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PARLIAMENTARY IMMUNITY AS A GROUND FOR PRECLUSION OF ACCOUNTABILITY

Theses of Doctoral Dissertation

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I.

Brief summary of the research topic

The last comprehensive monograph on the subject of immunity was published by József Bölöny in 1937. However, the theory and the practice of immunity is debated until recently, both the legislation and the law enforcement has conceptual problems and difficulties in making distinctions in this respect.

The history of immunity clearly shows that one of the fundamental guarantees of the independence of the legislative power and its free activity was the immunity from undue interference of the executive and judicial power.

Fundamental principles, which serve bases for this immunity, could also be well recognized. Pursuant to István Kukorelli's division these are as follows: sovereignty, division of powers and freedom of speech.[1]

As regards immunity two different types should be distinguished, however these are in close connection with each others: non-accountability or non-liability and inviolability.[2]

As a summary it could be stated that immunity basically provides protection for the person concerned and through his person it protects certain activities and manifestation of the Parliament, it particularly protects against certain judicial proceedings and restrictions of rights. The purpose of immunity is to ensure the independent and free activity of the Parliament through the protection of decision-making MPs form unjust persecution of other branches of powers, which is basically manifested in the form of criminal law. It covers the MPs' freedom of speech, their exemption form penal (and administrative) coercive measures and prosecutions. In terms of criminal law, immunity has two aspects: *absolute*, if it precludes the accountability; *relative*, if it constitutes a temporary and conditional obstacle to the criminal proceedings.[3]

Immunity is not a basic right for the members of parliament as it could be restricted alongside the fundamental rights and principles.

In criminal law, immunity is a ground for preclusion of accountability that is manifested as a certain personal immunity.[4]

Parliamentary non-accountability, namely non-liability for votes cast and acts carried out in the capacity of members of parliament, has a nature of criminal substantial law. Exclusively that activity may follow to the grounds for preclusion of punishability, which means that no criminal offence has been established despite of the potential factuality.

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[1] Kukorelli István: Az országgyűlési képviselők jogállása , 253. o.

[2] Petrétei József: A mentelmi jog nemzetközi szabályozása. In. Előadások és publikációk a mentelmi jog tárgyköréből. Szerkesztette: dr. Karsai József, Budapest 2006, 277. o.

[3] Az abszolút és relatív felosztásról lásd: Bölöny: idézett mű 21. o.

[4] Személyes mentesség illeti meg továbbá azokat, akiknek mentessége a diplomáciai és nemzetközi jogon alapul. E személyek büntetőjogi felelősségre vonására nemzetközi szerződés, illetve ennek hiányában nemzetközi jog szabályai az irányadók. 1978. évi IV. törvény a Büntető Törvénykönyvről (Btk), 5. §

Having examined the legal nature of this ground for preclusion of punishability we can come to the conclusion that this part of immunity belongs to the reasons excluding unlawfulness.

Inviolability and, furthermore, all the personal immunities are grounds for preclusion of punishability based on Article 551 of Code on Criminal Proceedings (hereinafter: CCP). However, acts falling within this scope perform criminal offences that can only be prosecuted, if the required consent is available, and, unless the event of catching in the act of committing an offence, coercive measure can not be applied without authorization. The Parliament and the appointer are entitled to give approval to institute a criminal proceedings.

Immunity is a legal instrument of dual nature: in terms of *public law*, it is an exception to the principle of equality before the law for the operation of the given organization, while in terms of *criminal law* it constitutes a ground for preclusion of accountability that finally or temporarily impedes the calling to account.

From these determinations emerges that the specific components of immunity can be divided in two types at least. The first one is the so-called non-accountability or non-liability, the other one is the inviolability. These are, pursuant to certain opinions, not independent from each other, but they rather provide the two sides and stages of the same protection[5].

The purpose of this paper is to provide clear definitions, to indicate insufficiencies and faults of regulation and of law enforcement; and, taking into account these, to put forward proposals for the future.

[5] Dr. Szente Zoltán: A parlamenti képviselők mentelmi joga az európai parlamenti jogokban. In: A képviselők jogállása 2. rész, Parlamenti dolgozatok, Budapest 2004., szerk.: dr. Soltész István 204. oldal

II.

