ABSTRACT: This paper aims to investigate, from an interdisciplinary and intercultural point of view, the concept of parliamentary immunity. Thus, the main objective of the research is to identify the historical premises and the political, linguistic and legal means by which the concept of parliamentary immunity has marked the main intellectual events since its insertion in Romania and France. In Latin, the term had relatively demarcated meanings in the sphere of fiscal issues. Later on, because of its metaphorical flexibility, the term began to be used in spheres of law, medicine, politics, constitutionalism and economy. Because of its usage in many fields, the concept gains in importance and enters in everyday language, becoming a catch-word. Whether we are talking about immunité parlementaire in France, immunität in Germany, immunitet in Poland or imunitate parlamentară in Romania, the term underwent an extensive debate on its institutional means and legal aspects. Therefore, this research will no longer insist on these classical interpretations, but will develop, in extenso a comparative conceptual study based on methodological rigor guided around the following questions: When and in what form did the parliamentary immunity appear in Romania and France? How was the concept built in Romania and France? The comparative analysis is justified by witnessing a cultural, legal, and political transfer from France to Romania, which represents a fertile ground for a conceptual analysis of the parliamentary immunity. France is for Romania a source of inspiration and moreover, parliamentary immunity in Romania was adopted from the French tradition, attentive to the status and privileges of the parliamentary elites. This paper will emphasize the importance of the concept after its entry into national languages, but also the political uses of the term, its expansion into Philosophy of History and finally, an overview of the present usage of the term.

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I. INTRODUCTION

An explanatory generalization of the historical and philosophical facets of the concept of parliamentary immunity becomes definite when both academia and practitioners are invited to look and see, in typical Wittgensteinian fashion, in the story of parliamentary immunity in France and Romania. Embracing Reinhart Koselleck’s working methods\(^1\) in the field of conceptual history, this research intends to construct an extensive and coherent genealogy of the concept of parliamentary immunity in a comparative manner\(^2\), in both France and Romania, from its Latin usage until the entry into national language and its expansion to Philosophy of History. The paper will answer to essential questions about the meanings, the forms and the conceptual building in both of the countries. Despite the modest dimension of this comparative research, but sufficient to provide us with concluding remarks, the paper as a whole will trace out a unified conclusion with respect to the concept of parliamentary immunity. Altogether, the judgments issued from the historical logics of the concept developed in the two cases will raise further questions concerning the integration of these particularities in the general story of parliamentary immunity.

From Latin, the term had separate meanings in the sphere of law, regulating the public life by imposing alternatives between exceptions from service or obligation to exception from military chores. Later on, the concept became highly complex because of its meanings in the fiscal and medical realms. Until the beginning of the early modern period, the medical meaning remained dominant and continued to be used without any interruption and interference from other spheres. Towards the end of eighteen century, along with the French Revolution, the term used as a metaphor expanded into politics, becoming a very much political phenomenon. Because of its metaphorical flexibility, the concept gained in importance and enters into everyday language becoming a catchword. To understand how the concept of parliamentary immunity was also translated in the realms of the political activity and life, one must first have in mind, as Hanna Fenichel Pitkin did with the concept of representation\(^3\), the historical development of institutions, the corresponding development in interpretive thought about those institutions and the etymological development. Following its entrance in politics, in general, and in domestic constitutional life, in particular, the concept was exposed to great emotional debates about its limits and functions from the next centuries until present.

Applied to history, “parliamentary immunity” has its roots in the confrontation between the legislative power for independence and free activity of the House of Commons and the authoritarian executive power represented by the Crown and the House of Lords. It is worth mentioning that English history is the first to use the meanings of this term in order to explain the unequal political and legal relationship between the absolute power of the King and the Parliament. Moreover, the term revolved around the idea of freedom of expression, where the legislative institution struggles to limit the Monarch’s interference in its activities. If the fourteenth and fifteenth centuries represented the early awakening consciousness of immunity, the eighteenth century was the appropriate moment to introduce a mechanism to inhibit the power of the Monarch. Focusing on our cases, France and Romania, it was the French Revolution of 1789 that gave birth to the idea of immunity, through the term of inviolability (even though the term of immunity was not officially used). This necessity for protecting the members of the Parliament was transposed in the Decree from 23rd of June 1789 initiated by Honoré Gabriel Riqueti, comte de Mirabeau, followed by the Decree from 26th June 1790 which represented the appropriate measures to prevent the incrimination of the members of the Assembly without prior authorization.

As can be seen, the variety of meanings that immunity acquired in different historical periods and domains designed the modern usages of the concept. The connection of the parliamentary immunity to the institution of Parliament gave birth to a more complex concept, one in which the human conduct shapes the practices and functions of this institution. Taken together, all the meanings had a great contribution through the centuries to the creation and evolution of the conceptual history of parliamentary immunity.

II. THE LATIN USE OF THE WORD

Immunitas – atis has its roots in the Latin adjective immnisis(arh. Immoenis), meaning: “not bound”, “free from obligation”, “disengaged”, “unemployed”, “making no return”, “without payment”, “making no contribution”, “untaxed”, and figuratively, “free from”, “devoid of”, “apart from”, “without”. In turn, the adjective immunis has its roots in the noun munus whose complex meaning was “gift”, “obligation”, “duty”4. The Latin form of the term meant not only, “a freedom from taxes”, but also “a freedom from services which other citizens had to discharged.”. Thus, according to this multitude of meanings, immunitas was used as a central term to politics, in general.

Regarding the first meaning (“a freedom from taxes”), it was the Roman historian Gaius Suetonius Tranquillius (69-122) who used this term in his work The lives of Caesars to describe the emperors’ power to grant immunity to states, to persons or classes of persons throughout the Roman world5. In the early period of the Roman Empire, on the one hand, the

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immunity conferred to states was strongly related to the idea of *societas*, and was not considered as a reward or privileged for the communities dependent on Rome. Therefore, these communities were willing to build an alliance with Rome, so that they could be exempted from paying any taxes and in this way both allies and *liberae civitates* were regularly regarded as immune. On the other hand, the “immunitas” was also conferred to classes of individuals as freedom from local taxes, which was given by Rome to Romans, or to the members of communities of states obliged to pay a burden. With respect to the immunity enjoyed by an individual, this privilege ceased with his death, but in case of the states’ immunity, this was meant to be inherited by the following generations. Hence, the classical work of Gaius Suetonius Tranquillius emphasizes the emperor’s power to grant freedom from taxation to the inhabitants and the existence of a minority class of citizens being exempted from paying taxes.

Moreover, the immunities were given as well to individuals themselves, both on the basis of a valid justification (*excusatio*) in order to be provided with an exempt from this kind of services and on the basis of privileges and advantages to their benefit. Concerning this issue, there are significant differences when talking about the republic and the empire. The institution of immunity was put into service with not so many efforts in the case of a republic, but with greater difficulties in the case of an empire, due to the fact that the empire included numerous services requiring expenses (e.g., the *decuriones* in the *municipia*). The process of making specific regulations in this regard has emanated from the necessity of distinguishing these categories of privileged persons from the other categories of the society. It was Julius Paulus Prudentissimus, a Roman jurist who defined immunity in the sense of „*munus - onus, quod cum remittatur, vacationem militiae munerisque praestate, immunitatem appellari*“ (The burden which, when abandoned, provides for exemption from military service or public service, is called immunity).

