Not All Mandates Are Equal

The Immunity of Undemocratically Elected MEPs

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The European Parliament, following the recommendations of its Committee on Legal Affairs (JURI), voted against waiving the immunity of two of its Members elected in Hungary, Péter Magyar and Klára Dobrev on the requests of the Hungarian authorities in early October 2025. Péter Magyar is leader of the largest domestic opposition party (Tisza) and most significant challenger of the ruling party, Fidesz, whereas Klára Dobrev leads the formerly most significant opposition party (DK). In determining the fate of representatives elected in a Member State that is no longer democratic, the European Parliament reached the right decision, based on the wrong premises. I argue that undemocratically elected MEPs should enjoy immunity only if they belong to the undemocratic regime's opposition and have no individual record of dismantling or sabotaging democratic institutions.

Undemocratic elections, unequal mandates

The European Parliament currently has both democratically and undemocratically elected Members – with those elected in Hungary most clearly belonging to the latter group. Hungary is no longer a democracy but an electoral autocracy, as it is recognized, for example, by V-DEM (see p. 14), one of the most trustworthy academic regime typologies, and by the European Parliament itself (see 2.). The legal and political circumstances that warrant this categorization have systemic effects that European Parliamentary elections cannot be isolated from. These include, inter alia, the existence of a regime party – profoundly interwoven with the state – that continuously syphons public funds to secure its own political survival and has unilaterally adjusted the electoral system multiple times to manufacture its own majority. In addition, the media landscape and campaign regulation are heavily biased in the regime party's favour, while the independence of the electoral administration and its judicial oversight remains highly questionable. There is no need to rehearse the details to see that, while Hungary still regularly holds elections, it is not currently in a position to hold *democratic* European Parliamentary elections – nor was it in 2024, during the most recent EP elections. It is against this backdrop that a couple of years earlier, András Jakab and John Cotter even considered that those elected in such elections should not have their mandates verified but should be immediately excluded from parliamentary work. The European Parliament should not compromise its legitimacy, they argued, by allowing undemocratically elected representatives among its ranks.

While I disagree with an unconditional call for exclusion, I have recently argued that undemocratically elected MEPs should not enjoy the same moral status as democratically elected ones – and in certain circumstances, this distinction should have consequences for their legal status as representatives. Metaphorically speaking, democratically elected MEPs should be regarded as "opaque": they are entitled to non-interference in the exercise of their rights and privileges as parliamentarians simply by virtue of being democratically elected and thus democratically authorized. By contrast, undemocratically elected MEPs should be regarded as "transparent": they are not democratically authorized and hence are not entitled to non-interference merely because they have been elected as MEPs. Instead, other MEPs may engage with them in any way that is instrumentally necessary to fulfil either *their own* duties as representatives or the collective duties of the European Parliament as a whole. For example, in some cases, democratically authorized representatives might need to rely on their

undemocratically elected colleagues to pass a resolution or support a legal act that they owe European citizens their effective support for. In other cases, democratically authorized MEPs should call out or isolate undemocratically elected colleagues to protect the legitimacy of the Parliament and that of its co-legislated legal acts. To decide whether MEPs should cooperate with, protect, or rather isolate or exclude undemocratically elected colleagues in a given context, they need to scrutinize these colleagues to a far larger extent than democratically elected ones – this is what the opacity vs. transparency metaphor conveys. But should Parliament protect or rather waive the immunity of its undemocratically elected members? Is there any reason for the latter to enjoy parliamentary immunity at all?

Immunity for some or for all

The immunity of a parliamentary representative serves to protect the legitimate political activities of two subjects: the mandate-holder as an individual and the legislative assembly that she is a member of, as a collective. For democratically elected MEPs, both of these considerations are relevant. First, they gained democratic authorization in a democratic election, hence they legitimately pursue political activities as individual MEPs. Second, their activities should also be protected as part of the collective representative work of Parliament as a whole. These considerations are not just a matter of parliamentary ethics but are also legally enshrined. The *Rules of Procedure* provide that "[i]n exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative assembly and to ensure the independence of its Members in the performance of their duties" (Rule 5, Para. 2). Moreover, the *Principles for Immunity Cases*, laid out by the Committee on Legal Affairs, further clarify that "[t]he purpose of parliamentary immunity is to protect Parliament and its Members from legal proceedings in relation to activities carried out in the performance of parliamentary duties and which cannot be separated from those duties" (Part I, 3.).

