

REFLECTIONS ON REGULATION OF PARLIAMENTARY IMMUNITY IN THE ROMANIAN CONSTITUTIONS AND IN COMPARATIVE LAW - SELECTIVE ASPECTS

Nicolae PAVEL*

Abstract

At the onset of the study it is necessary to mention that its topic will be circumscribed to regulations on parliamentary immunity in the Romanian Constitutions and in comparative law - selective aspects. By this approach, the proposed study opens a complex and complete vision, but not exhaustive, to the reflections on regulation of parliamentary immunity in the Romanian Constitutions and in comparative law. In comparative law analysis, we will keep a symmetrical approach to identifying regulations on parliamentary immunity in the Constitutions of other countries. Following an outline - the following parts of the study are dealt with successively: 1. Introduction. 2. Identification of constitutional rules on parliamentary immunity in the Romanian Constitutions and in comparative law. 3. Highlights on Romanian doctrine and comparative law on the parliamentary immunity. 4. Jurisprudence of the Constitutional Court of Romania on parliamentary immunity. 5. Conclusions.

Keywords: *parliamentary immunity in the Romanian Constitutions, parliamentary immunity in comparative law, romanian doctrine, comparative law doctrine, parliamentary inviolability, legal unresponsive, jurisprudence of the Constitutional Court of Romania.*

1. Introduction

The object of study of this scientific approach will be circumscribed to the scientific analysis of its three main parts, as follows: 1. Identification of constitutional rules on parliamentary immunity in the Romanian Constitutions and in comparative law. 2. Highlights on Romanian doctrine and comparative law on the parliamentary immunity. 3. Jurisprudence of the Constitutional Court of Romania on the parliamentary immunity.

What seems relevant to highlight for this research is to approach parliamentary immunity in the Romanian constitutional and legal system starting with the first document with constitutional value, i.e. The developer Statute of the Paris Convention from 7/9 August 1858 and until today, i.e. The Romanian Constitution revised in 2003, form of republished Romanian Constitution of 1991.

Considering the approach of this generous topic of study for over 145 years of constitutional evolution of parliamentary immunity in Romania, we should emphasize, since its beginnings, the need of a diachronic approach of this topic by identifying all the Romanian Constitutions which regulated the constitutional regime during all this time.

Moreover, we should point out that in the stated period, Romania experienced several forms of government, respectively, monarchy, people's Republic, socialist republic and semi-presidential republic.

In the field of comparative law, in order to maintain a symmetry of approach with the Romanian constitutional system, the regulations at the constitutional level, regarding parliamentary immunity were identified in the normative content of the selected constitutions, i.e.: 1. The Belgian Constitution as updated following the constitutional revisions of 6 January 2014, containing the latest revisions. 2. The French Constitution of 4 October 1958, in force at the date constitutional review of 23 July 2008 containing the latest revisions.

For a full, but not exhaustive, coverage of the field of study, doctrinal and jurisprudential landmarks are presented selectively regarding parliamentary immunity

On the other hand, it should be mentioned that the jurisprudence of the Constitutional Court of Romania contributed to the constitutionalization of parliamentary immunity, since its very establishment.

As results from the conducted bibliographic research, parliamentary immunity is new in its formulation, but, it is not new in its existence. Starting from this axiom, and paraphrasing K. Mbaye, we may say that: „The history of parliamentary immunity is confounded with the history of people”.

This approach serves the proposed study by opening a complex and complete view, but not exhaustive, in the current sphere regarding parliamentary immunity.

In our opinion, the studied field is important for the constitutional doctrine, for the doctrine of

* Associate professor, PhD, Spiru Haret University, Bucharest, Romania, Faculty of Sciences Juridical, Political and Administrative and Research Associate at the Institute of Legal Research "Acad. Andrei Rădulescu" of the Romanian Academy (e-mail: nicolaepavel0@yahoo.com).

parliamentary law, for the doctrine of comparative law, for the general theory of law, for the legislative work of elaboration of normative acts, for legislative technique, as well as for the research in the field covered by the theme of the study.

Even if the regulation and theorizing of parliamentary immunity goes back in time to the first written constitutions in the world, the theoretical interest to resume it is determined by the fact that, not always has attention been paid in the field literature to the three aspects – normative, theoretical and jurisprudential – regarding parliamentary immunity, analyzed in this study.

