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PARLIAMENTARY IMMUNITY IN THE KINGDOM OF CROATIA AND SLAVONIA IN THE SECOND HALF OF THE 19TH CENTURY AND ITS EUROPEAN MODELS *

Jasna TURKALJ**

The paper discusses the development of the English model of parliamentary immunity, which was limited to non-accountability immunity, and the French model. During the revolutionary events in France at the end of the 18th century, the French model established a two-tier system that included both non-accountability and inviolability immunities. With the development of parliamentary systems during the second half of the 19th century, the French model was adopted throughout continental Europe, including Austria, Hungary, and the Kingdom of Croatia and Slavonia. This paper focuses on the Law on the Inviolability and Non-Accountability of the Parliamentary Members, issued for the Croatian Parliament on May 16, 1867, and its application, especially during the early years of the administration of Ban Khuen-Héderváry.

Keywords: Parliamentary Immunity; English Model; French Model; Kingdom of Croatia and Slavonia; Law on the Inviolability and Non-Accountability of Parliamentary Members

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** Jasna Turkalj, Ph. D., Croatian Institute of History, Zagreb, Croatia; jturkalj@isp.hr

Introduction

In the broadest sense, immunity, according to the definition in the *Pravni leksikon* [Legal Lexicon], refers to an exception from "jurisdiction, responsibility, or the obligation to submit to authority or comply with its general or specific normative demands". Alongside immunities such as immunity of foreign states, diplomatic immunity, and official immunity in contemporary law, one of the most historically recognized forms of immunity is parliamentary immunity.[1] In a very general sense, parliamentary immunity can be defined as "a legal instrument that inhibits legal action, measures of investigation, and law enforcement in civil or criminal matters against members of the legislature".[2]

Although all parliamentary systems have implemented one or more of the mentioned elements, significant differences have existed among states throughout history regarding the individual characteristics and scope of parliamentary immunity. Regardless of these differences, the general purpose of parliamentary immunity has always been the protection or defence of the "authority and jurisdiction" of the legislative body.[3] To understand the various manifestations of parliamentary immunity, it is necessary first to emphasize that by the 19th century, two main forms of this immunity had developed: non-accountability[4] and inviolability.[5] While non-accountability ensures a representative's freedom of speech and voting within the legislative body and is limited in duration, inviolability protects a representative from prosecution or legal action for

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1 *Pravni leksikon*, ed. Vladimir Pezo (Zagreb, Čakovec: Leksikografski zavod "Miroslav Krleža", "Zrinski", 2007), 437.

2 Sascha Hardt, "Parliamentary immunity: a comprehensive study of the systems of parliamentary immunity of the United Kingdom, France, and the Netherlands in a European context" (Ph. D., Maastricht University, 2013), https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/1439730/guid-55b44d63-b482-4e81-b66e-cfc1a4cef467-ASSET1.0.pdf.

3 Hardt, "Parliamentary immunity", 3-4; Ivan Andres, *Imunitetno pravo s osobitim obzirom na imunitetno pravo članova zajedničkoga hrvatsko-ugarskog državnog sabora* (Zagreb: Tisak kr. zemaljske tiskare, 1913), 69.

4 In legal literature from the early 20th century, non-accountability is also referred to as "official immunity". (Andres, *Imunitetno pravo*, 3,107) and "immunity in the narrow sense" (Ladislav Polić, *Nacrt hrvatsko-ugarskog državnog prava* (Zagreb, 1912), 231). In contemporary literature, the term "material immunity" is also used. Marijana Pajvančić, *Parlamentarno pravo* (Belgrade: Fondacija Konrad Adenauer, 2008), 64, 206-207; Saša Šegvić and Mia Bašić, "Parlamentarni imunitet-teorija, pravna regulativa i praksa u suvremenim demokratskim državama", *Zbornik Pravnog fakulteta u Splitu* 49, no. 3 (2012): 487.

5 Inviolability immunity in contemporary literature is also referred to as "procedural immunity" or "formal immunity" (Pajvančić, *Parlamentarno pravo*, 65, 220; Šegvić and Bašić, "Parlamentarni imunitet – teorija, pravna regulativa i praksa u suvremenim demokratskim državama", 487). The term "informal immunity" was used earlier (Andres, *Imunitetno pravo*, 3, 107).

criminal offences committed outside their legislative duties. It can be revoked by the decision of the legislative body and ceases to be valid at the end of their parliamentary mandate.[6] Although both forms of parliamentary immunity share the common general purpose of ensuring the independence of the legislative body's actions, they represent two different concepts with distinct issues, differing in their historical origins and development.[7]

The Parliamentary Immunity: English and French Models

The origins of the institution of parliamentary immunity can be traced back to the history of English parliamentarism,[8] particularly to the late 14th century. The development resulted from the struggle between the Crown and the Parliament, especially the House of Commons, over the rights its members to speak and debate freely without fear of the royal use of coercion.[9] After centuries of struggle, the most comprehensive form of legal recognition of freedom of speech was achieved through the Bill of Rights of 1689. Article 9 of the Bill explicitly recognized parliamentary immunity, stating that freedom of speech, debate, and action in Parliament should not be subject to prosecution or investigation in any court other than the Parliament itself.[10] As a result, all members of both houses of Parliament, the House of Lords and the House of Commons, became exempt from the jurisdiction of ordinary courts. Judicial functions were vested exclusively in Parliament, which did not apply general criminal laws but rather its own special laws and customary practices known as *lex et consuetudo Parliamenti*. These measures available to Parliament included warnings, reprimands, imprisonment, and the loss of

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6 Hardt, "Parliamentary immunity", 4-5; Andres, *Imunitetno pravo*, 3, 107; Polić, *Nacrt hrvatsko-ugarskog državnog prava*, 231; Šegvić and Bašić, "Parlamentarni imunitet", 485-486; Dan Gjanković, *O imunitetu narodnih zastupnika* (Zagreb: Narodne novine, 1962), 6-7; Branko Smerdel, *Ustavno uređenje europske Hrvatske* (Zagreb: Narodne novine d.d., 2013), 196.

7 Gjanković, *O imunitetu*, 5-6; Hardt, "Parliamentary immunity", 4; Andres, *Imunitetno pravo*, 3; Smerdel, *Ustavno uređenje europske Hrvatske*, 195.

8 In England "parliamentary immunity comes in the form of parliamentary privilege", but "[parliamentary] privilege is not simply the British synonym for parliamentary immunity; it also bears reference to the special status of Westminster Parliament and the law governing parliamentary affairs within British law". Hardt, "Parliamentary immunity", 55-56.

9 Smerdel, *Ustavno uređenje europske Hrvatske*, 195; Gjanković, *O imunitetu narodnih zastupnika*, 11-12.

10 "Bill of Rights", Art. 9: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament"; Andres, *Imunitetno pravo*, 10; Gjanković, *O imunitetu narodnih zastupnika*, 17.

parliamentary mandates.[11] Freedom of speech in England was not unlimited, nor did it represent personal immunity privileges. Instead, parliamentary debate as a whole was privileged. This is evident from the fact that the judicial authority of the English Parliament extended even to individuals who were not its members if they violated parliamentary privileges or showed disobedience to Parliament's provisions and orders, or insulted Parliament as a whole or any of its individual members.[12]

The second main form of parliamentary immunity, inviolability, which was unknown in England in the sense in which it developed in continental Europe within criminal law[13], originated during the revolutionary upheavals in France at the end of the 18th century. Inviolability was based on the principles of the sovereignty of the people and the separation of powers.[14] Motivated by the desire to protect the legislative branch from the executive authority and biased judiciary, decrees of the National Assembly in 1789 and 1790 in France established a two-tier system of parliamentary immunity. This system included complete immunity for members of the representative body for statements they made while performing their duty as representatives (non-accountability) and protection of representatives from criminal prosecution and arrest without the permission of the National Assembly for offences committed outside the scope of their duty as representatives, except caught *in flagranti* (inviolability).[15] Although the National Assembly did not clearly distinguish between these types of immunity conceptually, the two-tier system of parliamentary immunity that is still in force today was established by these decrees. Since then, and "throughout the French waltz of constitutions", this system has undergone remarkably little change.[16]

The English, or Westminster model of parliamentary immunity, which is limited to non-accountability, was primarily adopted by countries with a British colonial history. In contrast, the French two-tier model was accepted in the development of parliamentary systems in the 19th century throughout

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11 Andres, *Imunitetno pravo*, 10-12; Polić, *Nact hrvatsko-ugarskog državnog prava*, 231-232.

12 Andres, *Imunitetno pravo*, 11-13, 92.

13 Cf. in detail in Andres, *Imunitetno pravo*, 14-21, 46, 133; Gjanković, *O imunitetu narodnih zastupnika*, 27-29; on "The Privilege of Freedom from Arrest and Molestation" in England cf. Hardt, "Parliamentary immunity", 65-67.