Following the historical footprints of the Latin works, we can identify how the term expanded its meanings and intensified its political and judicial dimension. It was the Roman general Gaius Julius Caesar (100 BC – 44BC), who used in his work *De Bello Gallico* the term *immunitatem* describing the high status of the druids. According to Caesar, druids represented along with the knights (warriors of the Celts) a class of dignity. Their duty was to perform divine worship, public and private sacrifices and interpretation of ritual question. Furthermore, in Book VI, Caesar describes the role of the druids in the Celtic justice system as possessing the power to resolve all kind of disputes from property to murder and to punish the criminals. The importance of the druids in the Celtic society was given not only by their capacity to judge people, but also by their privileged status of removing themselves from wars and not paying taxes. Hence, *immunitatem* covered not just exception from military service and from all liabilities, but also the act of judging and ultimately taking legal decisions.

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7 *Idem*.
In *Philippics*, the work of Marcus Tulius Cicero (106 BC – 43BC), the immunities granted to citizens and states had the meaning of favors. Moreover, the official document mentioning the *immunitatem* was called *beneficio*, whose correct understanding was “benefit”, “service”, “kindness”\(^9\). In the early time of the Roman Republic, only a decree of the people could ratify and authorize these documents. Since these favors were not for life, the Roman Senate had the authority to revoke them under the conditions imposed by Lex Data (“ne quis magistratus milites introducito, nisi senatus nominatim decreverit”) if the states were free and if the citizens were not longer part of the sworn *foedus* (an agreement). If the *foedus* was abrogated or declared invalid, immunity was automatically lost.

One of the last meanings of *immunitas* found in the works of the Latin writers is the exception from military service. It was the Roman historian Titus Livius (59BC – 17BC), who used the word to describe the special kind of immunity as freedom from military burdens - *immunus militia*\(^{10}\). This type of exemption was granted to citizens only in special cases and with a certain irregularity. It was a privilege provided only to Rome herself used in *foedera* and in other laws that regulated the allied states\(^{11}\).

The Latin studies revealed that, although the concept subsequently experienced different meanings, all of them were inseparable from the sphere of politics. Whether we are talking about the exemption from taxes, military service or just freedom from services, *immunitas* not only regulated the public life, but also made a clear distinction between the social classes. Therefore, the sphere from where the concept has its roots contains specific meanings and discipline bound terms. Analyzing all together, but also separately, the concept could be, without any doubts, incorporated into modern and political language\(^{12}\). In all of the cases, the concept answers to the questions of privileges, the superiority of someone over something or somewhat, the freedom to act without any constraints, or exemption from taxes.

### III. IMMUNITY AND ITS ADOPTION INTO NATIONAL LANGUAGES (FRENCH AND ROMANIAN)

Given the use of Latin in the spheres of politics, law, and later on in medicine\(^{13}\), the term *immunitas* continued to be part of the same semantic fields, and for this reason, it appeared sporadically in different documents in the thirteenth century. The frequency of the term is modest, which indicates that immunity was not yet a central concept at that time. Could the term of immunity gain its centrality after its entrance in French and Romanian?

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\(^{11}\) William SMITH(Ed.), *op. cit.*, p. 628.


In France, *immunité* first appeared in 1276. Later in the fifteenth century, the term acquired new meanings, taken from Latin and describing the privileges of some categories of citizens not paying taxes - *immunité de charges*. Concerning Romania, there are sources that prove its usage since early thirteenth century. *Imunitate*, taken also from the Latin branch, emphasizes the landlords’ power to forbid the entrance of kings’ chancellors on their properties.

In France, as well as in Romania, the concept of immunity entered the political sphere after it was previously transferred from the domains of fiscal matters. In both countries, the term acquired the same meanings and the same directions of action. With regard to the idea of parliamentary immunity, in France it appeared along with the French Revolution of 1789 as a necessary tool to protect the members of the National Assembly from external threats. Being inspired from the English tradition, the concept was adapted to French realities of the moment. In Romania, however, parliamentary immunity has its roots in the first democratic Constitution of 1866, which was inspired both from the French and Belgian traditions, taking into account its implications in the parliamentary and constitutional life. Given these points, one must observe the interdependence between the Romanian and French parliamentary immunity. Without any academic constraints, we are witnessing a cultural, legal, and political transfer from France to Romania, which represents a fertile ground for a conceptual analysis of the parliamentary immunity. Therefore, France was and still is for Romania a source of inspiration, not only regarding the adoption of the term, but also including the attentive consideration given to the status and privileges of the parliamentary elites.

**IV. LEXICA AND DICTIONARIES**

Dictionaries and lexica introduce us into the context of the origin of the term immunity, as well as into the historical background – continuous or discontinuous – through which the term acquires different meanings, and elapses from language, to events and then to an institution that protects the integrity of the Parliament.

Some dictionaries show us that in French the term “*immunité*” is registered, with few exceptions, in the thirteenth century with the meaning of “sûreté” (“safety”). Le Grand Robert de La Langue Française mentions the usage of this term since 1474 with the

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15 Alexandru CONSTANTINESCU, Florin CONSTANTINIU, *Dictionar al instituțiilor feudale din Țările Române. [Dictionary of feudal institutions in the Romanian Principalities]*, Academia Română, București, 1988, p. 231, s.v. “*imunitate*”.


17 Oscar BLOCH, Walther von WARBURG, *op.cit.*, s.v. “*immunité*”.


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meaning of “immunité de charges” (“exception from taxes”) given to a class of individuals. Thus, the beneficiaries of this kind of exception were the French nobility, the public officers and the magistrates who were discharged from different public taxes. Moreover, at that time we could also refer to the immunity in the clerical sphere and in this way, the Church included 3 types of immunity: firstly, **immunité personelle** was granted to church officials being exempted from some duties and military service; secondly, **immunité de jurisdiction** was conferred to clergy; and finally, **immunité de abbayes** which was a privilege conferred to monasteries.

The French moralist and satirist Jean de La Bruyère described in his *Les Caractères ou les Mœurs de ce siècle*, qualities as rusticity, dissimulation, flattery and put them in connection to the actual reality of that time (1688), creating thus characters or characteristics. In chapter XIV, La Bruyère asks himself a question, otherwise important in understanding the immunity: “Il n'y a rien à perdre à être noble: franchises, immunités, exemptions, privilèges, que manque-t-il à ceux qui ont un titre? Croyez-vous que ce soit pour la noblesse que des solitaires se sont faits nobles?”19 (There is nothing lost by being a nobleman; those who have a title neither want franchises, immunities, exemptions, privileges. Do you think it was purely for the pleasure of being ennobled that certain monks have obtained a title?). Thus, this meaning of immunity is inseparable from the idea of obtaining an advantage; in this case, an economic one.

