

## DESCRIBING, DELIMITING AND DEFINING THE JOB OF THE MP

By Susan Hattis Rolef\*

### **Abstract**

*The paper raises certain issues related to a book I am writing about the job of being a Knesset Member in a comparative perspective.*

*The first issue I deal with is the basic aversion to, and avoidance of defining the job of the MP, as opposed to describing it, which is also not common practice, and when done, is not systematic and is lacking. To the best of my knowledge there has been no effort to delimit the job - i.e. to draw the line as to what the job includes, and what it does not include. I also feel that the distinction that is made in the literature between the term 'job' and 'role' adds to the lack of clarity.*

*There are two main explanations given for this situation. The first is that the job of the MP is unique, and thus allegedly defies definition. The second is the concept of the free mandate, which claims that the MP is free to perform his activities as he may see fit, and is accountable only to his voters at election time. Both these arguments are faulty in my opinion.*

*However, the main reason why I suggest that one ought to deal more seriously with the description, definition and/or delimitation of the job of the MP, is that this seems necessary within the framework of dealing with the following issues: MPs' immunity; determining MPs' salaries; the growing share of constituency work in the MPs' activities; induction programs for new MPs; the promotion of legislative institutions in new democracies; the deterioration in public trust in MPs; and the occasional occurrences of scandals concerning MPs' conduct, in most countries.*

*The paper deals with each of these issues.*

### **Introduction**

It is conventional wisdom that the job of an MP should not be defined.

With very few exceptions, the issue of *defining* the job is simply ignored - both by academics and practitioners (the MPs themselves and parliamentary administrators). The subject of *describing* the job is less of a taboo, and one can find a wealth of references to it, especially in the literature on MPs' roles.<sup>1</sup>

The Australian counterpart of Erskine May actually opens a chapter on "Members" with a section entitled "The Members' Role", which deals with the roles performed by

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\* Dr. Susan Hattis Rolef, retired researcher in the Knesset Research and Information Center, Jerusalem.  
e-mail: susan-sheila@bezeqint.net

<sup>1</sup> For a good review of the relevant literature see Rudy B. Andeweg (2014)

backbenchers.<sup>2</sup> However, an information sheet on the Australian House of Representatives website, explains that "there is no formal 'job description' that sets out what a backbench Member does", adding that

it is possible to identify aspects of work common to all backbenchers.

A Member is expected to be a spokesperson for local interests; an ombudsman and facilitator who deals with concerns about government matters; a law maker; an examiner of the work of the Government and how it spends the money it raises from taxation; and a contributor to debates on national issues. If a Member has been elected with the support of a political party (as most are), he or she is also expected to participate in party activities.

Most Members can thus be viewed as having three roles—that of parliamentarian, constituency representative, and party member.<sup>3</sup>

In its report on MPs' expenses and allowances, following the 2009 expenses scandal in the UK, the Committee on Standards in Public Life also provided a similar description of functions, after stating that there is no formal job description for MPs:

There are, however, a number of recognised functions commonly expected of MPs which have been set out in various texts over the years. A 2007 report from the House of Commons Modernisation Select Committee listed these functions as:

- Representing and furthering the interests of their constituency;
- Representing individual constituents and taking up their problems and grievances;
- Scrutinising and holding the Government to account and monitoring, stimulating and challenging the Executive;
- Initiating reviewing and amending legislation;
- Contributing to the development of policy, whether in the chamber, committees or party structures, and promoting public understanding of party policies;
- Supporting their party in votes in Parliament (furnishing and maintaining the Government and Opposition).<sup>4</sup>

The threefold division, into aspects of the work performed in parliament itself, in constituencies and in the party, appears to be part of the conventional wisdom on the

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<sup>2</sup> Parliament of Australia, B. C. Wright ed. (2012). Incidentally, Erskine May itself does not even include a chapter about Members, not to speak of a description of the MP's roles.

<sup>3</sup> Parliament of Australia, Infosheet 15 (undated)

<sup>4</sup> Committee on Standards in Public Life (2009)

subject, even though it involves quite a few faults - both in terms of the content of each of these categories, and what it ignores.