14 Andres, *Imunitetno pravo*, 108; Hardt, "Parliamentary immunity", 164; Gjanković, *O imunitetu narodnih zastupnika*, 36-37.

15 Hardt, "Parliamentary immunity", 164; Cf. more on pp. 139-142, as well as in Andres, *Imunitetno pravo*, 29-30, 34-35; Gjanković, *O imunitetu narodnih zastupnika*, 34-36, 40-41.

16 Hardt, "Parliamentary immunity", 198.

continental Europe and later in those parts of the world that were once under the rule of France or another European state.[17]

Parliamentary Immunity in Austria and Hungary

With the breakdown of neo-absolutism and the establishment of constitutional order in the Habsburg Monarchy, achieved through the issuance of the October Diploma in 1860 and the February Patent in 1861, which redefined the system and powers of the Imperial Council (*Reichsrat*), a gradual shift towards parliamentary governance began in Austria.[18] Following the example of the French model of parliamentary immunity, a law regarding the inviolability and non-accountability of members of the Imperial Council and provincial diets (*Landtage*) was passed by the consent of both houses of the Imperial Council on October 3, 1861. According to § 1 of this law, which regulated non-accountability immunity, members of the Imperial Council or diets could never be held accountable for their votes cast or statements made during the performance of their legislative duties. Accountability could only be sought within the respective house to which they belonged. Inviolability was guaranteed to members by § 2 of the Law. This paragraph stated that a member of the Imperial Council or diet could not be arrested or prosecuted for a criminal offence without the consent of their respective house, except in cases where they were apprehended in the act. Even in such cases, the court was required to immediately inform the president of the house. If the house requested it, detention had to be suspended, or the prosecution postponed until the end of the session until the end of the mandate. The same right was extended the house if a member faced arrest or legal proceedings outside the session period.[19]

The Law of October 3, 1861, became part of the so-called December Constitution of 1867[20] and was included as § 16 in the Law of December 21, 1867,

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17 *Idem*, 5-6, 12.

18 Vlasta Švoger, "Razvoj parlamentarizma i poslovnici parlamenata u dugom 19. stoljeću – transferi ideja i praksi", in Jasna Turkalj and Vlasta Švoger ,*"Zdrav temelj za razvitak parlamentarnog života"? Poslovnici Hrvatskog sabora (1861.-1918.)*, (Zagreb: Hrvatski institut za povijest, 2022), 38., accessed May 2, 2023, https://eukor.isp.hr/e-knjige/.

19 "Gesetz vom 3. October 1861, in Betreff der Unverletzlichkeit und Unverantwortlichkeit der Mitglieder des Reichsrathes und der Landtage", R. G. Bl. Nr. 98/1861, 468., accessed April 18, 2023. https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1861&page=498&size=45; Andres, *Imunitetno pravo*, 134.

20 The Austrian "Fundamental State Laws" of December 21, 1867, known as the December Constitution, included, in addition to the Compromise Act, five other fundamental laws. Mirjana Gross and Agneza Szabo, *Prema hrvatskome građanskom društvu. Društveni razvoj*

amending the Fundamental Law on the Imperial Representative Body of February 26, 1861.[21] According to § 23 of the Austrian text of Austrian-Hungarian Compromise, members of the Austrian delegation[22] were protected by non-accountability and inviolability immunities.[23] In contrast to the provisions of § 23 in the Austrian text, which did not protect the Hungarian-Croatian delegation during the debates in Vienna, § 47 of the Hungarian text of the Austro-Hungarian Compromise (Legislative Article XII of 1867) guaranteed immunity to the Austrian delegation debating in Budapest.[24] Some Hungar-

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u civilnoj Hrvatskoj i Slavoniji šezdesetih i sedamdesetih godina 19. stoljeća (Zagreb: Globus, 1992), 213.

[21] "Gesetz, wodurch das Grundgesetz über die Reichsvertretung vom 26. Februar 1861 abgeändert wird", § 16:

"Die Mitglieder des Reichsrathes können wegen der in Ausübung ihres Berufes geschehenen Abstimmungen niemals; wegen der in diesem Berufe gemachten Äußerungen aber nur von dem Hause, dem sie angehören, zur Verantwortung gezogen werden.

Kein Mitglied des Reichsrathes darf während der Dauer der Session wegen einer strafbaren Handlung – den Fall der Ergreifung auf frischer That ausgenommen – ohne Zustimmung des Hauses verhaftet oder gerichtlich verfolgt werden.

Selbst in dem Falle der Ergreifung auf frischer That hat das Gericht dem Präsidenten des Hauses sogleich die geschehene Verhaftung bekannt zu geben.

Wenn es das Haus verlangt, muß der Verhaft aufgehoben, oder die Verfolgung für die ganze Sitzungsperiode aufgeschoben werden.

Dasselbe Recht hat das Haus in Betreff einer Verhaftung oder Untersuchung, welche über ein Mitglied desselben außerhalb der Sitzungsperiode verhängt worden ist." R. G. Bl. no. 141/1867, p. 393., accessed May 4, 2023, https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1867&page=421&size=45.

[22] The Austro-Hungarian Compromise established a system of so-called delegations consisting of 60 members each, chosen from their respective parliaments, to facilitate negotiations and decision-making on matters of common jurisdiction. The monarch convened these delegations alternately in Vienna and Budapest every year. Cf. more in Dalibor Čepulo, *Hrvatska pravna povijest u europskom kontekstu od srednjeg vijeka do suvremenog doba* (Zagreb: University of Zagreb – Faculty of Law, 2012), 171-172.

[23] "Gesetz, betreffend die allen Ländern der österreichischen Monarchie gemeinsamen Angelegenheiten und die Art ihrer Behandlung", § 23:

"Die Delegirten des Reichsrathes genießen in dieser Eigenschaft die nämliche Unverletzlichkeit und Unverantwortlichkeit, welche ihnen als Mitgliedern des Reichsrathes kraft des §. 16. des Grundgesetzes über die Reichsvertretung zusteht.

Die in diesem Paragraphen dem betreffenden Hause eingeräumten Befugnisse kommen, insoferne nicht der Reichsrath gleichzeitig versammelt ist, rücksichtlich der Delegirten der Delegation zu." R. G. Bl. no. 146/1867, p. 404-405., accessed May 4, 2023, https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1867&page=432&size=45; https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1867&page=433&size=45.

[24] Andres, *Imunitetno pravo*, 59; Géza Daruváry, *A mentelmi jogról. Tudori értekezés* (Budapest: Neuwald Illes könyvnyomdája, 1890), 18, 22; According to § 47 of Law Article XII from 1867, members of delegations could never be accountable for their statements made during

ian politicians and legal experts believed that § 47 of Legislative Article XII of 1867, and the immunity it granted to members of the Hungarian-Croatian delegation, should be interpreted in a way that it also extended to members of the Hungarian Diet, i.e. the common Hungarian-Croatian Diet, from which the delegation members were elected.[25]

The immunity of members of the Hungarian Parliament, which also extended to Croatian representatives as members of the common Hungarian-Croatian Parliament,[26] was not regulated by the constitution or a specific law, as was the case in other countries. Instead, it was established by a resolution of the Hungarian House of Representatives on November 18, 1867, which "simply incorporated" the provisions of the French inviolability immunity and the English and French non-accountability immunity.[27] Non-accountability was defined by this provision: "A member of the Parliament, as such, can be held accountable for what he says **or does**, inside **or outside** the house, only by the Parliament, and that by the house to which he belongs [emphasis added]". This provided representatives with broader protection compared to the form of immunity in most other continental European states. The same applied to inviolability immunity, which was regulated by the following for-

discussions on common matters. Furthermore, while serving as members of delegations, they could not be arrested or publicly charged without the prior consent of their respective parliament, or in cases when it was not in session, those delegations to which the members belonged. This immunity applied both to civil lawsuits that could lead to personal imprisonment and to criminal offenses or misdemeanours unless they were caught in the act. If any member was apprehended in the commission of crime and detained, the duration of their detention or its cessation would be decided by the respective delegation, unless the parliament was in session. Cf. "1867. évi XII. törvénycikk a magyar korona országai és az Ő Felsége uralkodása alatt álló többi országok között fenforgó közös érdekü viszonyokról, s ezek elintézésének módjáról", § 47, accessed May 8, 2023, https://net.jogtar.hu/ezer-ev-torveny?docid=86700012.TV&searchUrl=/ezer-ev-torvenyei%3Fkeyword%3D1867.%2520%25C3%25A9vi%2520XII.%2520t%25C3%25B6rv%25C3%25A9nycikk.

[25] Andres, *Imunitetno pravo*, 86-87.

