Chapter 2
Parliamentary Immunity and the Issues Encountered in Turkey

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ABSTRACT

Parliamentary immunity is the totality of the assurances provided to members of parliament (MPs) for the purpose of public interest. It originates from British parliamentary law. Parliamentary immunity aims to ensure that MPs can perform their legislative duty independently, without being pressurised. In Turkey, parliamentary immunity has been under constitutional protection since 1876, when the constitutional order began. It can be said that Turkey has two fundamental chronic problems when it comes to this matter. First, inviolability is misused to protect MPs against allegations of corruption. Second, there are no objective criteria regarding the lifting of inviolability. This situation provides ruling parties having parliamentary majority with a wide discretionary power and creates a tool for putting political pressure on the deputies of opposition parties. Besides this, the constitutional amendment made in 2016 has brought about many problems and caused the political sphere and freedom of speech to be diminished.

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INTRODUCTION

Parliamentary immunity is a constitutional institution which began to take place in the constitutions of all democratic countries beginning from the end of the 18th century and which aims to ensure that parliamentarians perform their duties independently. Thanks to parliamentary immunity, both the freedom of expression of parliamentarians is assured and it is also aimed to protect them against harassment and interventions from executive organs or political opponents.

Presently, parliamentary immunities are divided into two groups. That is, there are two types of privileges and immunity provided to parliamentarians. The first of these is parliamentary non-liability which aims to protect freedom of speech in the course of parliamentarians’ legislative activities. The second is parliamentary inviolability which protects parliamentarians from arbitrary detainment, interrogation, arrest or trial, factors that can prevent them from performing their legislative duty.

Parliamentary non-liability was born in Britain and the constitutional orders of Europe are influenced by British parliamentary law. In our day, there is little debate in democratic countries about the existence and function of parliamentary non-liability. The immunity of parliamentarians in this manner is considered to be necessary for a democratic system. It is observed, however, that national legislation on parliamentary inviolability varies significantly between countries and that there is more debate in this area. It should be mentioned that the liberal democratic constitutions of our time tend to regulate parliamentary inviolability in a narrower way.

It is a fact that inviolability is basically intended to protect the legislative function of MPs. The goal of this institution is not to provide a privilege to MPs, but to protect them from prosecution that might be started based on political pretexts. But although parliamentary inviolability is an assurance provided to MPs to allow them to securely fulfil their duties while taking public interest into account, sometimes it can be transformed into a personal privilege. This results in an abuse of the institution of inviolability. Allegations of MP corruption, in particular, are at the centre of such debates. On the other hand, in those countries which have not fully embraced objective criteria regarding exceptions to and the lifting of inviolability, this institution can be transformed into a means of pressure against opposition parliamentarians.

Building upon these observations, the current study will address the problems produced by the constitutional regulations and implementation of parliamentary immunity in Turkey. Within this frame, the study will discuss the conceptual and historical origins of parliamentary immunity, the European standards on legislations regarding parliamentary immunity and, finally, the legal basis of parliamentary immunity in Turkey and the related problems.
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