The 1855 work of Jules Michelet, *Histoire de France*, covering the French history from the Renaissance to beginning of the Revolution, brings together two meanings of immunity. First, Michelet uses the term **immunité** to describe the desolating effects of the depopulation of Italy in the time of Christian emperors and the letters sent by the French kings granting immunity to churches. First, the depopulation of Italy was a great challenge for all the Roman emperors. Many of them tried to strengthen the role of the farmer by protecting him from the landlords, but the method failed because of the lack of money to pay the taxes; others surrendered the farmer to the landlord and chain him to the soil forcing him to work, but this method failed too. It was the Roman emperor Pertinax (126-193), who tried to remedy the problem of depopulation by granting immunity from taxes for ten years to those citizens who will take care of the desert lands and will start to cultivate: “Pertinax avait assuré la propriété et l'immunité des impôts pour dix ans à ceux qui occuperaient les terres désertes en Italie, dans les provinces et chez les rois alliés”20. As Michelet argues, it was the despair that determined the Christian emperors to decide to grant immunity and exemption and to ask for the return of the cultivators to their desert lands. Second, the letters of immunity sent by the Dagobert I, king of all Franks (629-634) to Saint Rigobert, Bishop of Reims, is a good example of how the Church behaved as a privileged institution. In their correspondence21 with the king, the Benedictine monk objected to the king’s will to force the Church to pay taxes, bearing in mind that under all the previous kings, these rules didn’t existed. Dagobert, as a reaction to these letters, with the approval of his nobles, ordered as his predecessors did before, that all

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21 Ibid., p. 251.
goods, villages and people belonging to Holy Church of Reims to be forever exempted from all taxes, and that no public judge has no right to enter the lands of these Church of God.

There are few dictionaries that register only the medical meanings, e.g., Dictionnaire de Didactique des Langues\textsuperscript{22}: “immunité acquise, provoquée, spontanée; immunité congénitale”. Here, immunity is characterized as the resistance of an organism to the action of a poison or a pathogen, natural or not, as a consequence of an infection or a vaccine.

Apart from the dictionaries previously mentioned, the evolution of the meanings of the term “immunity” is revealed in the Dictionnaire de l’Académie française. Its sixth edition from 1835 mentions only two meanings regarding the exemption from taxes, duties or charges, and the ecclesiastical immunities. The ninth edition of this dictionary (1986) indicates the expansion of the term “immunity” in the following domains: constitutional law, biology, and medicine.

However, Romanian dictionaries, e.g., Dictionary of feudal institutions in the Romanian Principalities, show us that imunitate dates back from thirteenth – fourteenth centuries with the meaning of a privilege owned by the great landowners, laymen and clericals to forbid the access of the dregători (tax farmers) on their domains. It is worth mentioning that all the administrative, fiscal and judiciary attributes were granted by the central authority to all the great landowners\textsuperscript{23}. In the matters of the political and administrative structures, imunitate was seen as the expression of the economy’s autarchic character in the feudal domain. In the fourteenth century, imunitate had two meanings: 1) immunity granted through privilege by the Domnitori (Hospodars) and having either partial or total character; 2) immunity created by the estate owners who abusively took the sovereign power in their hands. As far as we come across, the early terminology used in the official documents issued by the Romanian principalities referred to “ocină” and “ohabă”. The term “ohabă” was used in the Romanian Principalities with the meaning of immunity in fourteenth-fifteenth centuries, and with the meanings of “full ownership” and “hereditary ownership” in the sixteenth-eighteenth centuries. Therefore, the Hospodar banned his servants from entering the immune land, house, church. These exempted properties were inalienable and had a special regime, so they could only be inherited and not purchased. In the Romanian Principalities the term also had the meaning of free villages, exempted from commitments. There are documents proving that not only properties could benefit from this kind of privilege, but there were also some categories of citizens like gypsies, peasants or some merchants’ markets.\textsuperscript{24}

In a more advanced form, imunitate, like in the French feudal period, was used with the meaning of exemption from public and fiscal duties granted, on the one hand, to the entire population of a certain domain, and on the other hand, to the agents of the central authority who were banned to enter the immune property. As an illustration, there is the case of the

\textsuperscript{22} See Robert GALISSON, Daniel COSTE, Dictionnaire de Didactique des Langues, Hachette Education, Paris, 1976, s.v. “immunité”.

\textsuperscript{23} Alexandru CONSTANTINESCU, op.cit., p. 231.

\textsuperscript{24} For a more detailed overview on the etymology of the term, see “Ohabă-Ohabnic”, in Convorbiri Literare, no. 40, 1906, pp. 295-299, or Alexandru CONSTANTINESCU, Florin CONSTANTINIU, op.cit., p. 339, s.v. “ohabă”.

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Ruler of Wallachia Mircea the Elder, (1390-1400) who exempted the chiefs of Baniștea village from paying taxes for sheep, pigs, wheat, barley and beehives:

“să se odihească iei de dijmă de oi și de vămuitul porci, de dijmă de grâu și de vinărcie și de stupid și de vădure de apă”.

Hence, according to the records, from a total of 514 Wallachian villages, 313 were immune for paying taxes until the beginning of 1500. As far as it concerns Moldavia, there is an important document dating back from 1458 stating that the inhabitants of the Roman bishopric were exempted from paying taxes, from civil service (labor). These being considered, no magistrate could judge them in any circumstance, important or not, with the exception of the metropolitan, archpriest or his chancellor:

“să nu plătească nici iliș, nici dare, nici podvoadă, nici la morile noastre să lucreze […], să nu umble între ei nici judecători” nici globnici, nici pripășari, nici osluhari, nici perebuți, nimeni altul din slujile noastre să nu-i judece, nici să nu ia gloaba de ei, nici tretina și nici nemic altcineva, nici pentru faptă mare, nici petru mică și alt judecător să nu-i judece afară de mitropolit sau de protopolul lui sal de dregătorul lui”.

The privileges of immunity were granted mostly in fiscal and judiciary domains, where the landowner had the power to judge or to collect fines from the inhabitants of the immune land in case they committed offenses. Besides the immunity created through privilege by the Hospodars, in Romanian principalities there has been another type of autogenous or domestic immunity resulting from the boyars’ refusal to permit the access of the tax farmers, sent by the central authority on their domains. Even though this type of immunity is not so often found in historical documents as the legal one, during the following centuries when the central power stated losing its authority.

The Romanian historian Serban Papacostea describes, in his study Oltenia sub stăpânire austriacă (1718-1739) [Lesser Wallachia under Austrian domination], an historical episode concerning this legal system of immunity which survived until mid-eighteenth-century in Oltenia. The author mentions the efforts of the imperial administration to keep the demographic evidence of this province. Due to the fact that parts of the land and some monasteries were immune, the access of the administrative agents in this area was almost impossible and thus, the demographic evidence was kept with certain difficulties. Throughout the historical process, this type of immunity disappeared at mid-nineteenth-century, along with the modernization of administrative structures. The system of immunities

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25 The Romanian Principalities from the 14th to 19th century were extended on the three ethnographic sub-zones: Wallachia (Țara Românească), situated north of the Danube and south of the Southern Carpathians, including Oltenia, Muntenia and Dobrogea; Moldavia (Moldova), including the Eastern territory of Romania (Bucovina) and the territory of the Republic of Moldova; and Transylvania (Transilvania), including the north Romanian territory (Maramureș) and the western one (Crișana and Banat).