[26] According to the Croatian-Hungarian Settlement of 1868, the Kingdom of Croatia and Slavonia was represented in the common Parliament (which consisted of Hungarian and Croatian representatives in the House of Representative and Hungarian and Croatian members in the House of Magnates) with 29 deputies in the House of Representatives (excluding Rijeka) and two members in the House of Magnates. The number of Croatian representatives in the common Parliament was increased in 1873 and later in 1881 after the incorporation of the Military Frontier. The common Parliament discussed and decided on issues defined in the Settlement as common matters. Cf. more in Čepulo, *Hrvatska pravna povijest u europskom kontekstu*, 176-177; Jasna Turkalj, "Organizacija i operativna pravila rada Hrvatskog sabora: Saborski poslovnici (1861.-1918.)", in *"Zdrav temelj za razvitak parlamentarnog života"?*, 88, last access on June 10, 2023, https://eukor.isp.hr/e-knjige/.

[27] Andres, *Imunitetno pravo*, 85, 91.

mulation: "A member of the Parliament can be brought before the judge because of what he says or does not as a member and not in the exercise of his legislative duty only with the permission of the house; he can only be subjected to public prosecution with the permission of the house; and he can be imprisoned – except in the case of being caught in the act – only with the prior permission of the house".[28] The purpose of this resolution, as emphasized in its explanation, was to ensure that the Parliament could make decisions freely without any external pressure and to protect the "integrity of the legislative body". This 'dual inviolability' was not so much an individual right as it was an "indisputable prerequisite and postulate for complete political freedom and the independence of the legislative body".[29] In addition to this resolution, several subsequent conclusions of the House of Representatives and regulations from the Minister of Justice also pertained to parliamentary immunity.[30]

The Law on Inviolability and Non-Accountability of Parliamentary Members from May 16, 1867, issued for the Croatian Parliament

The first attempt to regulate the immunity of members of the Croatian Parliament dates back to 1848 when the transformation of the Croatian Estate Diet into a representative body let to the creation of the "Basis for the Organisation of the Parliament".[31] In the second chapter ("On the Composition of

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[28] Ibid., 88-89.

[29] Ibid., 89; The text of the conclusion of the Hungarian Parliament on November 18, 1867, read as follows: "Az országgyülési tag sérthetetlensége két irányban jut gyakorlati érvényere, t. i.

1. hogy, a mit az országgyülési tag, mint olyan, a házban és a házon kivül mond vagy tesz, azért csak az országgyülés, és pedig annak azon háza által vonathatik feleletre, melyhez tartozik;

2. hogy a mit az országgyülési tag nem mint olyan és nem törvényhozói hivatásának gyakorlása közben mond vagy tesz, azért csak a ház engedelmével vonathatik közkereset alá, s a tettenérés esetét kivéve, csak a ház előleges engedelmével zárathatik el.

Amaz biztositja az országgyülési tanácskozás szabadságát kivülről származó minden nyomás ellenében. Emez biztositja a törvényhozó testület épségét arra nézve, hogy tagjai az ügymenet és törvényhozói tevékénység sérelmére el ne vonassanak törvényhozói tisztük gyakorlásától s ne gátoltassanak a törvényhozásban való részvétben se a hatalom, se bizonyos czélokra felhasznált, vagy sugalmazott egyének által.

E szerint csak arra van hivatva őrködni a törvényhozó testület, hogy a törvény álczája alatt megkisérlett erkölcsi és anyagi nyomás és zaklatás ellen védve legyen minden egyes tag." Quoted according to Daruváry, *A mentelmi jogról*, 19.

[30] Daruváry, *A mentelmi jogról*, 20; Andres, *Imunitetno pravo*, 90.

[31] Ladislav Polić extensively analysed the mentioned basis and included the source in the appendix of his book ("Mažuranićeva osnova: Članak o saboru") in *Povijest modernoga izbornoga zakonodavstva hrvatskoga* (Zagreb: Nakladom Akadem. knjižare Gjuro Trpinac, 1908), 22-30, 89-98.

the Parliament"), § 41 and § 43 provided members of the Parliament with inviolability and non-accountability immunities, following the French model.[32] However, since the "Basis for the Organisation of the Parliament" of 1848 did not undergo parliamentary debate nor come into effect,[33] the issue of parliamentary immunity was raised again in the Croatian Parliament of 1861. During the third sitting of this Parliament session, on April 20, 1861, Mirko Šuhaj brought up the question of parliamentary immunity. He emphasized the utmost importance of the issues that needed to be thoroughly and freely considered by this Parliament and proposed that the Croatian Parliament, like all other legislatures, should adopt a resolution to secure freedom of speech for representatives and express the principle of inviolability, i. e. "salvus conductus". Adding to this proposal, Slavoljub Vrbančić emphasized that the greatest guarantee of inviolability for representatives is contained in "our fundamental old law", to which the Parliament should refer in this matter. Šuhaj's proposal was then unanimously adopted.[34]

According to the Parliament's conclusion, which was included in *Spisi saborski* [The Acts of the Parliament] of 1862 with minor adjustments in terms of form and style without altering the content, as Legislative Article IV "On the Inviolability and Non-Accountability of Parliamentary Members", a member of the Parliament was not accountable to anyone for their statements during debates or voting in the Parliament, except to the Parliament itself. They could not be prosecuted or punished in any way for such statements and votes. Furthermore, it was stated that during the Parliament sessions, every member was "under the special protection of the Hungarian-Croatian laws 'de salvo conductu'" under which any insult offered to a member of the Parliament should be punished. For the prosecution or imprisonment of a representative for "publishable acts"[35] committed "during the Parliament", a special

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[32] Ibid., 29, 94.

[33] Ibid., 31.

[34] *Dnevnik sabora trojedne kraljevine Dalmacije, Hrvatske i Slavonije držana u glavnom gradu Zagrebu god. 1861* (Zagreb: Brzotisak Antuna Jakića 1862), 20, 21; Dragojlo Kušlan and Mirko Šuhaj eds., *Spisi saborski sabora kraljevinah Dalmacije, Hrvatske i Slavonije od god. 1861.*, vol. II, *Predlozi, prošnje, kraljevska pisma, previšnji odpisi, izviešća, interpelacije i predstavke* (Zagreb: Narodna tiskarnica Dra. Ljudevita Gaja, 1862), no. 11; "Predlog narodnog zastupnika dra. Mirka Šuhaja, o neodgovornosti i nepovredivosti članovah saborskih", 15; Ferdo Čulinović, "Sabor Hrvatske od 1861.", *Rad Jugoslavenske akademije znanosti i umjetnosti* 347 (1967), 115.

[35] A "punishable act" was considered an act as described and specified in the Criminal Law on Crimes, Misdemeanours, and Offenses, which was introduced in Croatia-Slavonia by patent on May 27, 1852. This law replaced various regulations and customary laws that had been previously in effect. More on the 1852 Criminal Law cf. in Čepulo, *Hrvatska pravna povijest u europskom kontekstu*, 158.

permit from the Parliament was required, except in cases where a member of the Parliament was "caught in the act itself". Legislative Article IV concludes with a provision stating that, for as long as the Parliament is in session, a member of the Parliament must not be subjected to "personal imprisonment for any debt",[36] thereby extending parliamentary immunity to a certain form of enhanced protection by civil law.[37]

On November 4, 1861, the Parliament decided to send the resolution on immunity to the ruler Franz Joseph I, along with the accompanying explanation.[38] Ante Starčević was tasked with composing the explanation, which he read in the Parliament on November 11, 1861, and it was adopted in its entirety.[39] However, the following day, a royal rescript was read to the representatives, dissolving the Parliament.[40] One of the numerous legal foundations that did not receive royal approval was that regarding the inviolability and non-accountability of the members of the Croatian Parliament.

Considering parliamentary immunity as essential to guarantee free and unhindered work, the new session of the Parliament requested the King's confirmation of the legal basis for the inviolability and non-accountability of its members through a petition from February 1866.[41] However, once again, this effort yielded no results. The issue was raised again on May 11, 1867, by the representative Ivan Perkovac due to pressures exerted on the Croatian Parliament to reach an agreement with the Hungarians and send its representatives to the coronation of the ruler in Buda, following the Compromise reached between the King and the Hungarian Parliament (Austro-Hungarian Compromise).[42] Arguing that Ban Šokčević's government was exerting "unprecedented pressure" on the members of the Croatian Parliament, Perkovac proposed, and the representatives unanimously adopted, the resolution that the Parliament would not discuss or vote on any proposals until the Legislative

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[36] Legal Article IV "*O nepovredivosti i neodgovornosti saborskih članovah*" cf. in Dragojlo Kušlan and Mirko Šuhaj eds., *Spisi saborski Sabora kraljevinah Dalmacije, Hrvatske i Slavonije od god. 1861., vol. I, Zaključci saborski* (Zagreb: Narodna tiskarnica dra. Ljudevita Gaja, 1862), 4.

[37] Gjanković, *O imunitetu narodnih zastupnika*, 124.

[38] *Dnevnik sabora 1861.,* 895-896.