Thus, for example, while the work that is performed by MPs in parliament itself is quite straightforward, there is nevertheless some lack of clarity in the UK about what of this work is considered "proceedings in parliament", mentioned in article 6 of the 17th Century Bill of Rights,<sup>5</sup> and thus falling under parliamentary privilege, and what does not, just as in the US there is lack of clarity regarding what is included in "legislative acts" that warrants American Congressmen immunity under the "freedom of speech or debate clause" in the US Constitution.<sup>6</sup>

Things get more complicated when it comes to the MP's constituency role, since it would seem obvious that not everything an MP does in or for his constituency and constituents is part of the job.<sup>7</sup>

In the case of an MP's activities in his party, many of these are definitely not part of his job as an MP, as, for example, raising money for the Party, or working on its election platform, though he is not barred from performing these functions.

And what about the roles that are simply not mentioned, such as the MP's international role, which very clearly exists in the case of MPs in the national parliaments of EU member states, but in other countries as well?<sup>8</sup>

In Israel the question of what is and is not included in the international aspect of the Knesset Member's job is a vivid topic of contest, especially in the case of Arab MKs, some of whom insist that traveling to states that are considered by Israel enemy states, without official permission from the authorities, and meeting with personalities who are leaders of terrorist organizations under Israeli law, is part of their job as representatives of the Arab citizens of Israel, even though article 1(a1)(4) of the Immunity Law explicitly excludes "Support of an armed struggle of an enemy state or acts of terror against the State of Israel, or against Jews or Arabs due to their being Jews or Arabs, in Israel or abroad" from the MP's job.<sup>9</sup>

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<sup>5</sup> See for example Geoffrey Lock (1998).

<sup>6</sup> Alissa M. Dolan & Todd Garvey, (2012) p. 3.

<sup>7</sup> The website of the Parliament of Uganda actually mentions as what MPs do not do: "Members of parliament do not have a legal obligation to construct or repair roads, bridges, hospitals and schools in their constituencies. They also do not have an obligation to contribute to weddings or pay school fees".

<sup>8</sup> On the international role of MPs see for example: Inter-Parliamentary Union (2005), and B. Crum and J. E. Fossum eds. (2013). Earlier this month a summer school was held at the Luiss School of Government in Rome on "Parliaments of Europe foreign policy and democracy promotion". [www.parliament.go.ug/new/images/stories/mp\\_roles.pdf](http://www.parliament.go.ug/new/images/stories/mp_roles.pdf)

<sup>9</sup> There is nothing in writing on this topic, to which I am devoting a chapter in a book I am writing about the job of MKs.

## **The difference between 'job' and 'role', and between a description and a definition**

As already mentioned above, the literature usually deals with MPs' roles rather than their job. This is one of quite a number of semantic tangles that appear in the literature in legislative studies.

In Hebrew the word for 'role' and 'job' is the same - *tafkid*. In English, and in many other languages, these are two separate words, with different connotations. The word 'role', in English, suggests something like a part played by an actor in a play, where the actor's job is to act. His profession is 'actor'.

When it comes to the MP, there is no argument about the fact that the MP can select the roles that he chooses to play, and the manner in which he chooses to play them, even though not everything he does necessarily constitutes part of his job, while there are many possible roles that constitute part of the job, which the MP may choose not to play. Whether or not being an MP is a profession, a vocation, a career, an occupation or merely a hobby, is something which there are as many opinions as there are options.

But what is more significant is the distinction between a description and a definition.

The description focuses on what MPs actually do, and to find out what this is, one must rely on what the MPs themselves say they do, and what senior members of the parliamentary administration, or academic observers of parliaments perceive the job to include.

The problem with relying on what the MPs themselves report is that, as already mentioned above, not everything that an MP reports as being part of his job, can actually be considered to be part of his job; that MPs may have reason not to be completely candid in their reports due to their disinclination to report everything that they do, or how much time they devote to each of the roles they perform; or as frequently happens when they receive questionnaires from pollsters and researchers, it is their assistants who provide the replies, rather than they themselves.<sup>10</sup>

A definition, on the other hand, suggests that there is some objective basis in custom, the law, court judgments, or statutes to the various components of the job. The sources of the definition include constitutions or basic laws, statutes, court rulings, rules of procedure (or standing orders), codes of conduct (or ethics), etc.

In countries like Israel, where the system is highly legalistic, it is not difficult to find such sources.<sup>11</sup>

It is much more difficult to find them in countries like the UK, where there is no constitution, basic laws, and very little relevant legislation, and where the sovereignty of Parliament, and parliamentary privilege are regarded as almost sacred principles. As a result of this reality the courts in the U.K. keep as clear as possible from dealing

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<sup>10</sup> I have personal experience in this respect from dealing with questionnaires sent out by the IPU to the Knesset, and several academics have admitted to me that they have come across this phenomenon.