27 Nicolae GRIGORAȘ, “Immunitatile si privilegiile fiscale in Moldova (de la întemeierea statului și până la mijlocul secolului al XVIII-lea) [Immunities and fiscal privileges in Moldova(from the state foundation until mid-eighteenth-century], in Revista Istoriocă, , no. 1, 1974.

was also used in feudal Transylvania, where the king granted to some noblemen or ecclesiastical forums different privileges regarding administrative, fiscal and judiciary matters. Here, the secular feudal owner was authorized to exercise himself the authority on his domain, and in this way, being exempted from the royal officers’ involvement.

Turning to the usage in the dictionaries, there are some Romanian lexica that register only the Latin meanings of the term referring to the exemption of taxes, like in France. Others provide very brief definitions of the term with meanings in biology, medicine and constitutional law.

Taking into account all these examples, dictionaries and lexica, there are some remarks to be considered: firstly, one could strongly claim that the evolution of the term from its entry in national languages, had the same trajectory both in French and Romanian; secondly, one could observe that there are similarities in the meanings of the term and its usages in the societies, in both countries, coinciding with the same historical periods; finally, only the medical meaning of immunity was included in the two languages, keeping its initial form and usage without any changes until the present day. Despite its different meanings, the term did not acquire a conceptual framework in order to become a central concept in the political and social domains. The French and Romanian usages raised new opportunities for this concept to be expanded into the spheres of internal and external politics.

In France, until the collapse of the Ancien Régime, the term continued to describe the privileges enjoyed by a class that did not paid taxes, but after the 1789 Revolution, the term acquired a new meaning – inviolability –, disposed in the two Decrees initiated by Honoré Gabriel Riqueti, comte de Mirabeau. This inviolability was not a privilege given by a high authority, but a right gained by the French revolutionaries in order to protect their representatives. Therefore, benefiting from inviolability, the members of the National Assembly were exempted from all criminal actions during their term of office, but could be arrested only in flagrant cases. Thus, in France this was the historical context giving birth to the idea of parliamentary immunity, in the sense of protecting the independence and integrity of the representatives of the people. However, the term immunité parlementaire was not mentioned in the official documents until 1890, when it was included in the domestic constitutional law.

As for Romania, from the beginning of the French Revolution until 1866, the birth of the first Romanian Constitution, the history tells us that the concept had the same feudal meaning, namely a privilege of a feudal institution and not a parliamentary right.

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30 According to the definition of the immunity, as it is exposed by *Le Grand Robert de la Langue Francaise*, a particular meaning is transferred in international law terminology. In this regard, there are two levels of usage: first of all, the jurisdictional immunity concerning „the States that could not be submitted, against their will, to the jurisdiction of a third State”; and secondly, the diplomatic immunity, characterizing the set of privileges issued from the principle of the extraterritoriality that the foreign diplomats, their families, the official personnel from the embassies enjoy from the jurisdiction of the host country.
V. FROM THE POLITICAL CONCEPT TO THE PHILOSOPHY OF HISTORY. PARLIAMENTARY IMMUNITY IN EIGHTEENTH CENTURY - FRANCE AND ROMANIA

a. Political usage

Somehow paradoxically, immunity used in one part of the history to describe the privilege of the ordinary law of the land and an exception from it\(^3\) expands its implications in the parliamentary life. The political usage of the term has its origins in the developing need of independence, integrity and authority of the House of Commons, being against the influence of the Crown and the House of Lords. Despite of the fact that telling the full story of immunity as it appeared and developed in Great Britain is not the scope of this research, we recognize its centrality in any research regarding parliamentary privileges, due to the English model later adopted by different societies. Thus, the English society is the first to use the meanings of the term to emphasize the unequal political and judicial relationship between the Parliament and the absolute power of the Monarch. The political meaning of the term revolved around the idea of freedom of speech, through which the legislative institution struggled to limit the power of the Monarch in order not to interfere in the parliamentary decisions\(^3\). Between fourteenth and sixteenth centuries the internal competition for obtaining independence came to an end by transforming the freedom of speech, from a prescriptive tradition into an inviolable right. It is also worth mentioning that the grass roots of parliamentary protection were embedded in its own fragility: the parliamentarians realized the necessity of such a protection, being aware of the fact that their position was fragile against the strong and absolute executive, namely the Monarch.

The French system of privileges and immunities derives from a custom born in Great Britain in the fourteenth century. However, the French political and social concept of parliamentary immunity has appeared only in the context of the Revolution of 1789, when the Ancien Régime was replaced and the authority of the Monarch was reduced\(^3\). Consequently, this paper will first include the analysis of the French political concept of immunity and since „its dual aspects of non-liability/inviolability, has exerted a predominant influence”\(^3\) in other countries from Europe, especially in Romania, the attention will be then concentrated on how the Romanian history adapted the French model to its political realities.


The French Revolution of 1789, depicted as “the rise of vigorously and productive and proudly self-conscious bourgeoisie against the parasitic nobility”\(^{35}\), provides the early evidence of the conceptualization of parliamentary immunity. On the 4\(^{th}\) of July, when the National Assembly completely destroyed the feudal customs, and the privileges of the nobles, clergy and the special rights of the cities and provinces where cancelled, the initial meaning of the term immunity disappeared leaving a conceptual container\(^{36}\), as Sartori would say, to be filled. Therefore, the dynamic French society replaced what Auguste Prost called justice privée\(^{37}\) with a system of legal equality. Once the feudal meaning of immunity seized to exist, the term gradually started to be applied solely to the parliamentary life.

In order to stop the hostility of King Louis XVI, the French revolutionaries, led by Honoré Gabriel Riqueti, comte de Mirabeau, imposed the principle of inviolability of deputies to royal authority through an act of resistance, established by the Decree from 23\(^{rd}\) of June 1789. Thus, this document empowered the members of the National Assembly in a way that they could not be criminally responsible for their opinions during their mandate:

“L’Assemblée nationale déclare que la personne de chacun des députés est inviolable ; que tous particuliers, toute corporation, tribunal, cour ou commission, qui oseraient, pendant ou après la présente session, poursuivre, rechercher, arrêter ou faire arrêter, détenir ou faire détenu un député pour raison d'aucune proposition, avis, opinion ou discours par lui fait aux États-Généraux ; de même que toutes personnes qui prêteraient leur ministère à aucun desdits attentats, de quelque part qu’il soit ordonné, sont infâmes et traîtres envers la nation, et coupables de crime capital. L’Assemblée nationale arrête que, dans les cas susdits, elle prendra toutes les mesures nécessaires pour faire rechercher, poursuivre et punir ceux qui en seront les auteurs, instigateurs ou exécuteurs”\(^{38}\).