2. Identification of constitutional rules on parliamentary immunity in the Romanian Constitutions and in comparative law

2.1. Identification of constitutional rules on parliamentary immunity in the Romanian Constitutions

2.1.1. The developer Statute of the Paris Convention from 7/19 August 1858¹

A special discussion is required for the *The Developer Statute of the Convention of 7/19 August 1858*. In our opinion, *The Statute* may be deemed a Constitution, considering the provisions of art. XVII which set forth that: all officials, with no exception, upon taking office, *are liable to swear allegiance to the Constitution and laws of the country and faith in God*.

The systematic analysis of the normative content of the Statute shows that art. VII (2) sets forth the following constitutional principle on *inviolability* of the members of the Ponderatrice Assembly and Elective Assembly, under the following phrasing: „The members of the Ponderatrice Assembly enjoy the same inviolability guaranteed for the deputies under Art. 36 of the Electoral Law enclosed hereby”. (Ponderatrice Assembly members enjoy the same guaranteed *deputy's inviolability*).

We find that art. VII (2) refers to the provisions of art. 36 of the Electoral Law, which sets forth the following *inviolabilities for the members of the Elective Assembly*, with the following phrasing: „No member of the Elective Assembly shall be arrested for the term of the session, nor criminally prosecuted, except for the case of committing a flagrante delicto, but after the Assembly would have authorized the persecution.

It is worth pointing out that the Statute is the first document with the value of a Constitution,

which uses the terminology: „inviolability of members of both Assemblies”.

As *The Developer Statute of the Paris Convention from 7/19 August 1858*, explicitly uses the syntagm, *inviolability of members of both Assemblies*” inspired in our opinion, more from the French Constitution of September 3, 1791, which uses the same terminology, than the text of the Constitution of Belgium of 1866.

In the debut of the study, we intend to present some terminological explanations, from comparative law, considering that in the title and content of the study we used the syntagms: „*parliamentary immunity and parliamentary inviolability*”.

(a). In English law terminology², the term of *parliamentary privilege* has the following content: Rights and immunities enjoyed by each House of Parliament, designed to allow members to carry out their duties unhindered. They apply collectively and individually to every Members of Parliament. Privileges include: right freedom of speech in debate; the to control proceedings; right to penalize those who commit breach of privilege; to expel members whom parliament considers unfit to serve. The absence of precedent does not prevent an act being of considered a breach of privilege.

(b). In American terminology³ the term *congressional immunity*, has the following content: The immunity of members of the U.S. House of Representatives and Senate from Lawsuits derived from what they say on the floors of the Congress. This limited immunity is established by the *speech and debate* portion of the Constitution, Article I, Section 6, which also holds that they may not be arrested except for *treason, felony and breach of the peace*. So they are clearly subject to criminal prosecution, just as any other citizen, furthermore, what they say in newsletter and press release is also prosecutable.

In view of the foregoing, in our opinion, the syntagms *parliamentary immunity and parliamentary inviolability* regulate in their content the same parliamentary realities, and, may be used simultaneously, moreover, we consider that most of the texts of the constitutions we will refer to, do not contain a *marginal synthesizing* of the content of the constitutional text.

2.1.2. The Romanian Constitution of 1866⁴

We should point out that the Fundamental law of Belgium of 1831 was an inspiration for the constitutions of other states, among which the Romanian Constitution of 1866.

The systematic analysis of the normative content of the Constitution reveals that in Chapter I

¹ Ioan Muraru and Gheorghe Iancu, *The Romanian Constitutions*, Texts, Notes. Comparative presentation, (Bucharest: Actami, 2000), 7-28.

² LB Curzon, *Dictionary of Law*, Third Edition, (London: Pitman Publishing, 1991), 318.

³ Jay M. Shafritz, *Dictionary of American Government and Politics*, (Chicago, USA, The Dorsey Press, 1998) 274.

⁴ Ioan Muraru and Gheorghe Iancu, op. cit. 29-60.

of Title III, entitled *About national representation*, dedicates the following two fundamental principles regarding *parliamentary immunity*, under the following phrasing:

1. *art. 51* – None of the members of one or the other assembly may be prosecuted or persecuted for his opinions and votes during his mandate.