<sup>11</sup> I have dealt with these in an article I recently published on the job of the Knesset Member - Susan Hattis Rolef, (2014)..

with matters that are considered purely within the domain of parliament, including the MPs' job and conduct.<sup>12</sup> Thus the following statement, that appeared in a 2010 factsheet published by the House of Commons Information Office (but since archived) is revealing:

There is no statutory job description for MPs. The Code of Conduct for Members of Parliament... is the nearest approximation. The purpose of the Code is "to assist Members in the discharge of their obligations to the House, their constituents and the public at large".<sup>13</sup>

Michael Rush and Philip Giddings gave the paucity of such sources in the UK as a explanation for why they relied on descriptive sources, when they came to define the roles of MPs:

For the Westminster Parliament there is no formal definition to be obtained from constitutional documents or even the House's Standing Orders (though Speakers' rulings and reports from the Procedure and Privileges Committees over the years provide important pointers to how the role has developed). We shall therefore draw on empirical work on how MP's themselves appear to define their roles.<sup>14</sup>

Finally a distinction can be made between *defining* the MP's job and *delimiting* it. When we speak of defining the job, we are speaking of what the job includes. Delimiting the job takes this idea one step further, and speaks of what the job *includes*, and also what it *excludes*.

### **The uniqueness of the MP's job**

It was the Legal Advisor to the Knesset, Attorney, who in July 2011 stated that the essence of the MK's job is different to other jobs, and therefore should not be defined. And this is what he said:

I think that it is no coincidence that one cannot find a binding source offering an exact definition of "the job of the Knesset Member", since the approach, which stands at the basis of the matter is that being an MK is not a "job" but a "mission". It is a multi-layered mission (a parliamentary layer, a political layer, a representational layer, etc.) which is difficult to delineate, and it is not desirable to do so. It is in this that the job of the MK differs from other jobs in the public service, and jobs in general. *Inter alia* because of this approach MKs are not "civil servants". They do not clock in when they enter the Knesset building, and do not clock out when they leave it. They have no obligation to be present in the Plenum or in the Committees, or to participate in any other activity, and they do not have other duties that apply to position holders in the civil service. They do not represent professional positions, but a political and ideological philosophy of

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<sup>12</sup> See for example Richard Kelly & Matthew Hamlyn, (2013).

<sup>13</sup> House of Commons Information Office (1996).

<sup>14</sup> Michael Rush & Philip Giddings (2011), p. 13.

life. At the same time they do not enjoy tenure in "their place of employment", and they periodically stand the test of the public's trust.<sup>15</sup>

That the job of MPs is different to other jobs has also been mentioned in the UK, in connection with MPs' salaries. Thus, in 2007 the Senior Salaries Review Board (SSRB) stated that:

The task of reviewing and making recommendations on MPs' pay, pensions and allowances is complicated. MPs are not a homogeneous group. They are office holders, not employees, and, because Parliament is sovereign, they have the power to determine their own terms and conditions.<sup>16</sup>

Six years later the Independent Parliamentary Standards Authority (IPSA) also dealt with this issue:

MPs have no job description. They do not have to undergo training or gain qualifications. They have no annual appraisals nor performance reviews completed by their line managers. Indeed, they have no line managers. The argument is made, and it is a fair one, that the role is unique.<sup>17</sup>

Though there is no doubt that the job of the MP is different to any other job, and that for various reasons it has not been defined, this does not necessary mean that the need for a description, definition and delimitation, should not be considered.

In the remainder of this paper I shall present some of the contexts within which the need for a change of approach to this subject emerges.

### **The "free mandate" as an argument against defining the job**

Whenever one suggests that the job of MPs should be defined, one of the standard answers one receives against the idea is that a definition would contravene the free mandate.

The Committee on Standards in Public Life quoted above, explained this idea as follows:

New MPs are not provided with a job description or role specification. Individual MPs have complete autonomy on how to discharge their role and are held accountable for their decisions by voters at the ballot box.<sup>18</sup>

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<sup>15</sup> Knesset House Committee, 19 July 2011.

<sup>16</sup> Senior Salaries Review Board (2007) p. 3.

<sup>17</sup> Independent Parliamentary Standards Authority (July 2013), p. 11

<sup>18</sup> Committee on Standards in Public Life, op. cit.

There are two main faults with this statement. The first is that in most parliamentary democracies party discipline greatly circumscribes the autonomy of the MP, especially within parliament itself,<sup>19</sup> and the second is that voters might well reelect an MP who devotes most of his time to constituency work (see below), but neglects his parliamentary duties, and seems to earn his parliamentary salary as an amateur social worker and ombudsman rather than as a parliamentarian.

