



PARLIAMENTARY IMMUNITY BRIEF:
*A Summary of Case Studies of Armenia, Ukraine
and Guatemala*

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Parliamentary Immunity and Democracy Development ¹

Practically all established and emerging democracies provide for some sort of immunity from prosecution for members of the legislature or parliament; often these rights are addressed in a country's constitution. The legitimate purpose of immunity is to allow legislators to freely express themselves and adopt policy positions without fear of politically motivated retribution. However, protection from criminal and/or civil prosecution can allow some legislators to engage in corrupt or illicit behavior with impunity; alternately, an overly-politicized legislature and/or executive and judicial branches of government can override the legitimate protection that immunity is supposed to provide. Both scenarios may encourage abuses and serve to erode the public's confidence in the legislature as a democratic institution.

Parliamentary immunity is receiving increased attention as a potential threat to democratic development. A 2003 public opinion poll in Armenia revealed that the majority of Armenians would do away with parliamentary immunity altogether, equating it with corruption and special privileges, not rightful protection.² The U.S. Agency for International Development (USAID) recently funded a conference in Latin America to discuss egregious abuses of official immunity with the aim of creating regional legal standards for limiting the scope of immunity.³ The Cambodian National Assembly promised in February 2006 to reinstate the parliamentary immunity of three opposition members, whose immunity was stripped last year despite sharp protest from international and local human rights groups who believed related criminal defamation charges were politically motivated. Even in the more established democracies of the European Union, immunity has been called "anachronistic, obsolete and contrary to the fundamental principles of modern constitutional law."⁴ The abuse of an important legal instrument guarding independent speech in democracies, then, risks undermining the very popular support needed for democratization.

In this brief, we examine parliamentary immunity in practice over the past 10 years, highlighting findings from our recent case studies in Armenia, Ukraine and Guatemala. Our findings indicate that weak institutions, specifically the lack of standards of ethical behavior by legislators and clear parameters for prosecution of elected officials, are a greater indicator of the abuse of immunity, than the legal scope of immunity. Therefore, reformers must take comprehensive institutional approaches to limiting immunity abuse, especially as it relates to corruption.

What is Parliamentary Immunity?

Parliamentary immunity describes a system in which members of a legislature are granted partial immunity from prosecution from civil and/or and criminal offenses. Before prosecuting – or in

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² According to a poll conducted by IREX/ProMedia in 2003, 64% of the population opposes immunity.

³ USAID/America's Accountability/Anti-Corruption Project-sponsored international conference, held October 24-26, 2005 in Lima, Peru with 12 regional country participants.

⁴ "Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union," European Centre for Parliamentary Research and Documentation, page 6, 2001.

some cases, investigating -- a member of the legislature for an alleged offence, it is necessary that the immunity be removed, usually by a superior court or a vote of the legislature itself. The purpose is to reduce the possibility of pressuring a member to change his or her official behavior (for example voting, policy orientation, exposure of government corruption) by using the threat of prosecution.

Parliamentary immunity traditionally takes one of two basic forms, each with advantages and disadvantages. Some countries, like the United States, adopt a *narrow* scope of immunity, restricting protection to actions and statements that the legislator undertakes directly in his or her capacity as a politically elected representative and lawmaker. If the legislator engages in illegal activity outside his or her legitimate role as a representative, he or she is subject to investigation, prosecution, trial, and potentially punishment like any other citizen. Similarly, the British model provides legislators protection from civil actions (e.g. charges of slander and libel) that transpire in the execution of their duties. The Continental model (based on the French system) provides deputies with a *broad* scope of immunity, including protection from both civil and criminal prosecution, within and outside of their roles as parliamentarians. The majority of developing democracies have embraced a broad scope of immunity, presumably to protect against the authoritarian abuses of the past. Under their respective constitutions, Ukraine and Guatemala legislators enjoy broad immunity, while members of the Armenian parliament are protected by narrow immunity, related directly to their “status” as deputies. The following chart details the immunity systems of the countries studied.