2. *art. 52* – None of the members of one or the other Assembly, may during the session, be prosecuted, or arrested in the matter of repression, without the authorization of the Assembly he belongs to, except when proven guilty.

Detention or prosecution of a member of one or the other Assembly shall be suspended during the whole session, if requested by the Assembly.

With reference to the immunity of the members of the other two Assemblies, the two almost similar regulations, except for the terminology, may be found in the Constitutions of other states too, including in the Constitution of Belgium of 1831 and the Constitution of France of 1791.

2.1.3. The Romanian Constitution of March 23, 1923⁵

At the onset of the study we should point out that the Fundamental Law of Romania of 1866, remained effective for 57 years, when important economic and political transformations occurred.

The systematic analysis of the normative content of the Constitution reveals that in Chapter I of Title III, entitled, *About national representation* dedicates the following two fundamental principles regarding *parliamentary immunity*, under the following phrasing:

1. *art. 54* - None of the members of one or the other assembly may be prosecuted or persecuted with regard to opinions expressed and votes cast by him in the exercise of his duties.

2. *art. 55* - None of the members of one or the other Assembly, may during the session, be prosecuted, or arrested in the matter of repression, without the authorization of the Assembly of which he is a member, except in case of flagrante delicto.

If taken under custody or prosecuted while the session is closed, such prosecution or custody shall be submitted to the approval of the Assembly of which he is a member, immediately after the opening of the session of the Legislative Bodies.

Detention of a member of either House or his prosecution before a court is suspended during the session if the Assembly so requests.

As compared to the regulation of *parliamentary immunity* in the Romanian Constitution of 1866, we may find that the Constitution of Romania of 1923 included in its content para. (2) of art. 55 which regulates the status

of the custody or prosecution while the session is closed

2.1.4. The Romanian Constitution of February 28, 1938⁶

It is necessary to specify in the introductory part of the study that the Fundamental Law of Romania of 1923 remained effective for 15 years.

Under the historical circumstances of 1938, the new Constitution Draft was submitted to the plebiscite of 24 February 1938. The Constitution was promulgated and published in the Official Gazette Part I, no. 48, of February 27, 1938.

The systematic analysis of the normative content of the Constitution reveals that in Chapter II of Title III, entitled *About national representation*, dedicates the following two fundamental principles regarding *parliamentary immunity*, under the following phrasing:

1. *art. 56* - None of the members of one or the other assembly may be prosecuted or persecuted with regard to opinions expressed and votes cast by him in the exercise of his duties.

2. *art. 57* - None of the members of one or the other Assembly, may during the session, be prosecuted, or arrested in the matter of repression, without the authorization of the Assembly he belongs to, except in case of flagrante delicto.

Detention of a member of either House or his prosecution before a court is suspended during the session if the Assembly so requests.

As compared to the regulation of *parliamentary immunity* in the Romanian Constitution of 1923, we may find that the Constitution of Romania of 1938 removed from its content par. (2) of art. 55 which regulated the status of the custody or prosecution while the session is closed

2.1.5. The Constitution of April 13, 1948⁷

The systematic analysis of the normative content of the Constitution reveals that in Title IV, entitled *State supreme authority*, dedicates the following fundamental principle related to *parliamentary immunity*, in art. 59 under the following phrasing: „No deputy may be detained, arrested or prosecuted, without the authorization of the Great National Assembly of R.P.R. (People's Republic of Romania), during the sessions or the Presidium of the Great National Assembly a R.P.R., between sessions, for any criminal deeds whatsoever, except for the cases of flagrante delicto, when the approval of the Great National Assembly of R.P.R. (People's Republic of Romania) or the Presidium of the Great National Assembly of R.P.R. shall be immediately requested”.

⁵ *Ibidem*, op. cit. 61-92.

⁶ *Ibidem*, op. cit. 93-119.

⁷ *Ibidem*, op. cit. 123-139.

In our opinion, this constitutional principle serves to determine the conditions for a deputy to benefit from *parliamentary immunity*.

2.1.6. The Constitution of September 24, 1952⁸

The systematic analysis of the normative content of the Constitution reveals that in Title IV, entitled *State supreme authority of the Peoples' Republic of Romania*, dedicates the following fundamental principle related to *parliamentary immunity*, in art. 34 under the following phrasing: „No deputy of the Great National Assembly may be brought to trial or arrested without the approval of the Great National Assembly, during the sessions, and between sessions – of the Presidium of the Great National Assembly”.