In countries where there is a system of nation-wide proportional representation, like Israel and the Netherlands, the general electorate does not vote for individual candidates, and even in parties that hold primaries for their election list among party members, there seems to be very little correlation between MP performance and their chances of being placed on the party list in a "safe" slot.<sup>20</sup> In parties in which candidates are appointed by the party leadership, the criteria are also not necessarily based on past performance.

One might say that the only characteristic of the free mandate, which is followed religiously in western parliamentary democracies, is that an MP who fails to tow the party line, and is in breach of parliamentary group discipline, does not lose his seat in the current parliamentary term.<sup>21</sup>

One might argue that not only is the free mandate a weak argument against defining the job of the MP, legally defining the job of the MP in juxtaposition with the legal status of parties in the democratic system, might actually create a better balance between the two, to the benefit of the free mandate.

A particular case worth observing is that of Germany, where the free mandate is enshrined in article 38(1) of the Basic Law, which states that "[Members of the German Bundestag] shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience". while article 21(1) states that "The political parties participate in the forming of the political will of the people".

The two were actually declared by a former German Justice of the Federal Constitutional Court, Gerhard Leibholz, to be incompatible, and in 1970 there were even some party officials who suggested that article 38 should be repealed.<sup>22</sup> The free mandate has been declared by some German scholars to be a an "empty fiction".<sup>23</sup>

The fact that rule 76(1) of the Rules of Procedure of the Bundestag states that "Items of business submitted by Members of the Bundestag (Rule 75) shall be signed by a parliamentary group or five per cent of the Members of the Bundestag, unless the Rules of Procedure prescribe or permit otherwise", clearly demonstrates the weakness of the free mandate in Germany.

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<sup>19</sup> For a discussion of this issue see Zdzislaw Kędzia & Agata Hauser (2011) 4-12

<sup>20</sup> For the case in Israel see Anat Maor (2009) pp. 143-4, and Osnat Akirav (2015).

<sup>21</sup> See for example, European Commission for Democracy Through Law (2009).

<sup>22</sup> Donald P. Kommers (1971), p. 227.

<sup>23</sup> Peter Lerche (1995), p. 40

## MPs' immunity

The substantive immunity that MPs enjoy, which is referred to as non-liability, or non-accountability,<sup>24</sup> and which protects them from legal proceedings and public penalties that are external to parliament itself, in connection with actions they perform within the framework of their parliamentary duties (or the fulfillment of their parliamentary mandate), is directly linked to a definition of their job, or at least part of this job.

In most countries this immunity covers only (or mostly) the part of the job involving direct parliamentary activities, within the precincts of parliament itself, while excluding other aspects of the MP's job.

What this means is that before it can be determined whether an MP can claim immunity (or privilege) for any particular action or expression, one must have a list of those actions that make up an MP's parliamentary activities, or in other words, a detailed description of that part of the job that entitles an MP to immunity.

*Inter alia*, this implies that MPs parliamentary activities are legally considered to constitute the crux and core of their job, while other activities seem to be considered of inferior status, and do not entitle them to immunity.<sup>25</sup> This differentiation among the various aspects of the MP's job does not appear to have been given much thought, and is worthy of reflection and consideration.

It is the courts of law in the various countries, which are occasionally called upon to determine whether a certain action or expression falls within the limits of the immunity or not.

In the United States, for example,

the Supreme Court's interpretations and holdings in cases involving the Speech or Debate Clause<sup>26</sup> indicate absolute protection for Members when speaking on the House or Senate floor, introducing and voting on bills and resolutions, preparing and submitting committee reports, acting at committee meetings and hearings, and conducting investigations and issuing subpoenas.

Conversely, the Clause "does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs" or a Member's congressional duties, "but not a part of the legislative process itself". The Court has identified these acts to include speaking outside of Congress, writing newsletters, issuing press releases,

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<sup>24</sup> For a discussion of the semantics of this type of immunity see Office for the Promotion of Parliamentary Democracy in the European Parliament (2012), p. 11

<sup>25</sup> Oonagh Gay and Hugh Tomlinson have argued that "As the importance of constituency work increases, the question of extending Article 9 (of the Bill of Rights) to such work has become more pressing" (Oonagh Gay & Hugh Tomlinson (2013) p. 62).