Analyses, research methodology

The essay comes to the conclusions by following historical comparative methodology. Starting with the foreign practices, it introduces the history of immunity in Hungary until recently. It compares the current legislation with other European countries' rules and also touches upon their application. A separate chapter deals with the provisions on parliamentary immunity in the European Parliament and its practice. In deciding matters of principles, it asks for the help of the practice of the European Court of Human Rights and the European Court of Justice.

Its approach to the subject is complex. The paper backs away the general practice that looks over the immunity exclusively from the point of view of public law or, in less part, from criminal law aspect. It also lays emphasis upon issues of constitutional law, criminal substantial and procedural law.

The thesis takes into account the most recent developments in the field of legislation and law enforcement and the Lisbon Treaty and its Hungarian legal provisions, which will enter/have entered into force in the spring of 2010, are also included into.

As a new approach the thesis analyses the law philosophical bases of the immunity in a detailed manner.

The requirement of equality before the law and the undisturbed operation of the Parliament based on the principle of popular representation caused certain coherence problem regarding the immunity from the very first moment. This was recognized by Ferenc Vargha as he thinks that an exception to the principle of equality before the law is only allowed in moral sense, when the exception relates to an act of general interest and of public utility that would not be performed without exceptional action method.[6]

It can also happen that interests to be ensured via the rule of law and real constitutional government can be served in better way by provisionally, but sometimes radically, drifting apart from the law and the Constitution.[7] Otherwise, Finis refers to Dicey when he expounds that sometimes the interest of lawfulness in itself requires the infringement of normally appropriate rules.[8]

Taking into account all these, in general, John Rawls, one of the most outstanding representatives of the theories of justice, has right when he states that people, despite of their different approaches, can realize that an institution is just if no arbitrary distinction is made between persons while designating fundamental rights and obligations, and its rules take correctly into consideration the contrary needs relating to the advantages of social life.[9]

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[6] Vargha: idézett mű 32. oldal
[7] Finnis: idézett mű 158. oldal
[8] Lásd: Albert Venn Dicey: A jog uralma. In: Fiók Műhelytanulmányok. Szerk.: Mezey Barna, Budapest, 1985, 69. oldal
[9] John Rawls: A jog uralma az igazságosság elméletében, in: Joguralom, 248. oldal

In contrary with Rawls, one of the most known representatives of the conservative theories of justice is John Kekes.[10] Kekes criticizes the concept of justice given by Rawls, since in his view justice, as the greatest virtue of social institutions, can be debated from that starting point.

However, the origin of Kekes's thoughts dates back to former times. Plato has already stated that justice is to give everybody that he deserved.[11] Plato used the concept of virtue as one of the necessary elements of justice. Of course, just society can be realized, when it is motivated by reason and is not ruled by desires and emotions. On the other hand, the reason endows everybody with the knowledge of goodness. Knowledge and talent are essentials of realization of goodness that could not be produced by morally weak individuals, according to Plato's view. Therefore, it is possible that good person often suffers undeserved affront, while bad person receives undeserved advantage. All these can lead to injustice that shall be eliminated.[12]

It was Aristotle who substantially developed further Plato's theory of justice. He presented the basic idea that was regarded by Kelsen as the most important theory of justice ever exists. According to Aristotle justice is equality for equals and inequality for those who are not equal.[13]

Taking into account all these, the Constitutional Court came to the conclusion that distinction to be made between people having different statuses and activities cannot be classified as discriminative.[14]

The Constitutional Court stated as clear as possible that unconstitutional distinction can only be established when the legislator makes difference between individuals being in comparable situation that causes infringement of fundamental right and by this, it violates the constitutional requirement of equal dignity.[15]

Beside the historical and law philosophical analyses this paper also presents an important international comparison on the subject matter.

Parliamentary immunity is traditionally divided into two basic types. In some states, in the so-called Westminster-countries (including Great-Britain and the United States) immunity has a limited scope and includes non-liability only. Here, the protection is limited to the MPs' actions carried out in the legislative work of Parliament, specifically to their votes and speeches. In these countries, an MP is treated like any other citizen for anything he does outside proceedings in Parliament.