[39] *Dnevnik sabora 1861*., 928; *Spisi saborski 1861*., vol. II, no. 12 "Predstavka sabora troj. kraljevine, kojom se Nj. Veličanstvu članak o neodgovornosti i nepovredivosti članova saborskih za kraljevsko potvrdjenje podnaša", 15.

[40] *Dnevnik sabora 1861*., 934.

[41] *Saborski spisi Sabora kraljevinah Dalmacije, Hrvatske i Slavonije od godine 1865.-1867.* (Zagreb: Tisak Kraljevske zemaljske tiskare, 1900), no. 179. "Predstavka radi potvrde zak. članka o nepovredivosti narodnih zastupnikah" of February 28, 1866, 176.

[42] Cf. more in Gross, Szabo, *Prema hrvatskome građanskom društvu*, 211.

Article on the Inviolability and Non-accountability of Parliamentary Members from 1861 received the ruler's confirmation.[43] As a result of this pressure, on May 14, 1867, a letter from Ban Šokčević was read in the Parliament informing the representatives that the King had confirmed the legal basis for the immunity of members of the Croatian Parliament.[44] The representatives were, however, dissatisfied with the form of the communication and refused to continue their work, demanding that the king's decree confirming the law be read to them. They considered the Ban's letter to be an informal communication rather than a royal decree. "Such ignorance, such disregard, and bypassing of legal and constitutional forms are very dangerous", stated the representative Matija Mrazović, who demanded that the Parliament not discuss any issues until the King's confirmation had arrived.[45] On the other hand, representative Antun Stojanović suggested that the Ban's letter be acknowledged, and the ruler be asked through a petition to issue a decree of confirmation, allowing the Parliament to continue its discussions on items of the agenda. After the debate, Mirko Šuhaj, who chaired the sitting, posed a question for a vote on one or the other proposal. However, Perkovac raised an objection, believing that putting this issue to a vote would contradict the Parliament's conclusion from May 11, 1867, which had not yet been confirmed. According to him, the Parliament could not discuss or vote on such an issue. Following this, Perkovac, accompanied by a large number of representatives, left the chamber, and Šuhaj had to conclude the session due to a lack of a quorum.[46]

On May 18, 1867, the King's decree from May 16, 1867, confirming the Legislative Article from 1861, was read in the Croatian Parliament along with the text of the Legislative Article. However, Ivan Perkovac immediately claimed that the text of the confirmed Legislative Article that was read to them did not entirely correspond to the legal basis from 1861, as contained in the published *Spisi saborski*. He requested the appointment of a special parliamentary committee tasked with comparing the Legislative Article from 1861 with the Article that received the King's confirmation, and the representatives agreed to this request.[47] The committee's report was presented to the representatives on May 20, 1867. The committee proposed that the Parliament accept the King's decree from May 16 as regular confirmation, as they had veri-

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43 *Dnevnik sabora trojedne kraljevine Dalmacije, Hrvatske i Slavonije od godine 1865/67.* (Zagreb: Brzotisak Antuna Jakića, 1867), 708-709; Gross, Szabo, *Prema hrvatskome građanskom društvu*, 211.

44 *Saborski spisi 1865.-1867.*, no. 301; "Dopis bana o potvrdi zak. članka o nepovriedivosti saborskih članovah" of May 13, 1867, 322.

45 *Dnevnik sabora 1865/67*, 715-716.

46 Ibid., 716.

47 Ibid., 717-718.

fied the "complete identity" between the confirmed Legislative Article on the Inviolability and Non-Accountability of Parliament members and the basis sent to the ruler for confirmation before the dissolution of the Parliament in 1861. Although there were differences between the codified version from 1861 and the one confirmed by the King in 1867, during the debate, the majority of representatives agreed that these differences were "only stylistic".[48] Representative Antun Stojanović raised the question of the validity and legality of the confirmation by the King, who had not yet been crowned, suggesting that the ruler's confirmation of the law would only be valid after his coronation, when the law could be published. However, the Parliament did not accept Stojanović's opinion, considering that adopting it would set a dangerous precedent.[49] After a lengthy debate, the Parliament decided to accept "with satisfaction and gratitude" the royal decree of May 16, 1867, which granted regular confirmation of the Legislative Article on the Inviolability and Non-Accountability of Parliament Members.[50]

The Legislative Article on the Inviolability and Non-Accountability of Parliamentary Members, which was confirmed by the King and remained in effect until the dissolution of the Austro-Hungarian Monarchy in 1918, read as follows:

"In the spirit of our constitution and our constitutional laws, the non-accountability and inviolability of parliamentary members are established, meaning that:

a) No member of the Parliament is responsible to anyone other than Parliament itself for the opinions expressed during the discussion of any matter or during the voting on any matter in Parliament, and, for this reason, they cannot be prosecuted or punished in any way.
b) Every member of the Parliament is, as long as the Parliament is in session, under the special protection of our laws regarding 'salvus conductus', meaning that any insult offered to any member of the Parliament must be punished according to these laws; similarly, no member of the Parliament can, unless caught in the act itself, be imprisoned or prosecuted while the Parliament is in session for any punishable act without the special permission of the Parliament, and, as long as the Parliament is in session, no imprisonment, especially for debts, is allowed."[51]

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48 Ibid., 734-736.

49 Ibid., 737-738.

50 Ibid., 738, 741.

51 By the decree of the Provincial Government dated March 21, 1874, no. 735, the Legislative Article on the Inviolability and Non-Accountability of Parliamentary Members (hereinafter:

As in other countries that codified parliamentary immunity, the Croatian Law on Immunity did not regulate a number of issues,[52] or it formulated them insufficiently, leaving room for different interpretations of certain provisions. According to the opinions of some legal experts of that time, the law was "imperfect from a practical perspective", while the harshest criticism came from Stjepan Spevec – a member of the major political party, *Narodna stranka* [the National Party], prominent jurist, and future long-time president of the Table of Seven. Spevec concluded in the Parliament in 1885 that the entire law was "poorly drafted".[53]

The very first provision that "no member of the Parliament is responsible to anyone other than the Parliament itself for the opinions expressed during the discussion [...] **or** during the voting [emphasised by J. T.]" was 'awkwardly' formulated because it could be interpreted in such a way as to allow the Parliament to hold a member accountable even for their votes.[54] However, what drew the attention of the members of the Parliament was not the clumsy wording of the legal provision on non-accountability[55] but the willingness

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the Law on Immunity) was proclaimed in *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju, godina 1874.,* (Zagreb: Brzopisom tiskare "Narodnih novinah", 1875), 169.

[52] Vladimir Nikolić, a lawyer and member of the Parliament from 1887 to 1892, also a member of the parliamentary Committee on Immunity during that period, raised various issues relations to immunity. These issues included "the immunity of the seat of the parliament", the immunity concerning the speeches of deputies before their constituents in electoral districts, the forced summoning of deputies as witnesses in criminal cases, imprisonment in civil litigations for refusing to testify, the publication of parliamentary speeches at the deputy's own expense and editions, and notably, the issue of disciplinary responsibility towards an external professional body to which a deputy belongs, such as in the case of lawyers and notaries. Vladimir Nikolić, "O imunitetu narodnih zastupnika na hrvat. saboru", *Mjesečnik Pravničkoga družtva u Zagrebu* 19, no. 11, (1893): 494, 499-500.

[53] Andres, *Imunitetno pravo*, 94; Branko Ostajmer, *Narodna stranka u Slavoniji i Srijemu 1883.-1903.* (Zagreb: Hrvatski institut za povijest, 2018), 85; S*aborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1884.-1887.,* vol. II (Zagreb: Tiskarski zavod "Narodnih Novinah", 1887), 1074.

[54] Andres, *Imunitetno pravo*, 94-95. For comparison, the quoted Austrian law from December 21, 1867 (§ 16, paragraph one), clearly and unambiguously regulated non-accountability.

