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PARLIAMENTARY IMMUNITY IN THE INTER-AMERICAN SYSTEM: THE (UN)CONVENTIONALITY OF THE “IMMUNITY AMENDMENT” IN LIGHT OF THE CASE OF MÁRCIA BARBOSA DE SOUZA V. BRAZIL

AUTHORED BY - MARINA SOARES DA FONSÊCA

Federal University of Rio Grande do Norte

CO-AUTHOR - THIAGO OLIVEIRA MOREIRA

Federal University of Rio Grande do Norte

Abstract

Parliamentary immunity is a constitutional mechanism intended to safeguard the independence of legislative representatives and the proper functioning of democratic institutions. However, when extended to ordinary criminal proceedings unrelated to the exercise of legislative functions, it may operate as a mechanism of impunity and undermine access to justice. This article examines the (un)conventionality of the Brazilian “Immunity Amendment” (PEC da Blindagem) in light of the standards established by the Inter-American System for the Protection of Human Rights, with particular emphasis on the case of *Márcia Barbosa de Souza et al. v. Brazil*. The study adopts a qualitative, exploratory, and analytical approach, based on bibliographic and documentary research and on the analysis of Inter-American and Brazilian legal sources, including decisions and reports of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, as well as constitutional provisions and legislative proceedings concerning parliamentary immunity. The analysis demonstrates that the requirement of prior legislative authorization for the criminal prosecution of parliamentarians, as proposed by the PEC, reproduces a mechanism previously identified by the Inter-American system as an obstacle to access to justice and accountability. In particular, such a mechanism raises concerns under Articles 8 and 25 of the American Convention on Human Rights, concerning due process and effective judicial protection, respectively. The study concludes that the expansion of parliamentary immunity beyond its institutional purpose is incompatible with the inter-American human rights framework and may constitute a form of institutional regression. Accordingly, constitutional prerogatives must be interpreted in accordance with

international human rights obligations, ensuring that parliamentary independence does not become a shield against judicial accountability or a source of structural impunity.

Keywords: Parliamentary immunity; Inter-American Human Rights System; Conventionality control; Access to justice; Accountability; *Márcia Barbosa de Souza v. Brazil*; Constitutional amendment.

1 INTRODUCTION

Designed to safeguard the independence of elected representatives and ensure the proper functioning of democratic institutions, parliamentary immunity is a fundamental institution in contemporary constitutionalism. In its classical formulation, it serves to protect the office from political persecution or potential judicial retaliation that might compromise legislative activity. However, the historical context in Brazil reveals a repeated use of this mechanism for purposes other than its original protective function, serving, on several occasions, as a barrier to the prosecution of common crimes committed by political figures. Such a distortion creates a climate of impunity that undermines the effectiveness of democracy.

From this perspective, one of the landmark cases in this issue was *Márcia Barbosa de Souza v. Brazil*, decided by the Inter-American Court of Human Rights (IACHR) in 2007. The murder of student Márcia Barbosa, committed by Aécio Pereira, then a state representative from Paraíba, was hindered by the requirement that the Paraíba State Legislature grant authorization for the criminal proceedings to proceed.

Against this backdrop, the progress of the Proposed Constitutional Amendment known as the “Immunity PEC” has reignited debates, as well as concerns regarding the misuse of parliamentary immunity. The proposal aims to reestablish the requirement for legislative authorization to prosecute representatives and senators, thereby restoring a model that has already been condemned by the Inter-American System.

Given this context, the following question arises: What are the implications of the possible approval of the “Immunity” Constitutional Amendment Proposal (PEC) in light of Brazil’s international obligations under the Inter-American System for the Protection of Human Rights (SIPDH)?