The outcomes of the revolution, namely the Déclaration des droits de l'homme et du citoyen\(^{39}\), and the creation of the National Assembly “were not based on broad agreement among large sectors of the population and, as a result, special measures to safeguard the representatives, to ensure their independence, freedom of movement and expression and to protect them from any abuse, were necessary and clearly directed against the Executive”\(^{40}\). Followed by the Decree of the 26\(^{th}\) of June 1790, preventing the incrimination of members only with the permission of the National Assembly, Mirabeau managed to ensure the protection of parliamentarians and independence of Legislative Assembly. Through a series of successive documents, this second type of immunity was supplemented and clarified, in the sense that it referred strictly to criminal matters and it covered any kind of activity, even the


\(^{39}\) Declaration of the Rights of Man and Citizen of 1789, Art. I-XVII.

ones that had nothing to do with the specific parliamentary activity. Thus, in the parliamentarians’ views, it was, without any doubt, the fear of the Executive’s authority that increased the necessity for both inviolability and non-accountability for opinions expressed in the exercise of their duties.

In 1791, two years after the Absolute Monarchy has fallen apart and after a long and slow process, the first French Constitution was written. Under this fundamental act, the Executive and the Legislative powers were separated by strict rules, disposing that the first one could no longer intervene in the activity of the second one. On the one hand, the Executive power was represented by the king (who had no longer a divine status and had to take an oath to be loyal to the nation and uphold the Constitution), whose person was "inviolable et sacrée" and could be removed from his office by the Assembly in limited cases. On the other hand, the Legislative power was in the hands of the Assembly formed by 745 members and had a two years mandate based on a census suffrage. During their term, the deputies were:

"Les représentants de la Nation sont inviolables : ils ne pourront être recherchés, accusés ni jugés en aucun temps pour ce qu'ils auront dit, écrit ou fait dans l'exercice de leurs fonctions de représentants. Ils pourront, pour faits criminels, être saisis en flagrant délit, ou en vertu d'un mandat d'arrêt ; mais il en sera donné avis, sans délai, au Corps législatif ; et la poursuite ne pourra être continuée qu'après que le Corps législatif aura décidé qu'il y a lieu à accusation." 45

As already mentioned, the scope of parliamentary immunity following the French Revolution of 1789 is strongly related to the idea of securing the position of the National Assembly in front of the omnipotent Executive. The Constitution of 1791 regulated the first constitutional principle that governed immunity and even if the word itself was not mentioned in any official documents, the idea was already planted in the collective mind and used inseparably from the "novel term of inviolability that came into being". 44

Following the French constitutional history, we can observe how the new term inviolability, coined by the revolutionaries entered almost without interruption in the terminology of the Constitution of 24th June 1793, instated by the political group called Montagnards. Although it was inspired by the Déclaration des droits de l’homme et du citoyen and had popular support, it had never entered into force. Similarly to the previous one, this constitution contained provisions concerning the inviolable character of the deputies. The Act underlines that:

"les députés ne peuvent être recherchés, accusés ni jugés en aucun temps, pour les opinions qu'ils ont énoncées dans le sein du Corps législatif. Ils peuvent, pour fait criminel, être saisis en flagrant

42 Constitution of 1791, Chapter II, Art. 1, 2, 3, 4.
43 Constitution of 1791, Chapter I, Section V, Art. 7, 8.[The Representatives of the nations were inviolable, and they could not be questioned, accused or trialed at any time for what they have said, written, or done in the performance of their duties as representatives and in case of criminal acts they may be seized flagrante delicto, or by virtue of a warrant of arrest; but notice thereof shall be given to the legislative body immediately, and prosecution may be continued only after the legislative body has decided that there is occasion for indictment.]
44 Marc van del HUST, op. cit., p. 65.
Thus, like the former one, this Constitution was meant to be an ideal one, and to adopt a broader scope of immunity, shielding the lawmaker from any interference and making them responsible for the fair procedures of the legislative institution.

If the Constitution of 1791 describes the separation between the executive and legislative powers as rigid and unbalanced, the Constitution of 22 August 1795 (Constitution du 5 Fructidor an III), establishing the Directory, sets up a certain equilibrium between the two powers. An innovative aspect was the creation of bicameralism dividing the Parliament in two chambers (the today Sénat and l’Assemblée Nationale). With respect to the parliamentary immunity, the Constitution of 1795 makes a specific reference to the question of irresponsibility in Article 110: “Les citoyens qui sont, ou ont été, membres du Corps législatif, ne peuvent être recherchés, accusés ni jugés en aucun temps, pour ce qu'ils ont dit ou écrit dans l'exercice de leurs fonctions.”

The members of the legislative body were given privileges and could be judged only under exceptional circumstances:

“Ils peuvent, pour faits criminels, être saisis en flagrant délit; mais il en est donné avis, sans délai, au Corps législatif, et la poursuite ne pourra être continue qu'après que le Conseil des Cinq-Cents aura proposé la mise en jugement que le Conseil des Anciens l'auro décrété.Hors le cas du flagrant-délit, les membres du Corps législatif ne peuplent être amenés devant les officiers de police, ni mis en état d'arrestation, avant que le Conseil des Cinq-Cents ait proposé la mise en jugement, et que le Conseil des Anciens l'auro décrété.

Hors le cas du flagrant-délit, les membres du Corps législatif ne peuplent être amenés devant les officiers de police, ni mis en état d'arrestation, avant que le Conseil des Cinq-Cents ait proposé la mise en jugement, et que le Conseil des Anciens l'auro décrété.”

The Constitution de l'an VIII was the act that changed the historical pattern of the concept. Not only did it establish and unequal relation between the Executive and the Legislative powers, but it also led to the establishment of the personal political regime of Napoleon Bonaparte. On the one hand, the Executive was composed of three Consuls, but the actual power was in the hand of the First Consul, namely Napoleon Bonaparte. On the other hand, the legislative institution was divided into le Sénat Conservateur, le Tribunat and le Corps Législatif. Turning to the question of immunity, this act emphasized that:

„les fonctions des membres soit du Sénat, soit du Corps législatif, soit du Tribunat, celles des consuls et des conseillers d'État ne donnent lieu à aucune responsabilité. Les délits personnels emportant peine afflictive ou infamante, commis par un membre soit du Sénat, soit du Tribunat, soit du Corps législatif, soit du Conseil d'État, sont poursuivis devant les tribunaux ordinaires, après qu'une délibération du Corps auquel le prévenu appartient, a autorisé cette poursuite“.

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45 Constitution of 24th of June 1793, Art. 43, 44: [Members cannot be searched, charged or tried at any time, for the opinions they set out in the Legislative Body. They can, on a criminal charge, be entered in flagrante delicto: but the arrest warrant or the warrant cannot be issued against them without the authorization of the Legislative body.]
46 Constitution of 22 August 1795, Art. 110.
47 Constitution of 22 August 1795, Art. 111- 123.
48 Constitution of 13th December 1799, Art. 69, 70.
All these being mentioned, we can state that the omnipotence of the executive power led to the decline of the role of the parliament and the parliamentary immunity as well, at the beginning at the nineteenth century.