[55] The freedom of speech of representatives was a frequent topic of debate in the Parliament, but not in the context of the Law on Immunity, which protected members of the Parliament from criminal prosecution committed within the Parliament. Sharp debates primarily revolved around disciplinary measures stipulated by the parliamentary Rules of Procedure and their arbitrary application by the Parliament's president, particularly since the October 1882 amendment to § 41 of the Rules of Procedure from 1875. This amendment introduced a new measure, the exclusion of representatives from eight sessions, along with the loss of daily allowances, in addition to reprimand and withdrawal of the floor from the speaker. The opposition's reaction was particularly vehement when the Rules of Procedure were amended in October 1884 to expand the discretion of the president, introduce a 'closer' [*klotura*] limiting

of Ban Ladislav Pejačević's government, in the words of the representative Matija Mrazović, "to peculiarly define the freedom of speech and voting of the national representatives".[56] The government presented its interpretation of non-accountability immunity in response to an interpellation by Josip Zorić, submitted on April 1, 1882, regarding the resignation by representative Fran Vrbanić of his mandate.[57] In the previous parliamentary term, at the request of Ban Pejačević, Fran Vrbanić – the esteemed jurist, university professor, and member of the oppositional *Neodvisna narodna stranka* [Independent National Party] – had been suspended from his position as a professor at the University of Zagreb. Although the decree of suspension cited his improper behaviour during the elections for the Zagreb City Council as a reason,[58] the real motive was that Vrbanić, during the debate on the legal status of the town of Rijeka, challenged the authenticity of § 66 of the Croatian-Hungarian Settlement of 1868.[59] In the parliamentary elections of September 1881, Vrbanić was re-elected as a representative in the Parliament. From the beginning of the new parliamentary session, Zorić argued in the interpellation, pressure was exerted on Vrbanić through the president of the Parliament, Nikola Krestić, and the dean of the Faculty of Law, Josip Pliverić, and ordered by Ban Pejačević, for him either to resign his mandate or face being dismissed from the Faculty. Faced with the choice of "either retracting his statement in the Parliament about the authenticity, or relinquishing his mandate; otherwise he will be dismissed at the Faculty", Vrbanić eventually, under pressure and threats, resigned his mandate.[60] Responding to Zorić's interpellation, the head of the government's Department for Religion and Education, Ivan Vončina, emphasized that the government acknowledged the legally guaranteed right of immunity to all members of the Parliament. However, Vončina added, this right does not exempt a representative who is also a public servant from their official duties, to which they are bound by oath. If public servants come into conflict with their official duties due to their political beliefs, they should

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the duration of the debate on a specific issue to three days, and increase the length of suspension from session to 30 or 60 sitting. Cf. more in Turkalj, "Organizacija i operativna pravila rada Hrvatskog sabora", 114-126, 130-137.

56 *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1881.-1884*, vol. I (Zagreb: Tiskarski zavod "Narodne Novine", 1884), 428. (N.B.: In vol I. of *Saborski dnevnik* for the mentioned parliamentary period, starting from the sitting on March 14, 1882, the pages are once again numbered from the beginning, i. e. from the first page).

57 *Saborski dnevnik 1881.-1884*, vol. I, 179-180.

58 *Saborski dnevnik 1881.-1884*, vol. I, 179.

59 Jasna Turkalj, *Pravaški pokret 1878.-1887.* (Zagreb: Hrvatski institut za povijest, 2009), 93; *Saborski dnevnik 1881.-1884*, vol. I, 179.

60 *Saborski dnevnik 1881.-1884*, vol. I, 179.

either resign from their position or relinquish their parliamentary mandate. According to him, this principle, grounded "in the postulate of the state order and the demand of public morality" should be adhered to, and it seems that Vrbanić also followed it when he found himself in an uncomfortable position of having to choose between his post and his mandate. Vrbanić's personal decision was to withdraw "from the slippery field of public politics" to better pursue his calling, Vončina concluded.[61] Despite Zorić's dissatisfaction with the government's response, the parliamentary majority immunity accepted the government's answer.[62] This unusual interpretation of non-accountability, according to Mrazović, meant that freedom of speech and voting in the Croatian Parliament did also not apply to other representatives who were not entirely independent of the government. This, Mrazović stated, resulted in some members of the parliamentary majority leaving the chamber during voting to avoid "collisions with the discipline of the parliamentary majority on one hand, and their beliefs and conscience on the other".[63]

Much more attention and debate were stirred in the Croatian Parliament by the provisions regulating inviolability. According to the lawyer and parliamentary representative Lavoslav Šram, the Croatian Law on Immunity had a "peculiar" provision that was not found in any constitution or law on parliamentary immunity in other countries, and that was the *salvus conductus*. As Šram interpreted, this provision in Croatian laws from the 16th to the 18th century arose from the need to guarantee freedom within the Parliament to each individual member. He believed that *salvus conductus* contained principles that ensured and guaranteed the "inviolability of a person while travelling to the parliament, during the debate, and while inside the parliament".[64] Some legal theorists considered the claim that the inviolability of members of the Croatian Parliament was rooted in old (Hungarian-Croatian) laws to be incorrect. They argued that it was entirely incompatible, as in the Croatian Law on Immunity, to merge the old institution of *salvus conductus*, which aimed to preserve the privileges of the nobility, with the modern concept of immunity associated with the development of parliamentary systems.[65] Hungarian legal theorists and politicians who supported the theory of the historical development of parliamentary immunity in Hungary also referred, among

[61] Ibid., 339-340.

[62] Ibid., 340-345.

[63] Ibid., 428.

[64] S*aborski dnevnik 1884.-1887,* vol. II, 1048. Šram mentioned the following laws that pertain to *salvus condictus:* Art. XXV. from the year 1625, Art. XLII. from 1588, Art. VII. from 1723 and XLII from 1625.

[65] Andres, *Imunitetno pravo*, 1, 94.

other things, to old Hungarian laws that ensured the safety of members of the Parliament through the institution of *salvus conductus* when they were travelling to the sessions, inside the Parliament, or if the freedom of the Parliament was disrupted.[66] However, unlike the conclusion of the House of Representatives of the Hungarian Parliament from November 18, 1867, which regulated the immunity of its members independently of the content of old Hungarian law,[67] the Croatian Law on Immunity explicitly references *salvus conductus*. In the Croatian Parliament of 1885, S. Spevec warned that basing the protection of representatives on this institution means building it "on sand or an even weaker foundation". He believed that *salvus conductus* does not protect representatives if they commit a punishable act; rather, it is an institution that sanctions unauthorized acts that others might commit against representatives. Furthermore, Spevec pointed out that these provisions no longer apply because Croatian parliamentary representatives are protected against offences that may be committed against them by the Criminal Law, which has been in force in Croatia since 1852.[68]

One of the important questions that were not precisely defined by the Law on Immunity was the issue of the timeframe during which a member of the Parliament was protected by inviolability immunity. Phrases like "while the Parliament is in session" and "during the Parliament" could be interpreted in different ways. Was the representative protected from the day of election, from the day the Parliament convened, or from the day of verification? Considering that the Croatian Parliament did not sit continuously, it was questionable whether they were protected during periods when the Parliament's work was postponed or when sittings were not held. In this regard, the Royal State Prosecutor's Office issued a Circular on March 8, 1876, interpreting the terms "during the Parliament" and "while the Parliament is in session" from the Law on Immunity dated May 16, 1867. This interpretation was based on the Law on the Organisation of the Parliament from 1870, which established that the "parliamentary term" lasted for three years, with the ruler having the right to dissolve it before that period expired.[69] Furthermore, it was noted that § 6 of the Law on the Organisation of the Parliament from 1870 specified the beginning and the end of the Parliament's work by stating that the King opens and closes the Parliament, meaning that the "Parliament lasts"

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66 Cf. more in Andres, *Imunitetno pravo*, 74-84.

67 Daruváry, *A mentelmi jogról*, 18.

68 S*aborski dnevnik 1884.-1887,* vol. II, 1077.

69 On March 28, 1887, the Croatian Parliament adopted, and on April 24, 1887, the ruler confirmed a legal basis by which § 2 of the Law on the Organisation of the Parliament from 1870 was amended, extending the parliamentary term from three to five years starting from the next parliamentary term. Turkalj, "Organizacija i operativna pravila rada Hrvatskog sabora", 139.

throughout the entire period between these two royal acts, from its opening to its closure. It was hence concluded in the Circular that the inviolability of Parliament members cannot be limited to individual parliamentary sittings because once the Parliament is opened, it legally continues to exist even during periods when sittings are not held until the ruler closes it. Given that in the context of the Law on the Organisation of the Parliament, "legislative term" means the same as a "duration of the Parliament", members of the Parliament are protected throughout the "entire legislative term of the respective Parliament".[70] Therefore, members of Parliament are granted inviolability from the day the Parliament opens until its closure or dissolution, and any delay in the Parliament's session or the non-holding of the sittings did not suspend the immunity of a Parliament member. However, when the competent court in Vukovar 1880 sent a request for the approval of the criminal prosecution of Dr Aleksandar Peičić, who had not yet been verified as a Parliament member, the Parliament, at a sitting on February 5, 1881, upon the proposal of the Committee on Immunity, adopted the conclusion that a member of Parliament is protected by immunity from the moment the electoral commission declares their election as a representative.[71] Interestingly, this conclusion of the Parliament from 1881 is not mentioned by Vladimir Nikolić, a member of the Committee on Immunity during the parliamentary term from 1887 to 1892. He interpreted the mentioned Circular from March 8, 1876 in such a way that the immunity of a Parliament member lasted "from verification" until dissolution or closure of the Parliament. Nikolić believed that this was the "only correct" interpretation, considering the imprecise wording of the 1867 Law on Immunity regarding this matter.[72]

The case of representative Peičić, who the Parliament did not allow to be prosecuted for reputational damage to lawyer Dr Ferdo Kettig, raised concerns in the press about the impact of immunity on the statute of limitations for penal responsibility, primarily for offences with very short statutes of limitation under the Criminal Law.[73] An anonymous author in the newspaper

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[70] "O pitanju glede nepovredivosti članova hrv. Sabora," *Mjesečnik Pravničkoga družtva u Zagrebu* 2, no. 4, (1876): 188.