In this light, when deciding on the immunity of democratically elected MEPs, all there is to decide is whether the legal proceedings that led to a request for waiving their immunity raise a *fumus persecutionis*. That is a suspicion, based on concrete evidence, that the proceedings aim to undermine the concerned parliamentarians' political activity in their capacity as MEPs. This is indeed what the reports of the Committee on Legal Affairs determine.

But what about undemocratically elected MEPs? The Committee on Legal Affairs has indeed established a *fumus persecutionis* in all the requests concerning Magyar (see here, here, and here), as well as in the request concerning Dobrev. Yet in these cases concerning undemocratically elected MEPs, the *fumus persecutionis* alone should not be sufficient. As individual representatives, these MEPs gained their mandates in elections that cannot democratically authorize representatives. Henceforth, regardless of the authorities' intention in requesting a waiver of immunity, it is far from clear that an undemocratically obtained mandate warrants protection against such actions.

Decisions on the immunity of undemocratically elected MEPs

If only individual mandates mattered for immunity, a decision on whether to waive it would be another occasion for Parliament to correct what seems to be a bug in the system: a parliamentary mandate without democratic authorization. Whether European Parliament elections were undemocratic in a Member State – and hence which MEPs lack undemocratic authorization – is a question that Parliament itself must answer. Just like any other question on which a decision about immunity is based. Yet the answer should be guided by normative criteria set out in EU law and sources of factual expertise and expert evaluations, such as academic regime typologies and independent election observation reports.

Excluding undemocratically elected MEPs by waiving their immunity, potentially leading to their removal from office, would not disrespect their democratic authorization, as (sadly) they have none. Arguably, for the same reason, such a decision would

be a step for Parliament to "uphold its integrity as a democratic legislative assembly". Whatever reason Member State authorities may have to request the waiving of the immunity of such representatives, the most straightforward reason to protect their mandates is missing. They should not enjoy a presumptively protected status simply on account of being elected. Their individual mandates are not clearly worth protecting, and their undemocratic pedigree provides an additional reason against doing so. Hence, the first consideration above cannot justify their immunity.

Needless to say, political persecution is always objectionable, whoever is targeted – with or without democratic authorization. Thus, if Parliament has the means to protect someone from persecution by granting legal immunity, it has a *pro tanto* moral reason to do so. Yet *personal* protection against political persecution is ultimately distinct from the function and purpose of parliamentary immunity, unless it simultaneously serves to protect an adequately authorized mandate or the representative assembly as a whole. Parliamentary immunity is more than, and distinct from, refugee status, after all: "not a Member's personal privilege but a guarantee of the independence of Parliament as a whole, and of its Members" (Rules of Procedure, Rule 5, Para. 2).

The question, then, is whether undemocratically elected MEPs' mandates should be protected based on the second consideration: as a necessary instrument for Parliament to carry out its legitimate (collective) political work. But when does their immunity serve to protect the political activities of the European Parliament as a whole, "in the performance of parliamentary duties"? To answer that question, we need an ethics of parliamentary work: an account of the values and principles that should guide Parliament's and its Member's activities, including the collective duties of Parliament and its Members' contributions to their fulfilment. Such an account both extends beyond and informs the interpretation of the explicitly codified, overtly legalized ethical rules and principles that form part of the *Code of Conduct for Members of the European Parliament regarding Integrity and Transparency*. I defend such an account of parliamentary ethics that includes a collective duty of Parliament to provide *surrogate representation*. That is, a duty to ensure that citizens of undemocratic Member States, whose interests and views are not adequately represented due to autocratic developments, nevertheless have representation. Democratically elected MEPs cannot fulfil that duty without the help of some MEPs elected (albeit undemocratically) in such Member States. But neither can they simply assume such MEPs will contribute to fulfilling that duty. Instead, they need to assess how likely the MEPs concerned are to assist in carrying out Parliament's duties of representation. This, in turn, depends largely on two factors: exactly how they won their mandate, and how democratically minded they are.