In countries of continental model, which basically follow the French-Belgian model, a broader scope of immunity was introduced. This model, on the one hand, consists of the above-mentioned non-accountability for votes cast and speeches held in Parliament, and, on the other hand, it provides temporary and restricted immunity from prosecution – and from

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[10] Lásd: John Kekes: A konzervativizmus ésszerűsége, Budapest, Európa Könyvkiadó 2001, valamint az Egalitarizmus illúziói, Gödöllő, Attraktor 2004.
[11] Lásd: Platón: Az állam, Gondolat 1970.
[12] Platón: idézett mű, 267-276. oldal
[13] Arisztotelész: Nikomakhoszi etika, 123-124. oldal.
[14] 954/B/1997. AB decision; ABK 2001/11 (XI. 30.)
[15] 865/B/2003. AB decision; ABK 2004/11 (XI. 30.)

civil law consequences – if an MP commits any other criminal offences. The majority of the countries, including recent democracies, belong to this second group. It should be added that in these countries the regulation is very different; inviolability has no relatively constant content that is peculiar to every state, in contrast to non-liability. It can obviously be reasoned by the existence of diverse political arrangements, and of different cultural, legal and institutional traditions.

Of course, all of these have impacts on the legislation of penal substantial and procedural law and on the law enforcement; therefore the legislation is diverse from countries to countries and varies from the scope of performed public functions; and there are differences in establishment of criminal liability, in procedural measures can be used in administrative and preliminary proceedings and in specificities of coercive measures to be applied in criminal proceedings. These differences raise problems that would also be worth analyzing from the point of view of the Hungarian legislation and practice.

In Europe, immunity is a relevant and accepted EU instrument at community level. The EU rules on parliamentary immunity in the European Parliament and its practice have twofold effects. On the on hand, it obviously depends on the rules on immunity of the Member States' Parliaments and their established practices of sometimes hundreds of years. On the other hands, rules on immunities and privileges enjoyed by members of the EU Parliament and the decisions on these rights have also impacts on the Member States. It would be worth analyzing the immunity of the European Parliament and its practice as it is synthesis of the legislation and the practice of the Member States creating the Community.

As a summing up, we can state that parliamentary immunity of the EU Parliament's members is a specific mixture of general rules of traditional immunity. It knows the two basic types of immunity: non-liability and inviolability. This latter one has dual nature as an EU Parliament's member enjoys inviolability of two types in fact. On the one hand, he is entitled to immunity enjoyed by his respective national Parliament's members, but on the other hand in the territory of other Member States of the EU he enjoys a non-derived, but original immunity of more limited scope, and which is decided by the EU Parliament under its own provisions.

The essay analyses the public law, criminal substantial and procedural law elements of the Hungarian legislation in a complex way, by pointing out all the existing contradictions and deficiencies.

Immunity of MPs is based on the Constitution. Under Section 3 of Article 20 of the Constitution Members of Parliament are entitled to immunity as defined and stipulated by the law on their legal status. The legal status of MPs is provided for by Act LV of 1990 (hereinafter: Kjt). This Act was adopted by the Parliament for the implementation of Section 5-6 of Article 20 of the Constitution. Act on the legal status of MPs provides detailed rules on immunity referred in Section 3. The Constitution provides only authorization to elaborate the provisions on immunity, but its main principles and barriers are not included in it. In my opinion – taking into consideration that it is not a basic right, but is a very important constitutional right –, this is considered as a deficiency of the Constitution, which shall be eliminated.

Hungarian rules on immunity set forth by Act on the legal status of MPs reflect traditional dualist concept of parliamentary immunity, by containing provisions both on the non-accountability and the inviolably.

The above-cited Decision no. 65/1992 (XII. 17) AB of the Constitutional Court confirms this interpretation, when it points out that although immunity is defined as a personal right of the MP, he is not entitled to dispose of this as – unless administrative proceedings – he cannot resign from the immunity and has to refer his immunity during the procedure.

In comparison to other states, Hungarian law applies broader personal scope as it expands the protection to candidate MPs as well. It means that an MP enjoys immunity even for the crime that was committed before he become an MP or a candidate, but the criminal proceedings is still in progress or it was not commenced until he became a candidate or after he was elected to an MP.

The law on immunity was essentially amended by the Parliament in 2006. Act LXXXVII of 2006 was introduced by the legislator with the explanation that the immunity should be preserved in a form defined by our traditions of public law as a guarantee of uninfluenced operation of officials having constitutional independence; at the same time damaged prestige of this legal institution has to be restored, therefore the scope of protected persons shall be substantially restricted; furthermore the content of safeguard must be clarified to preclude the abuse of exercise of rights.[16]

As it was already stated above, the Member of Parliament's non-liability is absolute and unconditional. MPs are not liable for votes, opinion and fact expressed by him while performing his mandate.