	<i>Political System</i>	<i>Type of Immunity</i>	<i>Who strips immunity?</i>	<i>Recent Political Situation</i>
Ukraine	Semi-Presidential; unicameral parliament with 450 seats; 4-year terms	Broad: with protections from arrest, detention and prosecution without the consent of Parliament; no protection from searches or investigations	Parliament	Since Jan. 2005, President's political party one of the largest in parliament [the previous President's party was not]. A lack of political party consolidation since 1996 has precluded a durable majority in parliament.
Guatemala	Guatemala Presidential system with an 158-member unicameral congress; 4-year terms	Broad: with protection from civil and criminal accusations, as well as protection from most types of investigation or evidence gathering	Supreme Court Magistrates; decision cannot be appealed	Since 2004, President's party is the largest in Congress, but it does not have a majority; Congress is highly fractured. 2000 – 2004, President's party (FRG) also enjoyed majority in Congress
Armenia	Semi-Parliamentary; with separately elected President; unicameral parliament with 131 seats; 4-year terms	Constitutionally narrow, but interpreted broadly	Parliament	Parliamentary elections in 2003 produced a strongly pro-government majority coalition in parliament. The president's parliamentary opponents are grouped under a tenuous cooperative umbrella

How Abuses of Parliamentary Immunity Feed Corruption:

- *Members may utilize a seat in parliament specifically to cloak their illegal or corrupt activities.* In Ukraine, a former government official, Pavlo Lazarenko, was accused of corruption (according to a U.S. district court indictment, Lazarenko used his political clout to set up an international underground network of bank accounts to launder at least \$114 million made through clandestine business schemes) ran for and won a seat in parliament in 1998, thus coming under the shield of parliamentary immunity. His political supporters in parliament were able to vote down the first attempt to remove his immunity. A second attempt to remove his immunity succeeded, after his alleged transgressions appeared more obvious, and public.

In Armenia, there is a strong public perception that a large minority of members are in the National Assembly primarily to protect corrupt business interests. This image is reinforced by the fact that despite possible evidence of corruption, government officials have only requested the lifting of parliamentary immunity twice since the democratic transition, and one of these cases was aimed at opposition members' participation in a protest rally.

- *A powerful executive, with the backing of a majority in parliament, may violate the spirit of immunity altogether in order to silence opposition members publicizing government corruption.* Members of the Guatemalan congress reported pressure to change their votes, under fear that those in political power can bring trumped up charges and influence a politically pliable Supreme Court to remove their immunity. One former deputy commented that, as a result, *"the Guatemalan Congress does not enact laws under a national agenda to resolve important problems of the Guatemalan society. It enacts laws depending on the political pressure."*

In Ukraine, then-President Leonid Kuchma directed the Procurator General (head of prosecution) to request parliament to lift the immunity of MP Yulia Tymoshenko, a former government official and vocal reformer. The Procurator General simultaneously arrested Tymoshenko, before receiving the consent of the parliament to detain her (in apparent violation of the Constitution). While it is notable that this abuse of immunity occurred under a past President with less democratic tendencies, political observers believe work remains to be done to bring the powers and practices of the Procurator General's office in line with Council of Europe norms to prevent future manipulation of the system.

Lessons Learned from Armenia, Ukraine and Guatemala

- *A country's politics should be considered when discussing changes in the legal definition or scope of immunity.* In Ukraine (a system of broad immunity), there is evidence that prosecutors, under direction from the office of former President Kuchma, pursued members of parliament (or, conversely ignored calls for investigation of an apparently corrupt member), based primarily on political motivations emanating from the executive or majority party in power. In Armenia (narrow immunity), legal arguments by the partisan prosecutorial arm of the executive branch to waive immunity of members of the National Assembly do not focus on whether the alleged crimes fall within or outside of the scope of

immunity but rather on the “seriousness” of the crime. For example, four opposition deputies participating in a 1996 protest rally against the government had their immunity challenged on the basis of the seriousness of charges (treason), rather than whether protest activities were within the realm of their “status” as deputies. Furthermore, Armenia National Assembly votes to waive or sustain a fellow member’s immunity tend to fall along political party lines.