[71] *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1878.- 1881.,* vol. II (Zagreb: Tisak Kraljevske zemaljske tiskare, 1904), 854, 1140.

[72] Nikolić, "O imunitetu narodnih zastupnika na hrvat. saboru", 495.

[73] On August 7, 1880, the competent court in Vukovar requested the Parliament's permission to initiate criminal proceedings against representative Peičić for the offense of insulting the honour of lawyer Dr Ferdo Kettig. However, on February 5, 1881, the Parliament denied consent. The statute of limitations for offenses and misdemeanours depended on the severity of the punishment by a Criminal Law, ranging from 3 months to 1 year. The Court sought criminal prosecution against Peičić a second time, this time for the crime of fraud. On February 3,

Sriemski Hrvat emphasized that parliamentary immunity cannot be a privilege that allows members of the Parliament to violate the Criminal Law with impunity, just as the Parliament cannot decide on the guilt of its members but only determine the validity of the request and whether the lawsuit was motivated to hinder the representative in carrying out their mandate. The author, perhaps even lawyer Kettig himself, pointed out that the Croatian Parliament did not convene for several months, and therefore, in some cases, it cannot make a decision on (not) lifting immunity, leading to the expiration of the statute of limitation for certain offences. In author's view, the same happened when the Parliament did not allow the prosecution of a representative. According to him, the Criminal Law should be amended so that for criminal offences committed by a member of Parliament, the statute of limitations stops running after the court requests permission for criminal prosecution from the Parliament.[74] On this matter, the Table of Seven took the position in 1887 that the criminal prosecution of members of the Parliament during the Parliament's session is considered only suspended, and this suspension has no legal consequences. As a result, the time elapsed from the submission of the request for permission for criminal prosecution until its resolution by the Parliament is not counted towards the statute of limitations. Therefore, the statute of limitations "cannot run" during the Parliament's session.[75]

Inviolability Immunity: conflicts over its interpretation and application in the early years of Ban Khuen-Héderváry's goverment

With the appointment of Károly (Dragutin) Khuen-Héderváry as Croatian Ban on December 1, 1883, a "new chapter in Croatian history" was

1881, the Parliament referred the case to the Committee on Immunity, which did not submit a report with a proposal for a conclusion to the Parliament by the end of the parliamentary session. The statute of limitation for the crime of fraud was 5 years, which meant that after the Parliament was dissolved or closed, the competent court could prosecute Peičić criminally. *Saborski dnevnik 1878.- 1881.*, vol. II, 854, 1138, 1140; *Kazneni zakon o zločinstvih, prestupcih i prekršajih od 27. svibnja 1852. sa Zakoni od 17. svibnja 1875. o porabi tiska, o sastavljanju porotničkih imenika i o kaznenom postupku u poslovih tiskovnih, preinačenimi zakonom od 14. svibnja 1907. o promjeni tiskovnih zakonah i sa zakoni i naredbami koji se na nje odnose ter sa rješitbam Kr. stola sedmorice i Vrhovnog suda u Beču*. Third issue, ed. by Josip Šilović (Zagreb: Tisak i naklada knjižare L. Hartmana, 1908), §§ 531-532. (statute of limitations for misdemeanours and petty offences), §228. (statute of limitations for criminal offences), 428-430, 257; "Saborski imunitet i naš kazneni zakon", *Sriemski Hrvat* (Vukovar), February 17, 1881, no. 7, 2.

[74] "Saborski imunitet i naš kazneni zakon," *Sriemski Hrvat*, no. 7, (February 17, 1881): 3.

[75] Andres, *Imunitetno pravo*, 134-135; "Pravosudje. C. Kazneno.", *Mjesečnik Pravničkoga družtva u Zagrebu*, 14, no. 2, (1888): 93-94.

opened.[76] In just four years, Khuen managed to establish complete control of the Croatian political scene "while maintaining the appearance of a parliamentary system".[77] He transformed the National Party into his strong support base and brought the small but vocal opposition under control.[78] The beginning of the rule of the new Ban was marked by changes in the law from the time of Ban Ivan Mažuranić's government, which laid the foundations for the modern Croatian judiciary. By suspending the principle of judicial independence and introducing "solutions that place the judiciary under the real control of the executive authority," "the principle of the separation of the judiciary from the administration" was also relativized.[79] Shortly after the new session of the Parliament began in October 1884, the disciplinary penalties provided for in the Rules of Parliamentary Procedure[80] were significantly tightened, and the application of these Rules in 1885 would effectively silence the vocal opposition in the Parliament. [81]

During the parliamentary term from 1884 to 1887, the number of petitions submitted by competent courts seeking permission for the criminal prosecution of a member of the Parliament significantly increased. In three previous parliamentary terms (1875-1884), the Parliament had received a total of 19 such petitions.[82] Approval for a prosecution was granted in seven cases,

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[76] Ostajmer, *Narodna stranka*, 43.

[77] Nikša Stančić, "Hrvatski građanski sabor 1848-1918.", in *Hrvatski sabor*, ed. by Željko Sabol (Zagreb: Sabor Republike Hrvatske; Nakladni zavod Globus; Školska knjiga, 1994), 84.

[78] Ostajmer, *Narodna stranka,* 47-48.

[79] Dalibor Čepulo, "Izgradnja modernog hrvatskog sudstva 1848-1918", *Zbornik Pravnog fakulteta u Zagrebu* 56, no. 2-3 (2006): 378. More on Khuen's restrictions of judicial independence cf. *idem*, 365-372.

[80] Cf. footnote 56.

[81] Cf. more in Turkalj, "Organizacija i operativna pravila rada Hrvatskog sabora", 137-139.

[82] Until the beginning of 1891, the practice regarding requests for permission to prosecute parliamentary members was inconsistent. Some courts sent such requests directly to the Parliament, others to the Ban's table, and some to the Provincial Government. In a circular issued by the Ban's Table on February 12, 1891, it was determined that all court requests, along with relevant documents, should henceforth be submitted to the Department of Justice of the Provincial Government, which would take further action. (*Kazneni zakon o zločinstvih, prestupcih i prekršajih od 27. svibnja 1852.*, 4). Regarding the submission of requests for the criminal prosecution of representatives, it is worth mentioning a circular from the Ban's Table dated February 1, 1900. Even during the parliamentary term of 1875-1878, during which seven requests for the criminal prosecution of representatives were received, in four cases, the Parliament adopted a resolution requesting the competent courts to provide additional documents to allow Parliament to make a decision. This conclusion was based on the recommendation of the Committee on Immunity, which believed that it should have the "entire material" before it to ensure that there was no unjust harassment or biased persecution involved (*Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1875.-1878.* (Zagreb: Tisak Kraljevske

denied in five cases, while in the remaining cases, the proceedings were not concluded.[83] During the parliamentary term from 1884 to 1887, the courts submitted 21 petitions,[84] with 13 of them relating to opposition members, primarily from the *Stranka prava* [Party of Rights; 11 petitions]. The Parliament only denied permission in one case, which involved a representative from the majority National Party. In one case, a decision was not reached by the end of the Parliament's work on May 24, 1887.[85] In addition to the significant increase in the number of petitions, this parliamentary term, especially from October 1885, was marked by sharp conflicts between opposition representatives and the ruling National Party regarding the interpretation of provisions of the Law on Immunity that regulated inviolability immunity.

The Ban and the ruling National Party were in intense conflict with the representatives of the Party of Rights from the beginning of the Parliament's work on September 30, 1884. This conflict reached its climax during the

zemaljske tiskare, 1900), 835). Since the practice continued where courts, based on "bare criminal reports" without prior investigations or any accompanying explanations, requested Parliament's permission to prosecute representatives, the Ban's Table issued a circular on February 1, 1900, outlining the procedure for preparing a file in cases where the extradition of a representative was sought (*Kazneni zakon o zločinstvih, prestupcih i prekršajih od 27. svibnja 1852.*, 4).

[83] During the first analysed parliamentary term from 1875 to 1878, seven requests for permission to prosecute parliamentary members were submitted to the Parliament. On the Committee on Immunity's recommendation, the Parliament issued resolutions permitting criminal prosecution in six cases, while there is no available information regarding the outcome of one request, including whether a resolution was issued at all, before the Parliament closed. In the parliamentary term from 1878 to 1881, out of seven requests from competent courts, the Parliament denied consent in five cases, permitted criminal prosecution in one case, and did not issue a resolution regarding one request. From the beginning of the new parliamentary term in 1881 until its closure in August 1884, the reports from the Community on Immunity, to which the Parliament forwarded five requests from competent courts, were not included on the agenda. Consequently, the Parliament did not issue resolutions on any of them. *Saborski dnevnik 1875.-1878.*, 706-707, 759, 767, 818, 835-836, 1032, 1068, 1073; *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1878.-1881.,* vol. I (Zagreb: Tisak Kr. zemaljske tiskare, 1903), 156, 215-216, 259, 262, 368-370, 604, 697; *Saborski dnevnik 1878.-1881.,* vol. II, 854, 1125, 1139, 1140; *Saborski dnevnik 1881.-1884*, vol. I, 3, 14, 557; *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1881.-1884*, vol. II (Zagreb: Tiskarski zavod "Narodne Novine" 1887), 1121, 1476, 1058.