The majority of the European countries do not indicate any exceptions from this in the regulation of non-accountability. However, the German Grudgesetz, Lithuanian, Latvian and Polish Constitutions are identical to the Hungarian opinion.

During the application of law, it can cause problem when does an MP acts in that capacity and what is regarded as out of that capacity? To decide this question, it should be analyzed which actions can be considered as duties of MPs and which ones go further to this. The practice of European legislation, more or less, established general principles in this respect.

The form of non-liability of immunity as a substantial law ground for preclusion of punishability is a part of the constitutional penal law. As its formal requirement the Constitutional Court prescribes the prohibition of arbitrary interpretation and possible limitation thereof from the side of those who apply the law.[17]

Hungarian practice indicates restricting formal interpretation while designating borderlines of non-liability. However, under the opinion expressed in the Mussolini case, Hungary should rather move towards more functional broader interpretation.

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[16] See in more detail: ministerial explanatory report to the draft of Act LXXXVII of 2006

[17] 30/1992. (I.26.) AB decision

However, current experiences call our attention to that a solution like this would cause even more constitutional role confusion relating to immunity, which would result in that this institution become impossible.[18]

It could be a subject of debate, what kinds of crimes regulated by the Criminal Code should be covered by the non-accountability.

In my opinion, non-liability could consist of both the preparatory and the inciting acts in lack of precluding provisions.

Therefore, it would be worth considering that incitement to commit a crime and preparatory act should be excluded from the scope of non-accountability. The connections of immunity and freedom of speech were emphasized from the beginning by a number of people.

On the parliamentary session of 23 April 1896, Imre Hodosy stated the following: 'Freedom of speech and immunity are ones of the most important fundamental guarantees. The future of the Constitution depends on what is the extent of the free speech, to what extent are the speakers in safe during they freely express their opinions'.[19]

The Constitutional Court pointed out that the Parliament is a highly important place for free speech, the area where MPs decide in cases that concern the fate of the country after having listed the arguments for and against. Constitutional legislation is not imaginable without the publicity of discussions in Parliament and without the freedom of speeches expressed by MPs. Real open arguments and free expression of the legislator's will to be followed by debate would be endangered if an MP would be accountable in terms of criminal or administrative law for an opinion expressed by him in a parliamentary argument. Furthermore, MPs' duties, particularly the state's interest for having undisturbed and uninfluenced control of the executing power, justify MPs' restricted accountability for opinions expressed and acts taken by them in that capacity.[20]

As a summing up it can be stated that the modification of the law on MPs' legal status in 2006 further extended the scope of MPs' parliamentary immunity, when exceptions were provided to the prosecution of defamatory and libellous opinions and insults. The Constitutional Court's decision concerned reasoned the legislative act with the importance of the freedom of speech in cases when they give opinion regarding specific public actors and politicians.

However, it is not acceptable that 'incitement against a community' is covered by the scope of MPs' non-liability. The Constitutional Court and the judicial practice limited the possibility of prosecution for this kind of offence, because this act falls within the scope of free speech. It is unjust that the more serious 'incitement against a community' is declared by immunity to unpunished, while defamation and libel are mostly exceptions to the non-liability. Moreover, an MP as public official should have increased liability in these cases. It would serve the interest of the Parliament in an appropriate manner, if in case of 'incitement against a community' the rules of inviolability would prevail, that is the Parliament would be entitled to decide on the suspension of immunity.

[18] Simon Ákos: Az országgyűlési képviselők... 7. oldal
[19] 1892. Parliamentary diary, Volume XXXII, p. 305
[20] 160/1994. (XII. 24.) AB decision; ABH 1994, 342-363.

The procedure for waiving of parliamentary immunity is clearly possible in respect of inviolability only. The existence of non-accountability has to be declared ex-officio by the authority in case. If the proceeding was launched or is in progress against an MP despite of this, the Parliament can declare the infringement of immunity, but it does not decide on the maintenance or suspension of immunity.