This constitutional principle sets the conditions for a deputy to benefit from *parliamentary immunity*.

2.1.7. The Constitution of August 21, 1965, as republished⁹

The systematic analysis of the normative content of the Constitution reveals that in Title III, entitled *State supreme authority – Great National Assembly*, dedicates the following fundamental principle related to *parliamentary immunity*, in art. 61 under the following phrasing: „No deputy may be detained, arrested or brought to criminal trial, without the authorization of the Great National Assembly of R.P.R. (People's Republic of Romania), during the session, and between sessions, by the State Council. The deputy may be detained without this approval only in case of flagrant crime”.

This constitutional principle sets the conditions for a deputy to benefit from *parliamentary immunity*.

2.1.8. The Constitution of Romania of December 8, 1991¹⁰

From the systematic analysis of the normative content of the Constitution, the resulting that it, in its Section 2, of Chapter I of Title III, entitled the Status of Deputies and Senators, dedicates the following fundamental principle related to *parliamentary immunity*, in art. 69 under the following formulation:

1. *par. (1)* – No Deputy or Senator may be detained, arrested or brought to criminal trial or contravention, without the approval of the House he belongs to, after hearing. The jurisdiction in this case belongs to the Supreme Court of Justice.

2. *par. (2)* – In case of flagrant offence, the Deputy or Senator may be detained and subject to search. The Minister of Justice shall inform forthwith the President of the House on such detention and search. In the case the House finds that

there are no grounds for detention, the House shall immediately order the revocation of this measure.

In our opinion, *parliamentary immunity* is common to deputies and senators alike because both categories of representatives have the same *parliamentary status*.

2.1.9. The Constitution of Romania as revised in 2003, the republished form of the Constitution of Romania of 1991¹¹

The systematic analysis of the normative content of the Constitution reveals that in Section I of Chapter I of Title III, entitled *The Status of Deputies and Senators*, dedicates the following fundamental principles related to *parliamentary immunity*, in art. 72 under the following formulation:

1. *par. (1)* The Deputies and senators shall not be held legally responsible for the votes or political opinions with regard to opinions expressed and votes cast by him in the exercise of his duties.

2. *par. (2)* The Deputies and senators may be prosecuted and indicted for criminal deeds that are not related to opinions expressed and votes cast by him in the exercise of his duties, but shall not be searched, detained or arrested without the approval of the House they belong to, after the hearing. The prosecution and criminal indictment may only be done by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The jurisdiction in this case belongs to the High Court of Cassation and Justice.

3. *par. (3)* In case of flagrant offences, the deputies or senators may be detained and subject to search. The minister of Justice shall inform forthwith the President of the House on the detention and search. In case the House finds that there are no grounds for detention, the House shall order immediately the revocation of this measure.

The analysis of the constitutional text shows that the text was supplemented by *tradition parliamentary immunity* in the Romanian constitutions between 1866 – 1938, the according to which *the deputies and senators may not be held legally responsible with regard to opinions expressed and votes cast by him in the exercise of his duties*.

2.2. Identification of constitutional rules on the parliamentary immunity in comparative law.

As explained in the abstract: “In comparative law analysis, we will keep a symmetrical approach to identifying regulations on *parliamentary immunity* in the Constitutions of other countries.”

For this study we selected the following: 1. The Belgian Constitution as updated following the

⁸ *Ibidem*, op. cit. 143-166.

⁹ The Constitution of the Socialist Republic of Romania of August 21, 1965, was republished in Official Bulletin no. 65 of October 29, 1986.

¹⁰ The text of the Constitution of Romania was published in Official Gazette of Romania, Part I, no. 233 from November 21, 1991.

¹¹ The Constitution of Romania, revised in 2003, was published in the Official Gazette of Romania, Part I, no. 767, of October 31, 2003.

constitutional revisions of 6 January 2014, containing the latest revisions. 2. The French Constitution of 4 October 1958, in force at the date constitutional review of 23 July 2008 containing the latest revisions.

