

Parliamentary Immunity in the Saeima

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The opaqueness of the Latvian parliament (Saeima) allows Parliamentarians to avoid accountability and responsibility for their actions. The two major obstacles to transparency in current parliamentary practice are MP immunity and the secret ballot. This article will examine immunity, the following one will look at balloting.

The safest place in Latvia for criminal elements is in the Saeima, for both the Constitution and Parliamentary Rules guarantee them a wide range of protection from legal action by law enforcement agencies. So it is not surprising that major offenders can be found in the Saeima. This gives them an opportunity to participate in the management of the country not only as members of Parliament but as ministers, law makers and law enforcers. Along with the secret ballot, immunity provides an opportunity for promoting vested interests and provides the means to defend them. The idea of immunity has two meanings – parliamentary immunity, allowing Members to speak freely and safely carry out their parliamentary duties in parliament, and inviolability, which allows Members freedom of action outside parliament. Inviolability contradicts the ideas of the rule of law, equality before the law, Constitutional division of state power, limits the prosecutor's freedom of action and promotes disrespect and cynicism of the Saeima and the law. To promote democratic values as part of the parliamentary system, the immunity and inviolability laws must be amended to reflect these values and make the Saeima accountable, transparent and unsafe for lawbreakers.

The development of Parliamentary immunity is based on the historic need of nascent 18th century parliaments to be independent of the then pervasive power of monarchies. The British developed narrowly and the French broadly defined Parliamentary immunity models.

British parliamentary tradition protects members from civil lawsuits for statements and actions on parliamentary premises directly related to the performance of parliamentary functions. If MP's engage in illegal activities outside the role of legitimate representatives, they do not enjoy immunity and are subject to investigation, prosecution, trial, and possible penalties like any other citizen. Parliamentary Rules restrict members in the use of offensive language and other irresponsible behaviour. Basically, the idea is to maximize freedom of expression while not supporting criminal behaviour.

Underlining its independence from and authority over the former royalist elite, the French constitution guarantees members immunity and inviolability, limiting police and judiciary power to arrest or detain MP's. The law protects members from civil lawsuits, speeches in parliament, proposed bills, amendments and reports related to parliamentary functions in the House as well as outside it. Immunity and inviolability

may be extended beyond the end of an MP's term. However, the MP is subject to rigorous Parliamentary Rules. Criminal activity is an individual responsibility, but parliamentary support is necessary to arrest an MP, and detention may be postponed until the end of a parliamentary session. To arrest or detain members, prosecutors make a request to the Court of Appeal and the Minister of Justice, who transmit it to parliamentary authorities, who then decide to agree or disagree with the request. For Members of the Senate immunity is guaranteed for life. The generous French immunity and inviolability laws have recently caused outrage among French voters.

The broad immunity model has significant support. Ukraine broadly protects members from arrest, detention and prosecution except with the consent of parliament, but does not protect them from search or investigation. Guatemala also broadly protects members from civil and criminal charges, as well as from all forms of investigation or evidence collection, and enjoys the protection of magistrates of the Supreme Court, whose decision can not be appealed. Armenia's constitution defines immunity narrowly, but parliament interprets it broadly.

What is the Latvian approach? Members of Saeima may not be prosecuted by any judicial, administrative or disciplinary process for parliamentary functions, except, even though fulfilling parliamentary duties, an MP knowingly disseminates false or defamatory statements, including private or family matters (article 28). Members of the Saeima may not be arrested, investigated, or their personal liberty otherwise restricted without the consent of the Saeima. Members may be arrested if apprehended in the act of committing a crime. The Saeima Presidium must be notified within 24 hours each time a member of the Saeima is arrested, the issue put on the agenda of the next parliamentary session, voting to release or retain the MP in custody. Between sessions, the Saeima Presidium alone makes this decision (article 29). MPs may not be prosecuted or imposed administrative sanctions without the consent of the Saeima (article 30). In certain cases, Members can refuse to give testimony (article 31). No one shall be held liable if the summary of a Saeima or committee meeting is truthful (article 34). The President may be subject to criminal liability if at least 2/3 of the Saeima agrees (article 54). Immunity from extradition abroad applies to all Latvian citizens, except in cases covered by international treaties, and if the issue does not violate fundamental human rights as specified in the Satversme (article 98).

Saeima Parliamentary Rules (article 17) allow Parliament to decide on criminal proceedings against members only after a Mandate, Ethics and Applications committee report (17 (1)). In cases of administrative liability, forced relocation, viewing a person or property, or removal of documents of an MP, the decision-making process is the same (article 17 (4)). It appears that Latvia is generally using the broad immunity model. Saeima's Legal Affairs Committee recommendation to

amend article 29th is not enough.

Lack of clear ethical standards has led to the abuse of immunity or inviolability, therefore comprehensive institutional reform is needed to limit its use. Freedom of speech and Saeima's independence must be guaranteed, while limiting inviolability in criminal matters to ensure Parliament is not the safest place in the country for criminals. Weak laws are a critical factor in exploiting immunity and inviolability. On the other hand, a strong executive with a majority in parliament may violate the purpose of immunity to silence the opposition. Therefore, a balance of power in state institutions between the government, Saeima and judiciary is essential. The general public and the media must participate in combating the improper use of immunity and exert pressure on the government and Saeima when such incidents occur. Parliamentary immunity can only be effective in an environment which respects the rule of law and human rights. However, the impact of law and state structures on corruption is grounded in a society and individual ethics and integrity.