Lots of elements of the inquire procedures of parliamentary committee remind us of the judicial proceedings, but there are also basic differences between the two procedures. Judicial power separates from legislative and executive powers, and it is specific, because it is constant in contrary with these two branches of powers of political nature and it is neutral. Whereas the parliamentary committees carrying out inquires are not part of the administration of justice, but are part of the Parliament, and are the means of parliamentary control and of the declaration of governmental political liability. It directly follows from the foregoing that committees of the Parliament cannot take over such competences that are performed by judicial bodies; therefore they are not entitled to decide on the issues of criminal substantial or procedural law.

In any case, the already-mention thesis resulted from the Constitutional Court's decision, namely the parliamentary committee, in this particular cases the committee on immunity, is obviously not able to examine the criminal liability.

According to the above, the Parliament and its committee on immunity should not consider whether the crime has allegedly been committed by an MP, but it has to make sure whether unauthorized interference of the authority has happened. To this the followings have to be declared by the committee:

1. whether the facts of the case submitted to the committee meet with any relevant statutory provisions, and therefore it can serve as a basis for prosecution,
2. whether the given act is in connection with the MP concerned,
3. whether the entitled body has initiated the specific proceeding?[21]

The Hungarian Parliament regrettably does not always follow this practice that can be traced back to the unregulation as well.

Section 5 of Act on the legal status of MPs provides for the rules of inviolability. A Member of Parliament may apprehend in the act of committing an offence, and criminal or administrative proceedings against him may only be instituted or carried out after the prior consent of Parliament. Prior to the filing of the indictment the request for waiving an MP's immunity shall be submitted to the president of the parliament by the prosecutor general, and thereafter, or in cases based on private accusation, by the court. In the event of catching the offender in the act, the motion shall be submitted immediately.

Corresponding to Vargha's opinion, in case of suspicion of a concrete offence, criminal proceedings may be launched forthwith – in contrast of the previous Code on Criminal Procedure – suspicion is only needed to the apprise of the suspect. During this criminal proceedings all the investigative measures prescribed or made possible by the law may be applied. All investigating/procedural acts, which are necessary to decide whether the person enjoying immunity may be suspected with the commitment of crime, fall within this scope. In

[21] Cf.: Related provisions of the Decision of Parliament of 18 November 1867

lack of these, neither the person authorized to initiate the suspension of immunity nor the person entitled to decide on the motion would not be in the position to provide grounded decision.[22]

Section 5 of Act on the legal status refers back to the case of catching an MP in the act of committing an offence, when it makes possible the MP's apprehension without the consent of the person authorized to suspend the immunity. The Act does not go further, and following from grammatical interpretation, in case of catching the MP in the act, just arrest is possible, which could have only limited purpose. This measure is suitable for hindering the accomplishment of the attempted or planned criminal offence and for ensuring the means of evidence.[23] However, apart from this, waiving of immunity is needed to the hearing of the suspect, and to take any other coercive measures. The opinion, which is in contrary with this, is obviously *contra legem* interpretation that is impossible by the Constitution.

According to Section 2 of Article 6 of the Code on Criminal Procedure is in force: "Criminal proceedings may only be initiated upon the suspicion of a criminal offence and only against the person reasonably suspected of having committed a criminal offence". The law makes clear distinction between the initiation of a criminal proceedings, in general, and against a concrete person. Article 551 of the CCP stipulates that no criminal procedure may be initiated against persons enjoying immunity.

Parliamentary immunity is justified when the criminal proceedings is not directly carried out against the MP, but the specific measures, including coercive ones, concerns his person. In that case the parliamentary immunity has not to be identical with the immunity that is applied in proceedings against the persons to be heard as suspects. Therefore, it is to be considered that steps should be taken against the MP, provided that, the Parliament would be entitled to decide subsequently whether it is necessary to maintain his immunity. If the Parliament would decide so, it should retrospectively think over the consequences derived from the non-waiving of immunity. Avoiding of abuses would be ensured by accurate regulation.

Optimal solution would be that if the criminal proceeding may be commenced in general in the event of being caught in the act, including all coercive measures. In that case the request for waiving the immunity should be presented as soon as possible, but its granting would only function as a subsequent consent. Should the Parliament refuse the waiving of immunity, the criminal proceedings would have to be terminated against the MP. However, until that, it would not be necessary to suspend the procedure, which is mandatory even in the case of being caught in the act, according to the current law.[24]

It should repeatedly be pointed out that procedural prohibition in lack of suspension does not relate to the evidentiary procedural acts, but it relates to the suspicion and coercive measures against the person concerned.[25] It logically follows from the foregoing that procedural acts, which do not concern the person enjoying immunity, and, in general, criminal proceedings can be carried out under the law in force.