2.2.1. The Belgian Constitution as updated following the constitutional revisions of 6 January 2014, containing the latest revisions¹²

The systematic analysis of the normative content of the Constitution reveals that in Section I of Chapter I of Title III, entitled *about the federal Houses*, dedicate the following fundamental principles related to *parliamentary immunity*, in the art. 58 and in the art. 59 under the following formulation:

1. *Art. 58* - No member of either House can be prosecuted or be the subject of any investigation with regard to opinions expressed and votes cast by him in the exercise of his duties.

2. *Art. 59* - Except in the case of a flagrant offence, no member of either House may, during a session and in criminal matters, be directly referred or summoned before a court or be arrested, except with the authorization of the House of which he is a member. Except in the case of a flagrant offence, coercive measures requiring the intervention of a judge cannot, during a session and in criminal matters, be instituted against a member of either House, except by the first President of the appeal court at the request of the competent judge.

This decision is to be communicated to the President of the House concerned. All searches or seizures executed by virtue of the preceding paragraph can be performed only in the presence of the President of the House concerned or a member appointed by him.

During the session, only the officers of the public prosecutor's office and competent officers may institute criminal proceedings against a member of either House.

The member concerned of either House may at any stage of the judicial enquiry request during a session and in criminal matters that the House of which he is a member suspend proceedings.

To grant this request, the House concerned must decide by a majority of two thirds of the votes cast.

Detention of a member of either House or his prosecution before a court is suspended during the session if the House of which he is a member so requests.

In our opinion, this constitutional principle sets the conditions for a member of either House to benefit from parliamentary immunity.

2.2.2. The French Constitution of 4 October 1958, in force at the date constitutional review of 23 July 2008 containing the latest revisions.¹³

The systematic analysis of the normative content of the Constitution reveals that in Title IV, entitled the *Parliament*, and dedicates the following fundamental principles related to *parliamentary immunity*, in art. 26 under the following formulation:

No Member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his official duties.

No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorization of the Bureau of the House of which he is a member. Such authorization shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or when a conviction has become final.

The detention, subjecting to custodial or semi-custodial measures or prosecution of a Member of Parliament shall be suspended for the duration of the session if the House of which he is a member so requires.

The House concerned shall meet as of right for additional sittings in order to permit the application of the foregoing paragraph should circumstances so require.

In our opinion, this constitutional principle sets the conditions for a member of either House to benefit from parliamentary immunity.

3. Highlights Romanian doctrine and comparative law on the *parliamentary immunity*

3.1. Highlights Romanian doctrine on the *parliamentary immunity*

At the beginning of this subparagraph we shall mention the *legal definition of parliamentary immunity*,¹⁴ which in our opinion, is indicative, but not obligatory for the doctrine.

The law mentioned in par. (1) of art. 20 set forth the following definition regarding parliamentary immunity: „*Parliamentary immunity* is the set of legal provisions which provide for the deputies and senators a derogatory legal regime from the common law in their relations with justice and for the purpose of guaranteeing their independence.”

¹² Accessed, http://www.const-court.be/.../belgian_constitution.pdf

¹³ Accessed, <http://www.conseil-constitutionnel.fr/...constitutionnel...>

¹⁴ **Law no. 96 of 21 April 2006**, on The status of Deputies and Senators, was republished in the Official Gazette of Romania, Part. I, no. 459, of July 12, 2013.

A first opinion¹⁵ on *parliamentary immunity* sets the following explanations related to this concept: *Parliamentary immunity* aims at making him safe against abusive or unjustified judiciary prosecutions.

There are two categories of *parliamentary immunities*: the first are characterized by no *inexistence of liability* (irresponsabilité), which puts the parliamentary at a shelter for all the activity related to the exercise of his duties (speeches, opinions, vote); those in the second category, called *inviolabilities*, include special rules concerning the detention, arrest or *criminal arraignment*, when the deputies or senators are accused of crimes or misdemeanor. These rules protect the parliamentarians against certain abuse, certain unjustified arbitrary prosecutions, triggered by the executive or the opponents.

A second opinion¹⁶ on *parliamentary immunity* sets forth the following explanations concerning this concept: „*The immunity of the parliamentary* is a means of protection given to the people's representatives, meant to defend them against potential pressure, abuse and heckling processes, against them in the exercise of their duties, with the purpose of guaranteeing the freedom of expression of the parliamentaries and their protection against abusive prosecutions. *Parliamentary immunity* is expressed by two legal concepts: *irresponsibility* (legal non-liability) and *inviolability*. *Parliamentary irresponsibility* is the possibility of the parliamentaries not to be held legally liable for their opinions and votes expressed in the exercise of their duties. *Inviolability* is the possibility of the parliamentaries not to be searched, detained or arrested without the approval of the House of which he is a member.