Contributing to the fulfilment of Parliament's collective duties of representation

First, even if MEPs gained their mandates in elections that cannot confer democratic authorization in general, it matters *how* MEPs gained their mandates in such elections. MEPs associated with the domestic regime-party (e.g., Fidesz in Hungary) have most likely benefited from the tilted electoral playing field. By contrast, MEPs associated with the regime-opposition (e.g., as of 2025 in Hungary, Tisza or DK, the respective parties of Magyar and Dobrev) won despite the electoral playing field tilted against them. Thus, there is more reason to assume that the latter group are reliable sources on the interests and views of voters who are inadequately represented in autocratic elections, both domestically and at the European level. When Parliament attempts to represent such voters, these MEPs are worth consulting, listening to, and deliberating with, even if they have not been elected democratically. Their inputs are crucial to the fulfilment of a collective duty of surrogate representation.

Second, the individual track record of MEPs serves as a proxy to how democratically minded they are, and hence to how trustworthy collaborators they are in fulfilling Parliament's collective duties. Some MEPs have worked to protect democracy either at home or in the European Union or both – or at least showed benevolent indifference to the future of democratic

institutions. Others, meanwhile, have worked to dismantle democracy or sabotage democratic institutions, domestically or in the EU – or both. The latter MEPs are not trustworthy collaborators with whom the European Parliament could effectively discharge its collective duties of surrogate representation. Yet, again, among undemocratically elected MEPs, it is typically those affiliated with the opposition of the regime-party who have a good track record in this regard.

The above two questions could arise, of course, with regard to democratically elected MEPs too. But their democratic authorization implies "opacity": i.e., that these questions should not even be considered in deciding over their immunity. They are legitimate representatives in their individual capacity, and hence their status cannot depend on whether or not they are instrumental in fulfilling the collective duties of Parliament.

But is it really necessary to consider the above questions to decide on the immunity of undemocratically elected MEPs? Imagine that the current regime party, Fidesz, loses the general parliamentary election in 2026; Tisza wins and instructs the Prosecutor General to bring unfounded charges against Fidesz MEPs. Why is *fumus persecutionis* insufficient to protect their parliamentary immunity? Before all else, this is a highly unlikely scenario: in electoral autocracies, the regime party typically retains control over a wide range of state institutions even after losing the elections. (Hence the legal, moral, and strategic challenges of re-democratization, as developments in Poland show.) For example, in Hungary, Fidesz's parliamentary supermajority elected a new Prosecutor General in 2025 for the next nine years, protecting its affiliates against any charges regardless of election outcomes. Assuming this away, hypothetically, should Fidesz MEPs not be defended against abuses of prosecutorial powers? While everyone deserves protection against political persecution, parliamentary immunity specifically serves to protect an individual mandate with democratic authorization or at least a mandate-holder who can contribute to Parliament's work of representation. If the regime-party suddenly finds itself in opposition at home, this does not retroactively confer democratic authorization on its MEPs who did not gain such authorization by virtue of being elected. So, only the latter ground for protection may apply. Accordingly, their immunity should indeed turn on how they won the mandate in question and on their democratic track record.

Protecting the regime-opposition's MEPs

In practice, then, the European Parliament should defend the parliamentary immunity of undemocratically elected MEPs only if they belong to the undemocratic regime's opposition, were elected in elections biased against them, and have not sabotaged democratic institutions or contributed to dismantling democracy, either domestically or within the EU. Seen in this light, the European Parliament made the right decision in declining to waive the immunity of both Magyar and Dobrev. But not because all mandates are equal – sadly, they are not. It is time the reasoned reports of the Committee on Legal Affairs reflect that. *Fumus persecutionis* is necessary, but it cannot be sufficient to justify the protection of the immunity of undemocratically elected MEPs.

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