[84] The Judicial Court in Zagreb requested permission for the criminal prosecution of David Starčević and Josip Gržanić through a petition on October 6, 1885. S*aborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije, godina 1884.-1887.,* vol. I (Zagreb: Tiskarski zavod "Narodne Novine," 1885), 900.

[85] S*aborski dnevnik 1884.-1887.,* vol. I, 255, 413, 432, 442, 855, 899, 911, 914, 920, 936, 937, 958, 959; S*aborski dnevnik 1884.-1887.,* vol. II, 1382-1383, 1397, 1399, 1489, 1513, 1578, 1772, 1779-1781, 1846, 1860, 1981.

"archive affair" on October 5, 1885, when a physical attack on the Ban occurred.[86] "From that moment, the game began" in which the ruling majority sought to conceal what had really happened in the chamber, while Party of Rights representatives claimed that the Ban had been forcibly ejected from the chamber or kicked in the buttocks, hoping that Khuen "would not be able to remain as Ban"[87] due to the prevailing code of honour at the time. For the first time in history, the Presidency of the Parliament requested the initiation of criminal proceedings against members of the Parliament. On October 6, they filed a report with the state prosecutor's office, urgently requesting a criminal proceeding against David Starčević, who had "provoked", and Josip Gržanić, who had "carried out a violent attack" on the Ban.[88] Later in the day, a request from the Judicial Court seeking permission for the criminal prosecution of two deputies for offences listed in § 8 and § 98 of the Criminal Law was received by the Parliament.[89] The Committee on Immunity's report was included on the Parliament's agenda on October 10, 1885. Following a heated debate, the Committee's proposal allowing the criminal prosecution of two representatives was adopted.[90] In the following weeks, due to the events in the Parliament on October 5, the Parliament granted permission, at the request of the Judicial Council, for the criminal prosecution of Jakov Radošević and Eugen Kumičić, who were also representatives from the Party of Rights. Kumičić's extradition was sought for the same reasons as in the case of D. Starčević and Gržanić, for the "crime of public violence". During the debate, representative Mazzura warned that, in his opinion, the real motive behind the request for Kumičić to be criminally prosecuted was to prevent him from being a witness at the trial of D. Starčević and Gržanić by declaring him an accomplice.[91] Mazzura's warning proved to be accurate during the main hearing before the Judicial Court in mid-December 1885 when the state prosecutor dropped the charges against Kumičić on the very first day of the trial.[92]

When D. Starčević and Gržanić were detained in investigative custody after their hearing on November 9, 1885, Erazmo Barčić, with the support of a

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86 More details about the events in Parliament on October 5, 1885 cf. Mirjana Gross, *Izvorno pravaštvo. Ideologija, agitacija, pokret* (Zagreb: Golden marketing, 2000), 491-492; Turkalj, *Pravaški pokret*, 384-385.

87 Gross, *Izvorno pravaštvo*, 492-493.

88 S*aborski dnevnik 1884.-1887.,* vol. I, 900.

89 Cf. *Kazneni zakon o zločinstvih, prestupcih i prekršajih od 27. svibnja 1852*., 27-28, 113-114.

90 The course of the debate cf. in S*aborski dnevnik 1884.-1887.,* vol. I, 899-911; Turkalj, *Pravaški pokret,* 387-388.

91 S*aborski dnevnik 1884.-1887.,* vol. I, 937.

92 Turkalj, *Pravaški pokret,* 394.

sufficient number of opposition representatives, proposed that the Parliament accuse the Ban and the administrator of the Department of Justice of failing to take appropriate measures to rectify a serious violation of the Law on Immunity.[93] The two-day debate that followed revealed that the legal provisions on parliamentary immunity indeed allowed for different interpretations. Particularly contentious was the last paragraph of the Law on Immunity, on which Barčić based his proposal, interpreting it to mean that members of Parliament should not be deprived of their freedom during the Parliament, implying an absolute prohibition on imprisonment for its members.[94] Stjepan Spevec confirmed that this paragraph, which stated that "as long as the Parliament is in session, no imprisonment, **especially** for debts, is allowed [emphasis added]", raised questions among legal experts regarding its interpretation.[95] Since the last paragraph of the Law on Immunity was formulated differently in the Parliament's conclusion in 1861 ("that no member of the Parliament shall, while the Parliament is in session, be subjected to **personal** imprisonment for any debt [emphasized by J.T.") and in the text of Legal Article IV published in *Spisi saborski* in 1862 (§ 4 "A member of the Parliament shall not be subjected to **personal** imprisonment for any debt as long as the Parliament is in session [emphasis added]",[96] representatives sought to explain the genesis of the Law on Immunity and how these differences came about. They then provided their interpretation of the disputed paragraph.

Lavoslav Šram concluded that despite textual differences, there were no changes "in the core". Although the text of the Law "could be interpreted" to exclude any imprisonment of representatives, the legislator's intention was to exempt or absolutely prohibit only "so-called civil imprisonment" due to debt. Otherwise, Šram concluded, the last paragraph would be in conflict? with the preceding paragraph that allows for criminal prosecution or imprisonment with the Parliament's permission.[97]

According to Josip Frank, the text of the last paragraph was deliberately altered with the intention of fully protecting the personal freedom of representatives. The members of the Parliament believed that the previous wording of the Law was not clear enough, leaving room for the identification of prosecution and imprisonment. Given that imprisonment for debt had been

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93 Turkalj, *Pravaški pokret,* 390; S*aborski dnevnik 1884.-1887.,* vol. II, 1046.-1047 (Barčić's explanation of the proposal).

94 S*aborski dnevnik 1884.-1887.,* vol. II, 1046.

95 Ibid., 1074.

96 *Dnevnik sabora 1861.*, 21; *Spisi saborski 1861.*, vol. I, 4.

97 S*aborski dnevnik 1884.-1887.,* vol. II, 1049-1051.

abolished in the Kingdom of Croatia and Slavonia,[98] Frank believed that this?? part of the last paragraph should be excluded from interpretation. Without that addition, the Law states, according to Frank, that imprisonment of representatives during the Parliament's session is not permitted, thus supporting Barčić's interpretation of an absolute prohibition on the imprisonment of parliamentary representatives.[99]

Grga Tuškan argued that the law, once confirmed by the ruler, proclaimed in the Parliament, and included in the Code of Law, should not be further debated regarding its origins. He believed that the Law should be interpreted literally as it is written, and it states, as Tuškan pointed out, "that a parliamentary representative shall not be imprisoned or prosecuted without the Parliament's permission". In his opinion, the permission granted by the Parliament for the criminal prosecution of two representatives from the Party of Rights did not include permission for their imprisonment.[100] During the debate that had primarily revolved around the last provision of the Law on Immunity up until then, Tuškan expanded the discussion in his presentation to include the previous provision, which, in his interpretation, had been violated by the imprisonment of D. Starčević and Gržanić without prior approval from the Parliament.

Despite recently joining the opposition party, Jovan Živković[101] also refused to support Barčić's proposal. He argued that the Law should be interpreted in such a manner as to avoid internal contradictions. Živković emphasized that the last provision exclusively pertains to "civil imprisonment" which is absolutely prohibited in the Croatian Law on Immunity, as well as in similar laws of other countries upon which Šuhaj and his colleagues relied when redrafting the Croatian Law.[102] Živković considered the interpretation of the previous provision, which suggested that a representative should not be imprisoned after the Parliament has granted permission for criminal prosecution, to be unacceptable. According to Živković, the Law allows for

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98 In Croatia, by Legislative Article VIII of 1870, personal imprisonment for debt was abolished. Cf. *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1870.,* (Zagreb: Brzotiskom narodne tiskare dra. Ljudevita Gaja, 1871), 311-312.

99 S*aborski dnevnik 1884.-1887.,* vol. II, 1056-1057.

100 Ibid., 1061.

101 At that time, Živković was a member of the newly established opposition Party of the Parliamentary Centre ["Stranka saborskog središta", "Središnja stranka", or "Centrum"]. Gross, *Izvorno pravaštvo,* 491; Turkalj, *Pravaški pokret,* 384-385.