Based on this question, the purpose of this paper is to analyze the implications of parliamentary immunity and the “PEC da Blindagem” under the Inter-American Human Rights System, using the case of *Márcia Barbosa de Souza v. Brazil* as a reference. To achieve this objective and answer the question raised, it is necessary to: (i) present the general aspects of the Inter-American System for the Protection of Human Rights (IASHR); (ii) analyze the case of *Márcia Barbosa de Souza v. Brazil*, highlighting the role of the Inter-American Commission on Human Rights and the judgment of the Inter-American Court, particularly regarding the violations identified; (iii) examine parliamentary immunity in Brazil; (iv) investigate the “Immunity Amendment” (PEC da Blindagem), assessing its compatibility with the Inter-American System and the risk of reviving practices of parliamentary impunity; and (v) reflect on its impacts on the protection of human rights and the interpretation of parliamentary immunities within the Brazilian legal system.

To this end, this study adopts a qualitative approach—both exploratory and analytical—based on a literature review conducted through an analysis of documents available on the websites of the Inter-American Commission on Human Rights (IACHR), the Inter-American Court of Human Rights (IACHR), the Chamber of Deputies, and the Federal Senate. In addition, a normative analysis will be conducted to understand inter-American standards regarding the application of parliamentary immunities and the criminal liability of political officials, particularly with respect to common crimes not directly related to the exercise of an elected office, with special attention to the case of *Márcia Barbosa de Souza v. Brazil*.

In turn, the relevance of this study lies in the need to identify the risks of institutional regression and to reinforce the importance of aligning the Brazilian legal system with international human rights commitments, in line with the strengthening of the democratic rule of law.

Thus, the aim is to broaden understanding of the relationship between parliamentary immunity, constitutionality review, and the Inter-American System for the Protection of Human Rights, fostering reflection on the political and institutional impacts of the approval of the “Immunity” Constitutional Amendment Proposal (PEC), which could have repercussions both in academic circles and in the work of organizations, government agencies, and institutions dedicated to the defense of human rights and the consolidation of the democratic rule of law.

2 GENERAL ASPECTS OF THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

The consolidation of international human rights protection in the Americas can be viewed within the broader context of the regionalization of international systems for the protection of human dignity, a movement that gained momentum in the immediate aftermath of World War II. Against this backdrop, the states of the Americas established the Organization of American States (OAS) in 1948, with the aim of promoting peace, justice, solidarity, and fundamental rights as the pillars of hemispheric coexistence. Since its founding, the OAS has embodied a commitment to the defense of democracy and the human person, laying the institutional foundations for what would later become the Inter-American System for the Protection of Human Rights (PIOVESAN, 2023).

Also in 1948, the OAS adopted the American Declaration of the Rights and Duties of Man (DADDH), the first international human rights instrument of a general and regional nature, predating even the United Nations Universal Declaration of Human Rights. (CANÇADO TRINDADE, 1998). In this sense, the AADHR represented a normative milestone in the consolidation of a legal culture dedicated to the protection of human dignity in the Americas, by recognizing civil, political, economic, and social rights, while also linking them to ethical duties of solidarity and respect. Although it was not legally binding, the Declaration inaugurated the inter-American corpus juris, which would later be consolidated through treaty instruments and the creation of specialized monitoring bodies (HERRERA; FUCHS, 2021).

Thus, with the aim of enhancing the effectiveness of the promotion and protection of human rights, the IACHR was established in 1959 as an autonomous body of the OAS (MAZZUOLI, 2022). Consequently, it is clear that the Inter-American System for the Protection of Human Rights is built upon a solid historical and institutional foundation that combines normative instruments and oversight bodies. The following sections will address, respectively, the main international instruments that make up the inter-American corpus juris and the bodies responsible for monitoring and enforcing this system, notably the IACHR and the Inter-American Court of Human Rights.

3 THE CASE OF MÁRCIA BARBOSA DE SOUZA v. BRAZIL AND THE ROLE OF INTER-AMERICAN BODIES

The case of *Márcia Barbosa de Souza v. Brazil* is a landmark in Inter-American jurisprudence. The Inter-American Court of Human Rights' decision was instrumental in challenging how parliamentary immunity can hinder access to justice, especially in cases of gender-based violence. Evidence of systemic failure emerged when the Attorney General filed a criminal complaint against then-Deputy Aécio Pereira on October 8, 1998, before the Court of Justice of Paraíba, emphasizing that the case could only proceed if the Legislative Assembly of Paraíba granted authorization, since state legislators could not be criminally prosecuted without prior authorization from their respective legislative body.