However, in Romania we cannot speak about parliamentary immunity in the early eighteenth century for the reason that the institution of the parliament was not yet developed. Therefore, the immunity during the period of French Revolution was still considered in Romania a feudal institution and a privilege granted to landlords and to churches and monasteries. Only in mid-eighteenth-century, in 1866, the term entered into political and constitutional life, borrowing the French tradition of inviolability.

**b. Parliamentary immunity and its extension to the Philosophy of History**

The story has been constructed in such a way that the historical concept of immunity could be characterized by a gradual evolution, both in meanings and domains. In order to expose a comprehensive introduction of the term of immunity in the area of philosophy of history, I will begin with the embryonic definition of this domain. Voltaire’s coining of the term of ‘philosophy of history’, translated in present times as “critical cultural history”, conceived history both as a discipline and a method\(^{49}\). In my attempt of analyzing the (parliamentary) immunity, I will make use of history to draw the construction of this particular concept and culminate in understanding its present usage based on analytical reasoning.

How is the concept of immunity transposed to philosophy? This will be the first question that I will address in my research in the field of philosophy of history. The true picture starts in the eighteenth century, when immunity is characterized as a transitional concept bearing in mind that its meanings have been fluctuating in several disciplines. The term enters the field of medicine and, as follows, the medical origins will simplify the interpretation of its meanings, in Koselleck’s belief. The medical origins go back to 1775\(^{50}\), when the Dutch physician Van Sweiten used for the first time the term *immunitas* in order to explain the smallpox’s effects on the human body\(^{51}\). In the middle 19th century, the famous French physiologist Claude Bernard used this term of immunity in order to understand how to manage health and how to resist disease, providing a substantial theoretical framework for the development of independent organisms, namely the term of the immune system. Thus, Claude Bernard is considered to be the father of the whole concept of immunity.

As the story goes, the medical terminology gives birth to the concept of *corporeal atomism*\(^{52}\), in other words the independence of the human body. Claude Bernard’s definition of

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\(^{50}\) See Stanford Encyclopedia of Philosophy.


independent body, protected by external factors is transferred later on, as a revolutionary approach, to liberal political philosophy, and Comtian sociology. In essence, the medical origins of immunity as an autonomous human body played an essential role in redesigning immunity as political, social and economical independent body.

The concept of immunity, in the parliamentary context, developed through the centuries the broadly accepted meaning of parliamentary privilege. This privilege, being addressed rather to the Parliament as a whole and not only to the person of the parliamentarians, aimed at providing the necessary framework for the members to exercise the institutional powers without any constants, and in others words, to be immune in front of the ordinary law. Evidence for in support of this position, can be found in one of the most important work on British parliamentary procedure, Erskine May’s Treatise on the Law, Privilege, Proceedings and Usage of Parliament, published in 1844 and later on updated, also known as “Parliamentary bible”:

“Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively… and by Members of each House individually, without which they could not discharge their functions, and which exceeds those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.”53

From its origins and until the present times, the application of the parliamentary immunity represents a mark of the separation between the legislative and the executive branches from the point of view of the functions and responsibilities. Taken this into consideration, the connection between politics and philosophy is built in the light of understanding the interdependency relation between parliamentary immunity and the separation of legislative and executive power.

Parliamentary privilege is also a concept which in philosophy of thought embraces the principle of popular sovereignty54, emphasizing the fact that members of the Parliament are the servants of the people’s will. Furthermore, parliamentary immunity should not separate the representatives from the people in any matter, because the individuals are the masters who hold the legislators, which are the servants, accountable. In brief, parliamentary immunity is a mechanism that doesn’t separate the representatives from their constituents, but on the contrary, assures the integration between the parliamentarians and the voters.

Popular sovereignty also reflects the fact that there should be a mechanism of protecting the self-dealing. It was Josh Chavetz who used this term in his book, Democracy’s Privileged Few, arguing that when the legislators follow their personal interest, rather than the interest of the people of action, the legislative self-dealing is inevitable55. In the same manner, Anthony Smith, in his study An economic theory of democracy, described the personal motivation of

53 Thomas Erskine MAY, op.cit., p.69.
54 The concept of popular sovereignty was used in the American Revolutionary though with the meaning that the sovereignty is in the hands of all the people and not detained by only one indivual, namely the monarch.
the representatives arguing that they follow, firstly, their own interest and, secondly, the welfare of the society.\textsuperscript{56}

Another aspect, regulated by the popular sovereignty, is the protection of citizens’ rights. In this regard, the best solution to insure that all their rights are adequately respected and not violated is the separation of powers among the branches of the government. In this case, the reflection of politics in the philosophy’s mirror is translated in the parliamentary immunity or privilege seen as a doctrine of the separation of powers. In order to understand this analogy, let’s look back into “Esprit des Lois” (1748), Montesquieu’s pleading in favor of a separation of powers. Appearing as a reaction to the royal absolutism of the eighteenth century, the separation of powers was considered the guarantor of a free regime and moderate government, the instrument through which “le pouvoir arrête le pouvoir” and the protection of freedom is correspondingly acquired. In this context, the parliamentary immunity or privilege is regarded as a part of the whole process of defining the separation of powers and as the element vitalizing the branches of the political system. In the same light, James Madison, Alexander Hamilton and John Jay, in their \textit{Federalist Papers}, introduced a rough definition of the separation of powers, emphasizing that:

“the accumulation of all power, legislative, executive and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”\textsuperscript{57}

Hence, in the case of the separation of powers, parliamentary privileges should assure the discrete separation of powers and allow the Parliament to work without any interference from outside threats.

\section*{VI. PARLIAMENTARY IMMUNITY IN THE NINETEENTH AND TWENTIETH CENTURIES IN FRANCE AND ROMANIA}

Even if the era of the French Revolution had apparently ended, the effects were still present in the new established order. Along with the Constitution of the Year VIII the power of the French legislative diminished considerably and we are witnessing the omnipotence of the executive concentrated in the hands of the first Consul. The idea of protection of the deputies was just a façade since the preeminence of the executive has played the central role in the political life. Even though the balance of power between the legislative and executive power was slightly changed along with Louis XVIII’s Constitution, the Government still had the authority to influence any initiative or decision. Without any provisions concerning the protection and independence of the members of the two Chambers toward the executive, the idea of inviolability disappear and the parliamentarians had only an \textit{aura} of power.\textsuperscript{58} Thus,

\textsuperscript{58} All the articles of the constitution dedicated to \textit{Chambre de pairs} and the \textit{Chambre des députés} contain no special protection such immunity of the members. For the responsibilities of the two chambers of the Parliament see articles 24-53 from Charte Constitutionnelle du 4 juin 1814.
for a period of almost 31 years (1799-1830) parliamentary immunity as an institution and also as an idea of independence and freedom disappeared and the Parliament was then reduced to silence.