A third opinion concerning parliamentary immunity sets forth the following explanations regarding this concept: „Parliamentary immunities aim at protecting the members of the parliament against the repressive or judicial actions, which could be brought against them.”¹⁷

Considering the above expressed opinions, the constitutional and legal regulations in the matter, we may point out that the term *parliamentary immunity* has two components: 1. *Legal irresponsibility* of the parliamentary and *parliamentary inviolability*.

3.2. Highlights comparative law doctrine on parliamentary immunity

3.2.1. For this study, we mention from the French constitutional doctrine the following opinion on the parliamentary immunity¹⁸

In the author's opinion, *parliamentary immunity* sets forth the following explanations regarding this concept: „Parliamentary immunities are divided into two categories: *parliamentary irresponsibility* and *parliamentary inviolability*.

a) *Parliamentary irresponsibility*, places the parliamentary in an immunity system against civil prosecution or against the opinions and votes civil prosecutions or votes expressed in the exercise of his duties.

b) *Parliamentary inviolability*: The objective is to protect the parliamentary against the potential initiatives of the executive and of the public ministry on which he depends, which could in order to despise him to initiate abusively prosecutions or arresting for crime or misdemeanor committed outside the exercise of his duties (those committed in this exercise are already covered by *irresponsibility*).

In our opinion, the two components of the concept *parliamentary immunity* are similar from the point of view of the content with the Romanian ones.

3.2.2. From the Belgian constitutional doctrine, we hold the following opinion on parliamentary immunity¹⁹

Regarding *parliamentary immunity*, and considering the federal organization of the state with three systems of organization of the parliamentarians, respectively at the federal, community and regional level, the author expresses the following opinions:

A special regime of *irresponsibility* is established anyway. He applies to the member of a governmental team a guarantee of the parliamentary action (according to art. 101 para. (2) of the Constitution, concerning federal ministers).

No member of the government..... *can be prosecuted or be the subject of any investigation with regard to opinions expressed and votes cast by him in the exercise of his duties*” (art. 134 of the Constitution).

The every community and regional parliamentary benefits of *immunities*

These immunities are as provided by art. 58 and by art. 59 of the Constitution i.e.

¹⁵ Ioan Muraru and Elena Simina Tănăsescu, (*Constitutional Law and Political Institutions*) Edition 12, Volume II (Bucharest: C H Beck, 2006), 190.

¹⁶ Ștefan Deaconu, *Political Institutions* (Bucharest, CH Beck, 2012) 218.

¹⁷ Ion Deleanu, *Institutions and constitutional procedures - in Romanian law and in comparative law procedures* (Bucharest, CH Beck, 2006) 197.

¹⁸ Pierre PACTET and Ferdinand MELIN-SOUCRAMAINEN, *Constitutional Law*, (Paris: Sirey, 2007) 443.

¹⁹ Francis DELPÉRÉ, *The Constitutional Law of Belgium*, (Brussels: General Library of Law and Jurisprudence, 2000) 576-579.

irresponsibility and inviolability (art. 120 of the Constitution)

If *immunity* must be raised, this should be done by the parliament and the council of which the public trustee is a member.

In our opinion, the two components of the concept of *parliamentary immunity* are similar from the point of view of the content with the Romanian ones.

4. Jurisprudence of the Constitutional Court of Romanian on the parliamentary immunity

We highlighted in the decisions of the Constitutional Court, selected for this study only the Court's reasoning having a direct connection with *parliamentary immunity*, regulated by the fundamental law.

4.1. Decision of the Constitutional Court of Romania nr. 45 from 1994 on the constitutionality of the Regulations of the Chamber of Deputies, published in the Official Gazette of Romania, Part I, nr. 50 of 25 February 1994.²⁰

The Constitutional Court was notified by the President of the Chamber of Deputies that, in accordance with the provisions of art. 144 lit. (b) from the Constitution and art. 21 par. (1) of Law nr. 47/1992, to decide on the constitutionality of the Regulations of the Chamber of Deputies, approved under Decision nr. 8 of 24 February 1994, published in the Official Gazette of Romania, Part I, nr. 50 of 25 February 1994.