In Brazil, the crime of aggravated homicide has been considered a heinous crime since the enactment of Law 8,930 on September 6, 1994—four years before the crime committed against Márcia Barbosa. However, due to the office held by the then-State Representative from Paraíba, Aécio Pereira de Lima, formal immunity prevented his arrest—except in cases of being caught in the act of a non-bailable crime—and also prevented him from being the subject of criminal proceedings without prior authorization from the legislative body.

In this context, the case was initially brought before the IACHR, which reviewed the admissibility and merits of the complaints, recognizing that the requirement of legislative authorization for the criminal prosecution of legislators violated rights enshrined in the American Convention on Human Rights, particularly the right to access to justice and due process of law. The Inter-American Commission emphasized that parliamentary immunity, originally conceived as institutional protection for the independent functioning of the legislative branch, had been distorted, becoming an instrument of impunity.

Thus, in light of the Brazilian State's failure to adopt the necessary corrective measures (ALVES; MOREIRA, 2023), the case was referred to the Inter-American Court of Human Rights, which, in its judgment, recognized Brazil's international responsibility and ordered individual and structural reparations. Among the recommended measures were: the revision of legislation that made criminal prosecution contingent on legislative authorization; the implementation of policies to ensure the independence of the Public Prosecutor's Office; and the guarantee that political officials do not benefit from impunity by virtue of their institutional

position.

In the current context, an analysis of this precedent shows that approving the constitutional amendment proposal (PEC) would not only constitute an institutional setback for the country but could also give rise to new international liabilities for the Brazilian State. Thus, the Inter-American Court's decision serves as an important reminder: any change to the Constitution must respect the standards of the inter-American corpus juris to avoid conflicts and ensure that Brazil fulfills its commitments to the protection of human rights.

In several cases—and particularly in the case of *Márcia Barbosa de Souza v. Brazil*—the Commission acted as a monitoring and mediation body, evaluating both the admissibility and the merits of the petition, and identifying failures by the Brazilian State to comply with its obligations under the American Convention on Human Rights (ACHR).

In light of this, a petition was signed and submitted to the Inter-American Commission on Human Rights on March 28, 2000. The IACHR began its work on the case by analyzing the individual complaint, which challenged the misuse of parliamentary immunities to obstruct criminal proceedings against state representatives in Paraíba.

However, although the petition was submitted to the SIPDH in 2000, it was not until 2007 that the IACHR approved the Admissibility Report for the petition in this case, and it was not until February 12, 2019, that it issued the Merits Report setting forth its conclusions and recommendations (LINHARES; CANUTO, 2023). All documents and evidence were examined, including the decisions of the Paraíba State Legislative Assembly, reports from the Public Prosecutor's Office, legal opinions, and the history of the proceedings against the legislators. Following this analysis, the IACHR concluded that the requirement of legislative authorization for the prosecution of legal actions constituted an illegitimate obstacle. With this conclusion, the Commission confirmed that Brazil had violated fundamental rights, such as access to justice, due process, and equality before the law.

In this proceeding, the Commission emphasized that immunities must be applied proportionately, as they cannot serve as a means of protecting politicians who have committed common crimes. In addition, the IACHR mediated with the Brazilian government, recommending changes to legislation and public administration.

The goal was to ensure that parliamentary immunity would no longer be an obstacle to legitimate legal proceedings. It is worth noting that the failure to fully comply with the Commission's recommendations and the judgments of the Inter-American Court of Human Rights highlights the fragility of national mechanisms for implementing measures to prevent recurrence, particularly with regard to holding public officials with institutional prerogatives accountable (CAMBI; ANDREASSA, 2024).

In the context of the "Immunity" Constitutional Amendment Proposal (PEC), the Commission's actions reinforce the fact that legislative proposals that expand parliamentary immunities without clear criteria could result in international liability for Brazil. It is evident that domestic laws must be aligned with inter-American standards, ensuring that fundamental rights are not sacrificed in favor of political interests.