102 In France, too, according to the Constitutional Charter of June 4, 1814, representatives were protected from imprisonment for debt. However, this provision lost its significance when debtors' prisons were abolished in France in 1867. Gjanković, *O imunitetu narodnih zastupnika*, 45.

imprisonment with prior permission from the Parliament, and the use of the word "or" ("imprison or prosecute", J. T) implies that after the Parliament grants permission for criminal prosecution, there is no need to seek further permission for the imprisonment of the representative.[103]

On the contrary, Mazzura believed that the court should have requested permission for imprisonment from the Parliament after the permission for criminal prosecution, even if it concluded during the proceedings that it should be done. While acknowledging that there was "some blurriness" in the Law on Immunity, if interpreted in such a way as to require the court to seek permission from the Parliament when it wants to impose imprisonment on a member of the Parliament, then Barčić's proposal is entirely justified, without examining the nature of the imprisonment in the last provision of the Law, Mazzura concluded.[104]

According to S. Spevec, the Law on Immunity was not violated in this specific case because the permission for criminal prosecution inherently includes the court's right to impose imprisonment. Once the Parliament grants permission for criminal prosecution, the representative loses the protection provided by the Law on Immunity, and the courts are authorized and obligated to proceed according to general criminal law provisions and the Law on Criminal Procedure. There is no doubt about this, Spevec emphasized, as the purpose of immunity is not to protect a representative in the commission of unlawful acts but to grant the Parliament the right to protect its members when it deems it necessary and in the interest of the Parliament's reputation and successful work.[105] Spevec also believed that the last provision of the Law referred to "personal imprisonment", not, as Frank claimed, criminal imprisonment. Considering the existence of different versions of that provision of the Law, Spevec was confident that the difference arose during the transcription process when the word "personal" (Croatian "osobni") was mistakenly replaced with "especially" (Croatian "osobit").[106] In Spevec's view, any other interpretation would lead to "insolvable contradiction" because the Law, before that, allowed for imprisonment if a representative was caught in the act of committing a criminal offence, and it was then stated that imprisonment was permitted with the Parliament's consent. Spevec argued that the Law on Immunity was not so poorly codified that – as was emphasized during the debate – the last provision of the Law would make the rule, and the previous provisions an exception to that rule. According to him, the Parliament's per-

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[103] S*aborski dnevnik 1884.-1887.,* vol. II, 1066.

[104] Ibid., 1070-1071.

[105] Ibid., 1074.

[106] Ibid., 1075.

mission for criminal prosecution or imprisonment is not exception but a rule, as prosecution without the Parliament's consent is absolutely impossible. If the last provision of the Law were to nullify the previous ones, it would result in contradiction, and the entire law would "fall apart", meaning that the Law on Immunity would not be in use, and the courts would not need to seek the Parliament's permission for the prosecution of its members. Spevec concluded that the disputed provision referred to "personal" rather than "criminal" imprisonment because it was not possible that the legislator intended to create such an absurdity.[107] Barić's proposal was rejected by a majority vote on November 26, 1885.[108]

During the trial of D. Starčević, Gržanić, and Kumičić before the Judicial Court in Zagreb, which began on December 15, 1885, another unprecedented incident occurred. The Court wanted to prove that the Ban had not been kicked. When Tuškan, as a witness, stated that someone had indeed kicked the Ban, the presiding judge immediately accused him of the crime of perjury committed by giving false testimony under oath and ordered his detention in investigative custody. The Judicial Court informed the Parliament of Tuškan's imprisonment the next day because he was "caught in the act" of presenting an "obviously untrue fact", and Barčić submitted a proposal to the Parliament not to allow Tuškan's prosecution and to demand his immediate release from custody. During a session of the Committee on Immunity, which met on the same day, a letter from the investigating judge arrived, requesting investigative custody and, at the same time, permission for the prosecution of Tuškan.[109]

Discussing all three cases, the Committee concluded that it should propose to the Parliament that it reject Barčić's proposal and respond to the Judicial Court's letter stating that there was no reason to detain Tuškan because the provision of the Immunity on Law that deals with *in flagrante delicto* cases could not be applied in this case. The Committee believed that this case did not involve an established criminal offense but rather a suspicion of committing a criminal offense.[110] Regarding the request of the investigative judge, the Committee proposed a conclusion to the Parliament that allows for criminal prosecution but not imprisonment. Upon the Committee's recommendation, representative Vaso Gjurgjević submitted a counterproposal. Referring to the correspondence from the Judiciary Court and the investigative judge, which indicated that Tuškan was "caught in the act," and considering that, in his

[107] Ibid., 1076-1077.

[108] Ibid., 1085.

[109] Turkalj, *Pravaški pokret*, 393-394; Gross, *Izvorno pravaštvo*, 501; S*aborski dnevnik 1884.-1887.,* vol. II, 1371-1372.

[110] S*aborski dnevnik 1884.-1887.,* vol. II, 1385-1386; Gross, *Izvorno pravaštvo*, 501.

opinion, the provisions of the Law on Immunity were clear on this matter, Gjurgjević believed it unnecessary for the Parliament to issue a separate conclusion permitting Tuškan's prosecution and imprisonment. In the ensuing debate, Marijan Derenčin, a former member of the National Party and former longtime head of the Department of Justice, interpreted the Committee's proposal from a legal perspective, and argued that in Tuškan's case the judicial branch made a deliberate and reckless "incursion" into the legislative authority. He also argued that under the pretence that criminal acts committed outside the Parliament were being prosecuted, opposition representatives were effectively being persecuted for their actions within the Parliament. Derenčin concluded that the trend was to dismantle the opposition, and the ongoing legal proceedings against members of the Parliament aligned with this trend.[111] At the end of the sitting of the December 17, 1885, the parliamentary majority rejected the Committee's proposal and adopted Gjurgjević's counterproposal.[112] Although the provision regarding flagrant offences, as an exception to the protection that representatives enjoyed under the inviolability immunity, was originally created with the belief that in such cases, arrest motivated by political or other reasons was not possible since a representative was caught committing a criminal act,[113] the Tuškan case demonstrated that even this provision could be abused.

Conclusion

Parliamentary immunity, with its general purpose of ensuring the independence of the legislative body's work, is a widely accepted legal instrument designed to protect representatives from potential persecutions and accusations, primarily driven by political but also by other motives. Throughout history, there have been significant differences among states regarding the characteristics and scope of this institution. The first form of parliamentary immunity, known as non-accountability, originated in England and developed from the Middle Ages as a parliamentary privilege aimed at protecting the free speech and voting of representatives in the legislative body. The second form of parliamentary immunity, inviolability, was based on the concept of the sovereignty of the people and the separation of powers. It emerged in France during the revolutionary upheavals of the late 18th century. The French

111 *Saborski dnevnik 1884.-1887.*, vol. II, 1389; Gross, *Izvorno pravaštvo*, 501-502.

112 Turkalj, *Pravaški pokret*, 394; The entire parliamentary debate on the proposal of the Committee on Immunity and Gjurgjević's counterprosal cf. in S*aborski dnevnik 1884.-1887.,* vol. II, 1382-1397.

113 For details cf. Gjanković, *O imunitetu narodnih zastupnika,* 111-112.

National Assembly established a two-tier system of parliamentary immunity through decrees in 1789 and 1790. This system of immunity included both the non-accountability immunity, as the inviolability immunity which shielded representative from criminal prosecution and arrest without the Assembly's permission for actions committed outside their legislative duties, except when caught in the act. The French two-tier model of parliamentary immunity, along with its general principles, was adopted in Austria, Hungary, and the Kingdom of Croatia and Slavonia in the 1860s. However, the extent of protection provided by legislative bodies to their members, especially in regulating the issue of inviolability immunity, was not uniform. In a comparison of the solutions of parliamentary immunity in Austria, Hungary, and the Kingdom of Croatia and Slavonia, Hungary stands out as having the broadest protection for members of the Hungarian or common Hungarian-Croatian Parliament.

Until the dissolution of the Austro-Hungarian Monarchy, parliamentary immunity in the Kingdom of Croatia and Slavonia remained based on the Law on the Inviolability and Non-Accountability of Parliamentary Members, which was confirmed by King Franz Joseph I on May 16, 1867. This Law on Immunity, in terms of its form and content, largely matched the conclusion reached by the Croatian Parliament in 1861, except its last provision. In an effort to establish a modern institution of parliamentary immunity based on the rights and privileges of the members of the previous estate diet (*salvus conductus*), which was not the case in any other country, the provisions of the Law left room for various interpretations due to their insufficiently clear formulations, especially concerning inviolability immunity. In specific cases, these interpretations were largely influenced by the party affiliation of the Parliament members involved in the debates. An analysis of the application of the Law on Immunity over four parliamentary terms (1875-1887) revealed that the institution of parliamentary immunity for Croatian Parliament members faced a real test only in the early years of Ban Károly (Dragutin) Khuen-Héderváry's government. Under conditions where the judiciary was under the control of the executive branch, and with the majority National Party in the Parliament willing to comply with Khuen's demands, parliamentary immunity, especially inviolability, faced various interpretations and misuse in its implementation. The Law failed to protect opposition members of the Parliament from politically motivated criminal prosecutions.

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