The Court finds that in art. 168 par. (2) of the regulations: „The definition given to parliamentary immunity is useless and, of course, unconstitutional because art. 69 and 70 of the Constitution delimits its sphere. The wording of par. 2 is unconstitutional because its ambiguity may receive interpretations beyond this sphere.

The Constitutional Court finds that the listed articles, among which the above-mentioned one from the Regulations of the Chamber of Deputies are unconstitutional.

4.2. Decision of the Constitutional Court of Romania nr. 46/ 1994 referring to the constitutionality of the Regulations of the Senate, published in the Official Gazette of Romania, Part I, nr. 131 of 27 May 1994²¹

The President of the Senate requested the Constitutional Court the examination of the Regulations of the Senate, adopted under Decision nr. 16 of 30 June 1993, published in the Official

Gazette of Romania, Part I, nr. 178 / July 27, 1993, of terms of its *constitutional legitimacy*

The Court finds that: „In art. 149 par. (2) of the regulations, the reference, with no mitigating circumstance, to the protection of the senators against juridical prosecutions is *unconstitutional* because, according to art. 69 of the Constitution, it concerns only the abusive criminal or contraventional prosecution, so that it may be raised by the House, as well as during the office, as related to the capacity of senator. The independence of opinions only, as provided by para. 3 herein, is, according to art. 70 of the Constitution, has absolute character.

4.3. Decision of the Constitutional Court of Romania nr. 67 from 2003, on the admission of the exception of unconstitutionality of the provisions of art. 40 par. (2) of the Code of criminal procedure.²²

In motivation of the exception of unconstitutionality it is stated that the provision of art. 40 para. 2 of the Code of criminal procedure is contradictory to the second thesis of art. 69 para. (1) of the Constitution, which sets forth when the accused has the capacity of deputy the jurisdiction is of the Supreme Court of Justice, without distinguishing how the capacity of this person was acquired before or after committing the offence. It is also stated that the criticized legal provision is contrary also to the provisions of art. 16 para. (1) of the Constitution, regarding the equality of citizens in front of the law and public authority.

The Court finds that by art. 69 para. (1) of the Constitution, under the title *Parliamentary Immunity*, two of the categories of the measures of protection of the deputies and senators are regulated, during the exercise of his duties, against the potential abuse or juridical heckling, likely to affect their independence in fulfilling their mission as vested by the electorate and undermine the prestige of the Parliament.

For the above reasons, the Constitutional Court admits the exception of unconstitutionality and finds that the provisions of art. 40 para. 2 of the Code of criminal procedure are unconstitutional.

5. Conclusions

The objective of the study entitled: *Reflections on regulation of parliamentary immunity in the Romanian Constitutions and in comparative law – selective aspects*, was in our opinion attained.

The main directions of study to attain the proposed objective were the following:

²⁰ Decision no. 45/1994 was published in the Official Gazette Romania, Part I, no. 131 from May 27, 1994.

²¹ Decision no. 46/1994 was published in the Official Gazette Romania, Part I, no. 131 from May 27, 1994.

²² Decision no. 67/2003 was published in the Official Gazette Romania, Part I, no. 178 from March 22, 2003.

1. *The identification of constitutional rules on the parliamentary immunity in the Romanian Constitutions.* I approached this theme because the *fundamental law of Romania – the Constitution*, sets the fundamental principles regarding *parliamentary immunity*, which will be elaborated into the legislation or other subsequent regulations, for example, the *Regulations of the Houses*.

Moreover, I proceeded to the diachronic approach of the identification of these principles in the Romanian Constitutions, in order to turn to good account the evolution of the Romanian constitutional system for over 100 years term, starting with *The developer Statute of the Paris Convention from 7/19 August 1858*, and ending the study with *The Constitution of Romania as revised in 2003, the republished form of the Constitution of Romania of 1991*.

2. *The identification of constitutional rules on the parliamentary immunity in comparative law.* Approaching the principle of symmetry, I proceeded to *The identification of constitutional rules on the parliamentary immunity in comparative law*.