4 PARLIAMENTARY IMMUNITY, THE CONSTITUTIONAL AMENDMENT PROPOSAL ON IMMUNITY, AND (UN)CONVENTIONALITY

Parliamentary immunity was established to protect the independence of the legislature by shielding representatives and senators from political persecution. However, in practice, this prerogative has often been used to shield politicians from ordinary criminal proceedings, which deviates from its original purpose. This misuse creates serious problems for democracy: it hinders access to justice, allows for impunity, and undermines public trust in institutions.

In this context, the case of *Márcia Barbosa de Souza v. Brazil* represented a milestone in Inter-American jurisprudence by highlighting how the misuse of parliamentary immunity resulted in a structural violation of the right to equality and access to justice for women who are victims of gender-based violence (CAMBI; ANDREASSA, 2024). The legislative process surrounding Proposed Constitutional Amendment No. 3 of 2021—popularly known as the "PEC da Blindagem"—which proposes to restore the requirement for legislative authorization to prosecute members of the Chamber of Deputies and the Senate, represents an attempt to reinstate mechanisms previously condemned by the Inter-American System. The measure raises serious questions regarding its compatibility with the inter-American legal corpus, as it potentially reinforces parliamentary impunity and undermines the effective administration of justice in cases involving political officials.

In its case law, the Federal Supreme Court (STF) has established clear limits on parliamentary immunity. A recent example is Appeal No. 8242 AGR/DF, decided by the Second Panel on May 3, 2022, with Justice Celso de Mello serving as the reporting justice and Justice Gilmar Mendes drafting the opinion. In that case, the STF held that statements made by a congressman on social media—which were defamatory and insulting in nature—were not related to the exercise of his office, and thus parliamentary immunity did not apply.

Thus, the principle of separation of powers cannot be used as an argument to shield legislators from judicial oversight, since legislative autonomy must coexist with constitutional accountability and subjection to judicial scrutiny when fundamental rights are violated (NAVOT, 2008).

According to paragraph 3 of Article 53 of the 1988 Federal Constitution, in cases where charges are filed for a crime committed after certification of election—as occurred in the Márcia Barbosa case—the Federal Supreme Court (STF), as well as any competent courts, must notify the corresponding legislative chamber of the fact. It will then be up to the Legislative Chamber itself, at the initiative of a political party represented therein and by a majority vote of its members, to decide whether the criminal proceedings will be stayed until a final decision is reached in the case.

Before Constitutional Amendment No. 35/2001, however, parliamentary immunity was even broader. Had the proceedings been initiated before that amendment, Aécio Pereira de Lima might have escaped criminal prosecution by decision of his legislative chamber. However, the prosecution did not begin until March 14, 2003—almost five years after the crime—and only because the lawmaker had not been reelected. Thus, the conviction in the trial court was handed down only on September 26, 2007—almost ten years after the murder of Márcia Barbosa.

Proposed Constitutional Amendment No. 3 of 2021 was introduced by Representative Celso Sabino (PSDB/PA) and other co-authors, and aimed to amend constitutional provisions to expand the immunity privileges of legislators. In the Chamber of Deputies, it was approved by a significant majority: in one of the votes, it received 344 votes in favor and 133 against, and was sent to the Senate for review. On September 24, 2025, the Senate Committee on Constitution and Justice (CCJ) unanimously rejected the PEC, with 26 votes against and none in favor, effectively ending the proposal's consideration in the Senate and shelving it.

In this regard, it is observed that legislative interference in judicial matters undermines the principle of the separation of powers and threatens judicial impartiality, since “parliamentary immunity and autonomy cannot be interpreted as unlimited prerogatives, but must be subject to constitutional and judicial review” (NAVOT, 2008).