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[22] Nyiri Sándor: A mentelmi jog a büntetőeljárás tükrében 25. oldal
[23] Section 2 of Article 129 of the CCP
[24] Section 1 of Article 552 of the CCP
[25] Nyíri: Rendészeti Szemle, 1993. 3., p. 26

In respect of the persons entitled for immunity we should note that information gathered by the means of secret service may be used as it would have been obtained by the authority acting in the criminal proceedings, in case of their influence and interference.

It would be an adequate solution if the extent of supervision over data gathering performed by the national security service would not be tighter than the prosecutor's right for supervision of investigation, because evidence obtained in a secret way can only be used later if they have been gathered legally.[26] One of the most important requirements to be met is to entirely enforce the principle of target oriented evidence.

So the lawful secret information gathering – requiring consent – does not infringe the immunity, but using the obtained data as evidence is only acceptable under the CCP if the requirements set forth by this Act are met, including the principle of target and person oriented evidence.[27]

The parliamentary committee, in this particular case the committee on immunity, is obviously not able to examine the criminal liability.

Having analyzed the purpose and the history of parliamentary immunity we can find some guidelines on the correct procedure of the committee on immunity. The basis of immunity is to protect (corporate) freedom and independence of the Parliament.[28] In the frame of that, inviolability ensures MPs' participation in the parliamentary work. It means, on the one hand, that the MPs' participation in the parliamentary session could not be impeded by the help of criminal or administrative proceedings; on the other hand coercive measures may not be applied against him until the legal provisions make it possible.[29]

There are weighty arguments for that it would be worth reconsidering the regulation of this area.[30] First of all, defamatory and libellous insults should be dealt in the frame of disciplinary proceedings that could complete the legislation on immunity, and it could partially replace the impeachment by external bodies, especially by courts.

III.

New scientific results, proposals

[26] Finszter I. 988-959. oldal
[27] See about these conditions: 2/2007. AB decision; ABK 2007/1 (I. 31.)
[28] Daruvári Géza: A mentelmi jog. Budapest 1890. 19. oldal
[29] Drinóczi-Petrétei: A képviselői mentelmi jogról de lege ferenda. Jogtudományi Közlöny, 2006/6. 257. oldal
[30] Pesti Sándor, idézett mű 252. oldal

The current law on parliamentary immunity – as it was already stated above – is in need of changing. Considerable part of the substantial and procedural rules of immunity is out of date, inconsistent and contradictious that does not meet with the requirement of due process of law; and has negative impacts to certain fundamental principles. However, there are many solutions, if they were accepted, a modern immunity would be fit into the Hungarian legal system, which would meet all the requirements of rule of law and could be well applicable. In many countries of the world, there are regulations on parliamentary immunity considerably diverging form one another, but good working within the frame of rule of law.

The essay consists of the new approach to immunity. Its definitions take into account peculiars to public and criminal law. As a final conclusion we can state that immunity meets the requirements demanded by the rules of law both in formal and content sense; its existence cannot be disputed in itself. It will only be just and reconcilable with basic principles as equality before the law, if it won't expand beyond the narrowest borders suits its purpose.

The author works out the law philosophical basis of the parliamentary immunity. While doing so, he puts the immunity to the point of intersection of the most important judicial theories. This working-up of immunity is not known in the previous bibliography, therefore it can be considered as a new scientific theoretical result that contributes to the development of other branches of law contacting with this field. With all these, the author crates the new principle basis for the regulation and application of immunity.

The results of the essay may directly be used by the legislation and law enforcement. As regards legislation, the author partly works out principles and, in part, he provides proposals for drafting as well. The guidelines for law enforcement basically concern the practice of penal procedures, but they may orient the work of the Committee on Immunity.

The author points out the insufficiencies and barriers of the legislation on immunity and works out principles, which could help immunity to take its deserved place in the system of fundamental rule of law. These are as follows:

1.) Taking into account that it is an exception to fundamental principle (equality before the law), immunity has to be stipulated by the Constitution at least to such an extent that is provided for by the law on the legal status.

2.) In the interest of due process of law, uncertainty to be found in the law should be eliminated, first of all by legislative modification and via interpretation of the law enforcement in the second place.