I selected from comparative law the following: *The Belgian Constitution as updated following the constitutional revisions of 6 January 2014*, containing the latest revisions. 2. *The French Constitution of 4 October 1958, in force at the date constitutional review of 23 July 2008* containing the latest revisions. This selection may be motivated, considering that these states are deemed in the

doctrine among the first three states in the world which elaborated a written constitution.

3. *The highlights Romanian doctrine and comparative law on the parliamentary immunity.* In this paragraph, we highlighted the Romanian contributions in comparative law, regarding the approach of parliamentary immunity, in the Romanian, Belgian and French doctrine.

4. *The jurisprudence of the Constitutional Court of Romania on the parliamentary immunity.* In this paragraph, we selected certain decisions of the Constitutional Court, which in our opinion, contributed to the constitutionalization of the subsequent regulations regarding *parliamentary immunity, in the legislation and regulations of the Houses*.

The four parts of the study may be considered a contribution to the extension of research in the matter of *Reflections on regulation of parliamentary immunity in the Romanian Constitutions and in comparative law*, in accordance with the current trend in the field.

On the other hand, we further point out that the above study opens a complex and complete view, but not exhaustive, in the analyzed field.

The proposed scheme-key, considering the selective approach of a *Reflections on regulation of parliamentary immunity in the Romanian Constitutions and in comparative law*, may be multiplied and extended for other studies in the matter, taking into account the vastness of the analyzed field.

References:

- Ioan Muraru, Gheorghe Iancu, *Constituțiile Române*, Texte. Note. Prezentare comparativă, (București: Actami, 2000), 7-28, 29-60, 61-92, 93-111, 123-139, 143-166;
- LB Curzon, *Dictionary of Law*, Third Edition, (London: Pitman Publishing, 1991), 318;
- Jay M. Shafritz, *Dictionary of American Government and Politics*, (Chicago, USA, The Dorsey Press, 1998) 274;
- Constituția Republicii Socialiste România din 21 august 1965, a fost republicată în Buletinul Oficial nr. 65 din 29 octombrie. 1986;
- Constituția României din anul 1991, a fost publicată în Monitorul Oficial al României, Partea I, nr. 233, din 21 noiembrie 1991;
- Constituția României, revizuită în anul 2003, a fost publicată în Monitorul Oficial al României, Partea I, nr. 767, din 31 octombrie 2003;
- accessed, http://www.const-court.be/.../belgian_constitution.pdf
- accessed, <http://www.conseil-constitutionnel.fr/...constitutionnel...>;
- Legea nr. 96/2006 privind Statutul deputaților și al senatorilor a fost republicată în Monitorul Oficial al României, Partea I, nr. 459 din 25 iulie 2013;
- Ioan Muraru și Elena Simina Tănăsescu, *Drept constituțional și instituții politice*. Ediția 12, Volumul II (București, CH Beck, 2006) 190;
- Ștefan Deaconu, *Instituții Politice* (București, CH Beck, 2012) 218;
- Ion Deleanu, *Instituții și proceduri constituționale - în dreptul român și în dreptul comparat* (București, CH Beck, 2006) 197;
- Pierre PACTET and Ferdinand MELIN-SOUCRAMAINEN, *Droit constitutionnel*, ((Paris: Sirey, 2007) 443;
- Francis DELPÉRÉ, *Le Droit Constitutionnel de la Belgique*, (Bruxelles: Librairie Générale de Droit et de Jurisprudence, 2000) 576-579;
- Decizia Curții Constituționale nr. 45/1994 referitoare la constituționalitatea Regulamentului Camerei Deputaților, publicat în Monitorul Oficial al României, Partea I, nr. 50 din 25 februarie 1994, a fost publicată în Monitorul Oficial al României, Partea I, nr. 131 din 27 mai 1994;

- Decizia Curții Constituționale nr. 46/1994 referitoare la constituționalitatea Regulamentului Senatului, publicat în Monitorul Oficial al României, Partea I, nr. 131 din 27 mai 1994, a fost publicată în Monitorul Oficial al României, Partea I, nr. 131 din 27 mai 1994;
- Decizia Curții Constituționale nr. 67/2003 referitoare la admiterea excepției de neconstituționalitate a dispozițiilor art. 40 alin. 2 din Codul de procedură penală, a fost publicată în Monitorul Oficial al României, Partea I, nr. 178 din 21 martie 2003.