The events that followed the July Revolution (1830), when the constitutional monarchy of Louis VIII was changed with the one of Louis-Philippe, Duke of Orléans, produced no significant contributions in the sphere of parliamentary privileges. An important result of the revolution was the pact between Legislative, which has given back the right to initiate legislation, and the Executive institution in order to exercise sovereignty together. Not until the Revolution of 1848, changes became visible in the parliamentary life. On the one hand, the Legislative Assembly was opposed to the President Louis-Napoléon Bonaparte, both elected on the basis of universal suffrage and on the other hand, the separation of powers was well consolidated and none of the institutions could interfere in the other one’s activities. In the new drafted constitution, the parliamentary immunity was once again added as a basic principle of the constitutional life. The act emphasized that:

“les représentants du peuple sont inviolables. Ils ne pourront être recherchés, accusés, ni jugés, en aucun temps, pour les opinions qu'ils auront émises dans le sein de l'Assemblée nationale. Ils ne peuvent être arrêtés en matière criminelle, sauf le cas de flagrant délit, ni poursuivis qu'après que l'Assemblée a permis la poursuite. - En cas d'arrestation pour flagrant délit, il en sera immédiatement référé à l'Assemblée, qui autorisera ou refusera la continuation des poursuites. Cette disposition s'applique au cas où un citoyen détenu est nommé représentant”.

The political unrest led Louis-Napoléon Bonaparte to dissolve the National Assembly in 1851 and to promulgate a new constitutional act in 1852 - the foundation of the French second Empire. Similar to the one of the First Empire, this Legislative body was controlled by an omnipotent and omnipresent Executive. But, from 1860 until 1870 important changes occurred allowing the Senate and the Legislative Body the right to interpellate the government and publish their debates. We are thus witnessing an evolution towards parliamentary regime.

Onward the parliamentary Acts from 1875, a new constitutional order was established when the Chamber of Deputies and the Senate, representing the legislative power, exercised an abounding power over the government and the legislative initiatives. The members of both Houses enjoyed the privilege of immunity as it was stipulated in articles 13, 14 covering the freedom of speech and inviolability. The term continued to be used until 1946 without interruption in the political and constitutional life, despite the crisis and the collapsing governments that succeeded.

The constitution of the Fourth Republic of 1946 established as the previous one, the authority of the legislative body. If in the previous constitutional act immunity was limited to parliamentary sessions, this new one extended immunity even outside the parliamentary sessions. But this won’t last long because the constitutional revision of 1954 decided again its limitation to sessions, by adding some exceptions as mentioned in the 22nd article and the exemption from final-conviction as well.

60 Constitution of 1852, Second Empire, Titles IV and V.
Finally, the Constitution of 1958 establishing the French Fifth Republic reiterated the question of (partially) inviolability during and after the parliamentary session, which was also known as “immunité à eclipses” in the Constitutional Dictionary edited by Olivier Duhamel and Yves Mény. However, the constitutional law no.95-880 of 4 August 1995 modified the 26th Article concerning the regime of the parliamentary inviolability:

“Aucun membre du Parlement ne peut être poursuivi, recherché arrêté, détenu ou jugé à l'occasion des opinions ou votes émis par lui dans l'exercice de ses fonctions. Aucun membre du Parlement ne peut faire l'objet, en matière criminelle ou correctionnelle, d'une arrestation ou de toute autre mesure privative ou restrictive de liberté qu'avec l'autorisation du Bureau de l'assemblée dont il fait partie. Cette autorisation n'est pas requise en cas de crime ou délit flagrant ou de condamnation définitive.”

Therefore, after the modification of the original version, the prosecutions and all the coercive measures to be applied during the parliamentary sessions were allowed only with the authorization of the Assembly:

“La détention, les mesures privatives ou restrictives de liberté ou la poursuite d'un membre du Parlement sont suspendues pour la durée de la session si l'assemblée dont il fait partie le requiert. L'assemblée intéressée est réunie de plein droit pour des séances supplémentaires pour permettre, le cas échéant, l'application de l'alinéa ci-dessus.”

All in all, the 26th article defined the present application of parliamentary immunity in France as a disposition of the parliamentary statute providing the members of the Parliament with both irresponsibility and inviolability of their activities during their mandate, the later being questioned only at the Assembly’s requirement.

To conclude, the French constitutional history could be described by the specialists as exceptional indeed. The creation of a French society during the French Revolution generated the need of a French government that embraces all the revolutionary inquiries and reclamations. The creation of such a government agreed by all parties was delayed by different factors that put all together resulted in a difficult process of dealing with different political regimes (empire, constitutional monarchy, parliamentary republic) and 15 Constitutions between 1789 and 1958, when the latest Constitution established the French Fifth Republic.

Turning to Romanian case, the year of 1866 represents the historical moment when the term of immunity stopped from being used as a feudal institution and started to be introduced in politics, especially in the domestic constitutional life. Moreover, from a constitutional point of view, this was the moment when “the new Romanian stat has acquired the necessary tools to fulfill its responsibilities: a strong executive to ensure government of the country, a parliament representing a variety of opinions and political parties to serve as a mechanism to

61 See Olivier DUHAMEL, Yves MÉNY, Dictionnaire constitutionnel, PUF, 1re édition, 1992, p. 488.
62 Constitution of 4 October 1958, Art. 26 modified by the constitutional law no.95-880 of 4 August 1995 - art. 7.
63 Idem.
change and create legal codes and to encourage social stability and economic progress”\textsuperscript{64}. Focusing our analysis on the separation of powers, we can observe that \textit{Domnul} (the Lord), together with the \textit{Reprezentățiunea Națională} (the National Assembly) exercised the legislative power collectively.

\textit{“Puterea legislativa se exercita colectiv de către Domn și Reprezentățiunea națională. Reprezentățiunea națională se împarte în duoe Adunări: Senatul și Adunarea deputaților.”}\textsuperscript{65}.

The term \textit{imunitate parlamentară}, borrowing the same meanings from the French \textit{immunité parlementaire}, was regulated in Title III, Art. 51 and 52. The first article emphasized that none of the members of the two Chambers could not be prosecuted or persecuted for their opinions and votes. Furthermore, during the session of the Parliament the representatives could not be prosecuted or arrested in terms of repression, without the consent of the Assembly, unless the blame or the crime was obvious. Detention or prosecution of a member of the Chambers could be suspended, during the whole session, if the Assembly required. Immunity as a freedom of speech, mentioned in the Constitution of 1866 and in force until Romania’s participation in the First World War, hadn’t been formally restricted because the Articles 51 and 52 were entirely respected\textsuperscript{66}. The fact that the members of the Parliament could express themselves freely, both within and outside the Parliament, sets the basis for functional system of privileges. In relation to the executive, the debates could not influence or intimidate the government, which has encouraged the lawmakers to express their views through speeches in both Chambers concerning the draft response for the throne’s message, inquiries, and amendment proposals on draft laws. Regarding the relationship with the Monarch as head of state, his involvement was moderate, “being careful not to disturb the delicate balance between the two Chambers and Government” \textsuperscript{67}.