3.) It must be clearly defined in legal provisions that immunity is not a personal privilege, particularly not a basic right, but it is a right that is bound to the institutions helping the undisturbed operation of the constitutional state.

4.) The frames of the Hungarian immunity have to be tightened, taking into consideration the principles of equality before the law and of the virtue of justice.

5.) Candidate MPs' inviolability – as it does not concern the undisturbed operation of the Parliament – has to be abolished.

6.) Non-liability of persons enjoying immunity apart from MPs – thus members of the Constitutional Court, judges, prosecutors, parliamentary commissioners, president and vice-president of the State Audit Office – has to be reviewed, and, where it is uninterpretable and not necessary, it should be abolished.

7.) The regulation of immunity shall be guided by the undisturbed operation of the institution and by the non-influence of person concerned by the law. It reasons that, in certain aspects, immunity shall be presented as a personal right, but always as a consequence of the institutional right.

8.) Members of the Parliament are not able to waive their immunity.

9.) MPs' non-liability for votes cast shall be maintained without limitation.

10.) To determine non-accountability, the phrase of "performing his mandate" as defined in the law on legal status of MPs shall be carefully interpreted. It must be carried out in the law by "territorial" and "functional" approaches.

11.) Member of Parliament would have to enjoy non-liability for facts and opinions expressed by him in plenary sessions and in committees of the Parliament, unless he incite to commit a crime (preparation), he violates top secret and secret data, he commits incitement or he defames a public actor or libels a non-exposed person.

12.) MPs' non-accountability for facts or opinions expressed is valid even in the case it happens during public appearance and can be connected to the legislative or control function of the Parliament, unless he commits libel or defamation with this.

13.) Immunity does not concern civil law liability.

14.) Legislation on immunity shall arrange the obligation to appear and to give testimony as a witness.

15.) As a real alternative the parliamentary disciplinary liability shall be introduced, basically in case of libel or defamation has been committed against another Member of Parliament.

16.) Inviolability rules should be abolished in case of minor infractions, unless the administrative proceeding or punishment concerned personal freedom, and if the administrative measure could provide directly a basis for launching a criminal proceedings.

17.) In case of criminal offence to be punished by 5 (or maybe 3) years or more imprisonment, competent authorities should have the possibility to carry out criminal proceedings, even in the lack of suspension of immunity, but the Parliament should subsequently decide by two-third majority to refuse the suspension of immunity. Same solution is to be applied in case of apprehension in the act of committing an offence.

18.) In the frame of procedure for waiving the immunity, the Parliament may decide on the suspension thereof, but it does not consent to the application of any coercive measures. (Partially suspension.)

19.) Measures taken by authorities, which are not defined by the CCP, may be applied against the person enjoying immunity, unless it directly requires the initiation of the criminal proceedings.

20.) Provisions on secret information and data gathering shall be clarified in case of persons entitled to immunity.

21.) If the suspension of immunity was refused, the prosecution service or, in case based on private accusation, the court shall ensure the continuation or initiation of the suspended or terminated criminal proceedings after the mandate has been expired. Until that the period of prescription is rest.

22.) The commencement of the criminal proceeding in the given case does not infringe the immunity until the person enjoying immunity won't be heard as a suspect or coercive measure won't be applied against him.

23.) If such a criminal proceeding is in progress that concerns other offenders apart from the person entitled to immunity, there is no need, and it would be contradictious indeed, to separate or terminate the procedure against the person enjoying immunity in case of refusal of suspension of immunity.

24.) In cases based on private accusation, the court shall have the possibility to submit a grounded motion for waiving the immunity. In such cases another alternative would be the termination of the immunity.

25.) In cases based on substitute private prosecution, the suspension of immunity would not be allowed.

26.) In cases based on private accusation, the denunciation has to be dismissed due to the lack of criminal offence or other grounds for preclusion of punishability, instead of the initiation of the immunity procedure. The same has to be applied to the cases based on substitute private prosecution by taking into account the changes derived from the Act, provided that the legislator will expand the scope of immunity to these cases as well.

27.) The Member of Parliament should not personally take part in the immunity procedure; however he should be allowed to give statement in his own case.

28.) The parliamentary immunity procedure shall take into account the purpose of immunity and not the facts of the case and not the criminal law liability or its exclusion.

IV.

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