (detention, arrest, search).

---

5 Nemţoi G., Răspunderea în dreptul constituțional, Editura Lumen, Iași, 2015, p.82.
The inviolability is a so-called immunity procedure, enshrined in accounting any reproached made to lawmakers for other acts than those committed in the exercise of their office and indirectly related to the content.

The inviolability, as the institution of parliamentary law, aims to prevent unwarranted, arbitrary prosecution, thus preventing it from exercising its mandate and thus compelling him to exercise it in a certain way, contrary to his will and convictions. In this regard, according to art. 72 of the Constitution and Art. 193 of Regulation room, "Members may be pursued and criminally prosecuted for acts that are not connected with their votes or their political opinions expressed in the exercise of their mandate, but cannot be searched, detained or arrested without the consent of the Chamber of Deputies, after being heard. The investigation and prosecution shall only be carried out by the Prosecutor’s Office of the High Court of Cassation and Justice. The trial power belongs to the High Court of Cassation and Justice.

It is also specifically stated the procedure by which they may be prosecuted, as paragraph 2 of the same article states that "the request for detaining, arrest or search addresses to the President of the Chamber of Deputies by the Minister of Justice. Subsequent perpetration or discovery of new criminal actions shall lead to the introduction of a new petition for detention, arrest or search." (3) The President of the Chamber shall inform the Deputies about the request in an open session, and then send it immediately to the Legal, Discipline and Immunities Committee for examination to determine, through its report, whether or not there are grounds to approve the request. The Commission’s decision is adopted, within 5 days of the referral, by a majority of its members. The vote is secret. (4) The Minister of Justice will refer to the Legal, Discipline and Immunities Committee all the documents which it claimed; in case of refusal the committee will address the Chamber of Deputies, through the Standing Bureau, to decide on the refusal".

In Romania, after the revision of the Constitution, the parliamentary immunity is defined in the Law on the Status of Deputies and Senators (Law 96 from 21st of April 2006), which states that: "Parliamentary immunity is the set of legal provisions that ensure MPs and senators regime legal derogation from the general law in their relations with the judiciary, in order to guarantee their independence", also adds that “Parliamentary immunity is directly and inextricably linked to the mandate of deputy or senator". And the text of the Law no.96 / 2006, reaffirms about parliamentary immunity.
with respect to votes or political opinions, establishing the "regime" of parliamentarian in criminal proceedings (Article 23).

The authors of compared constitutional law studies, however, reveal the increasingly restrictive evolution in terms of derogatory system regarding criminal responsibility of parliamentarians. In Italy, in 1993, in Belgium, in 1997, in Austria, in 1996, it was restricted to the inviolability of arrest approval by Parliament.

This demonstrates that the phenomenon that concerns parliamentary immunity is in constant change.

**CONCLUSIONS**

Temporal application of the Constitution imposed numerous discussions regarding parliamentary immunity, and the text of the 1991 Constitution was criticized because it concerned some aspect of specific cases, which have been referred to situations from the Chamber of Deputies or the Senate, not met the number of votes necessary for removal of the parliamentary immunity to the proposals of the Ministry of Justice, especially during the Chambers Regulations stipulated a qualified majority of 2/3 to lift that immunity.

Another idea discussed by the public is that, according to that "public opinion was fed the idea that MPs are exempt from liability for acts unrelated to their political opinions and votes”, being unfairly criticized the text of the Constitution on the institution of parliamentary immunity.

Accordingly, the parliamentary immunity should be seen as an act of parliament work justification and not as a privilege thereof.

**REFERENCE**