Following the constitutional evolution and concentrating our attention on the immunity provisions, we observe that the second Constitution of 1923 did not bring any changes. Elaborated by the National Liberal Party and voted by the Chamber of Deputies on 26 March, this constitutional act was vehemently challenged until its adoption. Largely inspired by the Constitution of 1866, which has suffered changes over time, this new constitution was appreciated even outside the borders\textsuperscript{68}. Therefore, the constitutional heritage concerning the parliamentary immunity remained unchanged\textsuperscript{69} and continued its logics also under this fundamental act.

\textsuperscript{64} I	extit{oan STANOMIR}, \textit{Naşterea Constituţiei. Limbaj şi drept în Principate până la 1866}[The birth of the Constitution. Language and Law in Romanian Principalities until 1866], Nemira, Bucureşti, 2004, p. 400.

\textsuperscript{65} Romanian Constitution of 1866, published in the Official Gazette no. 142/1866, Title III, Art. 32 [The legislative power is exercised collectively by the Lord and National Assembly. The last one is divided into Senate and Deputies Chamber].

\textsuperscript{66} Marian ENACHE, Mihai CONSTANTINESCU, \textit{Renașterea parlamentarismului în România [Rebirth of parliamentarism in Romania]}, Polirom, Iaşi, 2001, p. 37.

\textsuperscript{67} Idem.

\textsuperscript{68} Eugen PLUGARU, „Evoluția dreptului românesc în perioada 1700-1923[The evolution of Romanian Law from 1700-1923]”, \textit{Revista Noema}, vol. 2 nr. 1, 2003

\textsuperscript{69} Romanian Constitution of Articles 1923 published in Official Gazette no. 282/29\textsuperscript{th} March 1923, Art. 54, 55.
The royal dictatorship of Charles II on 11 February, 1938, opens a long period of significant political change: from an authoritarian political, civil and military systems (1938-1944) to a totalitarian political one (1947-1989). The 1938 constitutional draft meant to instate a personal political regime of King Charles II who limited and controlled the institutions. Substantial changes on parliamentary immunity were not made, but the excessive domination of King Charles II was visible in all political powers. Thus, the parliamentary political mechanisms stopped working and parliamentary immunity became a default decoration tool.

The evolution of parliamentary regime was interrupted by the new political and constitutional realities of the communist regime. Therefore it would be useless to analyze the parliamentary immunity in this era because we are witnessing a change of regime, which pushes the Romanian society into an atrophied political space, led by communist ideology, not allowing the freedom of expression.

It was the Romania Revolution of 1989 that allowed the return to a democratic regime with free and representative institutions. The new political order brought major changes both in the institutional architecture of the state and in socio-political life. With the Constitution of 1991 the Parliament became “the supreme representative body of the Romanian people and the sole law-making of the country” and the parliamentary immunity was included in Art. 69 and 70 in the sense of the non-liability and inviolability of the members of the Parliament. By the end of the twentieth century, the Constitutional Court played an important role in shaping the present meaning of the parliamentary immunity, adjudicating on the constitutionality of laws, Standing Orders of the Parliament. From the beginning of 1991 and until the Constitutional revision in 2003, the Constitutional Court through its advisory opinions had a significant contribution to the clarification of the theoretical and practical aspects of parliamentary immunity.

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73 Decision no. 45/1994 regarding the constitutionality of the Standing Orders of the Chamber of Deputies; Decision no. 46/1994 regarding the Standing Orders of the Senate. The Constitutional Court gave its advisory opinions and objections as to the unconstitutionality, firstly concerning art. 149, paragraph (2) regarding the prosecution of the senators which did not meet the same criteria as art. 69 from the Constitution stipulating only the abusive prosecution and contravention. Secondly, paragraphs (5) and (8) of the same article were declared unconstitutional stipulating a new method of suspension of immunity. Decision no. 63/1997 regarding the effects of lifting the immunity was once again subject of debate for the Constitutional Court. Judges of the Court gave their opinion concerning the fact that the end of immunity must coincide with the end of the parliamentary term, and therefore, a member of the parliament will benefit again from this guarantee only if/after he/she will gain a new mandate. The last aspect regarding the parliamentary immunity referred to its lifting by secret ballot with two thirds of the senators or deputies participating in the session. The decision of the competent comities was based on the argument that there aren’t any national laws, in none of the counties, which would stipulate the fact that parliamentary immunity should be lifted with such a great majority. Consequently, the Constitutional Court gave its opinion, through Decision no. 6/1999, that parliamentary immunity should be lifted by a simple majority of the senators and deputies participating in the session.
VII. CONCLUSION: PRESENT USAGE OF THE CONCEPT

From the twentieth century until present, there have been a sizable body of literature about the variety of meanings attached to this concept, but in reality only few of them managed to offer the needed precision. “Parliamentary immunity” as a political concept coined as a reaction to internal struggles between the legislative and executive powers (as we have describes above in the French and Romanian modern constitutional histories) managed to reach the current stage, evolving along with terms like independence, freedom of speech and democracy. As far as the present usage goes, the concept continues to represent a catchword, used with its accurate meanings only by a few scholars and in limited circumstances. Therefore, when consulting the benchmark studies analyzing the parliamentary immunity, we could observe that either they are historically limited to a certain period of time, or they present only the normative rationality of parliamentary immunity. Ever since the concept of immunity has become a part of the parliamentary life, the amount of studies making reference to this term in their titles has quickly increased. Not only do they present parliamentary immunity as an institution of a democratic state, but they also explain the constitutional and technical meanings of the term, whose attributes are little known to public, despite its continuous presence in every day experience.

In France as well as in Romania, parliamentary immunity achieved a great theoretical rigor due to the knowledge gained from the historical experience. The experiences that shaped the present usage of the concept in both of the countries are caused and intensified by the process of lifting the immunity. Therefore, if in the first decades the term had a positive understanding, as we reach its present usage, the parliamentary immunity becomes a sensitive aspect of the parliamentary life, due to the critics brought to the elites (the beneficiaries of this privilege) which are increasingly associated with the acts of corruption. Consequently, in present days there is a negative perception of the term related, on the one hand, to the wrong judgment of the people, and on the other hand, to its undefined limits, bearing in mind that sometimes parliamentarians are not consciously aware of the borders of their immunity. Media seem to have a considerable impact on the present meanings of immunity, by exaggerating the use of the term in different headlines creating thus a separation between the correct usage of the term and the imprecise one. Undoubtedly, we are witnessing a shift towards imprecision and vagueness – which could be the sign of a new historical development of this institution.

In the long run, the concept of parliamentary immunity characterized, in both countries, the *institutional bodies* - the conflict between executive and legislative powers -, *epochs* - the birth and re-birth of parliamentary life in Romania and France -, and *humans*\(^\text{76}\) – the members of the parliament, the prime beneficiaries of the immunity. Therefore, the tension between the initial meaning of the parliamentary immunity and its political turmoil of its modern sense\(^\text{77}\) has provided the modern conception of the term with a story to be told.

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\(^{76}\) Reinhart KOSSELLECK, *loc.cit.*, p. 399.

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