In the case of Guatemala and several other Latin American countries, it is the Supreme Court, rather than the congress itself, who must vote to lift a legislator’s immunity. The Guatemalan congress is, however, highly influential in the selection of the Supreme Court magistrates, which creates a clientele relationship between the two, rather than a check and balance. The Guatemalan congress also strongly limits the degree of investigation and evidence gathering that can be done before immunity is lifted.

- *Media and Civil Society organizations can play an important role in highlighting cases and putting pressure on the executive and parliament to protect or punish individuals in high profile immunity cases.* In a well-known 2001 case in Guatemala, known as “Guatagate”, a politicized Supreme Court did vote to remove the immunity of former president of Congress, General Rios Montt, and twenty-two ruling party members in 2001, who were accused secretly reducing taxes imposed on alcoholic and other bottled beverages – essentially changing a law that was already passed in the period before it had been published. This was done presumably in order to favor the powerful liquor industry in exchange for money and/or favors. In that instance, intense pressure from the media and a coalition of NGOs and human rights organizations was seen as highly influential in forcing the Supreme Court to act.
- *A weak rule of law is a critical factor in the abuse of immunity.* In countries with a strong executive (as in Armenia and Ukraine in the recent past), prosecutors are under political pressure to go after members of parliament who oppose the government (for both real and invented reasons), and ignore charges of corruption by government officials or members of parliament from the ruling party. In effect, in many developing countries there is not an appropriate firewall between the executive and the prosecutorial offices. In Guatagate, while the Supreme Court, under public pressure, did vote to waive the immunity of a number of members from the majority party, these individuals were not ultimately convicted by what many consider to be a politically compromised court system.
- *Despite its weaknesses, parliamentary immunity has at times served as a critical check on the power of the executive.* In the case of Yulia Tymoshenko, despite the threats, harassment and arrest associated with politically motivated charges, a prominent member of the Ukrainian parliament and reformer was ultimately spared a trial and possible long imprisonment when parliament protected her immunity.

Recommendations for Balancing the Protections of Parliamentary Immunity with the Need for Greater Transparency and Controls on Corruption:

Political immunity systems offer important protections for members of opposition parties in democratizing societies. The abuse of these protections, however, threatens the integrity of these often nascent legislative institutions and imperils the very process of democratization.

Accordingly, democracy reformers should focus attention on strengthening existing systems rather than entering the debate to end the parliamentary immunity system.

- In countries with high levels of corruption, and weak checks and balances between branches of government, parliaments must do more to control the behavior of members in order to regain public confidence in the institution. For example, legislative reforms should examine and promote the use of parliamentary Codes of Ethics or Conduct to establish clear minimum standards of behavior below which members would be censured or expelled. Similarly, laws that regulate disclosure of assets and income should be adopted to counter the scope for potential abuses of immunity. Parliamentary leaders should ensure that ethics violations are investigated (through internal ethics committees or appointed external ombudsmen) and that sanctions are enforced. Appropriate Codes of Conduct need to be publicized both within, and outside of parliaments.
- International donors could establish a set of minimal immunity standards specifically related to firewalls and checks and balances between the executive and legislature that could provide Members, civil society, and media with an objective tool to determine where the potential for abuse exists. This practice has precedent -- the United Nations provides Model Laws and minimum standards for specific anti-corruption legislation to serve as a comparison to specific proposed legislation; many regional parliamentary institutions already promote model Codes of Ethics or Conduct of government and parliamentary leaders.
- Efforts to strengthen national level political party operations should publicize the criteria for candidate selection and promote rules changes that allow for open party electoral lists (so voters know the individuals, as well as the parties they are voting for). This may discourage the corrupt from running for or winning a seat with the specific intention of gaining parliamentary immunity.
- Media can play an important role in drawing attention to politically motivated investigations or to deputies benefiting from the impunity provided by their position. Media strengthening initiatives therefore should provide training to journalists on the issue of parliamentary immunity, the specific rules and institutions involved, and how to conduct investigative journalism. Journalists should be well-versed in parliamentary Codes of Conduct, and use them to bring corrupt behavior to light.
- Justice sector or rule of law reforms should include a specific focus on political immunity considerations. These include examining the method of appointment of prosecutors, advising on how to insulate prosecutorial decisions from political influences, and training members of parliament on how to enforce adequate oversight of prosecutorial offices.