First, it should be emphasized that the PEC strongly contradicts Article 8.1 of the American Convention on Human Rights (ACHR), which guarantees every person the right to be heard, within a reasonable time, by a competent, independent, and impartial judge or tribunal. By shifting the initial review of criminal prosecution to the legislative sphere, the decision on the admissibility of criminal proceedings is transferred to Parliament, constituting political interference in matters properly belonging to the Judiciary. Second, the proposal also violates Article 25 of the ACHR, which guarantees every person the right to a simple and effective remedy for the protection of their human rights. The requirement for legislative authorization becomes a political filter that renders access to the judiciary illusory, thereby undermining the effectiveness of judicial protection.

It should be emphasized that the review of conformity with international conventions is not a function exclusive to the Judiciary or to bodies linked to the administration of justice. It must be observed by all branches of government since the entry into force of the American Convention on Human Rights (ACHR), in order to ensure that the decisions, actions, and policies of the Brazilian State are more just and balanced. Furthermore, the Court has repeatedly affirmed that the duty to exercise conventionality review extends to all public authorities, including the legislative branch, which must ensure that their actions are consistent with the international human rights obligations assumed by the State.

Recognizing that international human rights treaties have a supra-legal nature is essential, since, in the event of a conflict between domestic law and the ACHR, the latter must prevail, resulting in the inapplicability of the state law (GUERRA; MOREIRA, 2017). Thus, the recent proceedings regarding the “Immunity” Constitutional Amendment Proposal (PEC) raise fundamental questions about the compatibility of the Brazilian legal system with the international standards for the protection of human rights established by the Inter-American System.

By proposing to reinstate the requirement for legislative authorization for the criminal

prosecution of deputies and senators, the PEC seeks to institutionalize mechanisms that, historically, have already been deemed incompatible with the principles of access to justice and due process by the Inter-American Court.

In this context, the National Congress itself deliberated on the constitutional amendment proposal (PEC) and decided to shelve it. Had it not done so, the Executive Branch possesses veto powers. Furthermore, the Judiciary may be called upon to act as a corrective body, declaring the provision unconstitutional and preventing setbacks that compromise effective access to justice and the accountability of public officials (MAGALHÃES; MOREIRA, 2024).

Therefore, this Proposed Constitutional Amendment represents not only a matter of legislative policy but also a significant legal and institutional challenge, as it directly conflicts with the principles of accountability, impartiality, and equality before the law. An analysis of this bill in light of the Inter-American System reveals that parliamentary prerogatives, when diverted from their original function, can become instruments of structural impunity, and that adherence to the Inter-American legal corpus is essential to ensuring that constitutional reforms respect human rights.

5 CONCLUSION

At the conclusion of this analysis, it is evident that parliamentary immunity—although constitutionally designed to protect the independence of the legislative branch—has been used in Brazil as a tool for personal protection, undermining access to justice and fostering impunity for political officials. The analysis of the case *Márcia Barbosa de Souza v. Brazil* found that the requirement of legislative authorization for the criminal prosecution of legislators constitutes a violation of fundamental rights enshrined in the American Convention on Human Rights, including due process, equality before the law, and the right to effective access to justice.

Finally, in the context of the proceedings on the “Immunity” Constitutional Amendment Proposal (PEC), the study revealed that the legislative proposal replicates mechanisms previously condemned by the Inter-American System, posing a concrete risk of institutional regression and the perpetuation of spaces of parliamentary impunity. An analysis of its (in)conformity with the Inter-American Convention, in light of Inter-American case law, indicated that the approval of the PEC could constitute a new violation of Brazil’s international

obligations, requiring the intervention of the Legislative, Executive, or Judicial branches to prevent the implementation of provisions incompatible with human rights.

It can therefore be concluded that the “Immunity” Constitutional Amendment Proposal (PEC) is inconsistent with the Inter-American System for the Protection of Human Rights, and that its eventual approval would require immediate corrective measures to ensure the compatibility of the Brazilian legal system with the State’s international commitments.

The analysis of the Barbosa de Souza case, in conjunction with the discussion on parliamentary immunity, reinforces the principle that institutional prerogatives cannot override fundamental rights; constitutional provisions must be interpreted and applied in a manner that ensures access to justice, the accountability of public officials, and the effective protection of human rights.

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