<sup>26</sup> Article 1, Section 6, Clause 1 in the U.S. Constitution, which deals with the privileges of Congressmen.



private book publishing, distribution of official committee reports outside of the legislative sphere, and constituent services.<sup>27</sup>

In the UK much of the debate concerning Members' immunity has to do with article 9 of the Bill of Rights (1689), which states that "Freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any Court or place out of Parliament". As mentioned above, time and again the question has arisen, what is meant by "parliamentary proceedings".<sup>28</sup>

There are two aspects to the meaning of "proceedings in parliament". First, with respect to the formal actions of the House and its members, one of the issues is whether the more extensive activities of members today, compared to 1689, are proceedings in parliament...

Today, this will include speaking in a debate, voting, giving notice of a motion, presenting petitions or committee reports and asking parliamentary questions. The second aspect to this phrase is with respect to place. Erskine May states that 'not everything said or done within the precincts forms part of proceedings in parliament'. On the other hand, some parliamentary business conducted outside the precincts could amount to a proceeding in parliament. In addition, as Erskine May notes 'Particular words or acts may be entirely unrelated to any business being transacted or ordered to come before the House in due course'.

The meaning of 'proceedings in parliament' has been considered from time to time both by parliament and the courts, with both institutions claiming the last word...<sup>29</sup>

Clearly, all this is relevant to the definition of the MP's job - albeit, the part of the job concerning "proceedings in parliament".

In France<sup>30</sup> the courts have dealt extensively with what the substantial immunity applies to, and what it does not. Thus, the French courts have ruled that the duties of members of the National Assembly and the Senate, to which immunity applies, include participation in deliberations and voting in the plenary and committees, parliamentary group meetings, presentation of bills and amendments to laws, questions to ministers, external missions on behalf of parliament, and reports which they prepare for the plenary.<sup>31</sup> They exclude words spoken in parliament that are not

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<sup>27</sup> Alissa M. Dolan & Todd Garvey (2012) p. 3.

<sup>28</sup> See Patricia M. Leopold (1998) pp. 72-74, and Onagh Gay & Hugh Tomlinson, (2013) , pp. 39-41.

<sup>29</sup> Patricia M. Leopold op. cit.. p. 72.

<sup>30</sup> See for example, Cécile Guérin-Bargues (2011).

Article 26 of the French Constitution states that "No Member of Parliament shall be subject to legal proceedings, investigations, arrest, detention, judgment for opinions expressed or votes cast by him while carrying out his duties. No Member of Parliament may be arrested or subject to any other measure depriving the Member of freedom or restricting that freedom for criminal or minor offences without the authorization of the Assembly to which he belongs, except in the case of a crime or flagrante delicto or of final sentence".

<sup>31</sup> François Luchaire, Gérard Conac (1987) p. 686-687.

connected to the parliamentary work as defined above or in meetings outside parliament, or written in books or articles, stated in interviews, or within the framework of the fulfillment of other functions, even if they are an accurate repetition of things said in parliament, within the framework of the parliamentary work.<sup>32</sup>

A frequently mentioned ruling of the French Constitutional Council in 1989, which dealt with the immunity of a member of the National Assembly, stated that such immunity shall not apply with regards to things he wrote within the framework of a report that he prepared at the request of the Government, since a task performed for the Government is not considered part of the Member's parliamentary duties.<sup>33</sup>

In Israel the system of substantial immunity appears to be much more extensive than in any other democratic state, and is explicitly linked to the fulfillment of the job of Members of the Knesset (MKs). Thus, article 1(a) of the Knesset Members' Immunity, Rights and Duties Law of 1951 (henceforth: the Immunity Law),<sup>34</sup> states:

A Member of the Knesset shall not bear criminal or civil responsibility, and shall be immune to any legal action resulting from the way he voted, or an opinion he expressed orally or in writing, or an act that he performed – in the Knesset or outside the Knesset – if the voting, the expression of the opinion, or the commitment of the act was **in the course of performing his job, or for the purpose of performing his job as a Member of the Knesset.** (my emphasis)

On numerous occasions the Israeli High Court of Justice, when dealing with appeals by MKs, or others, connected with the decision of the Knesset to lift or to apply MKs' immunity, has been called upon to contend with the problem of how one is to define the job of the MK, in the absence of a formal definition.

Thus, in a verdict from 1987 in the case of MK Mohammed Miari (Progressive List for Peace), who petitioned the court against the Knesset's decision to lift his immunity after he had participated in a commemoration ceremony for a PLO leader, where he expressed support for the latter's positions, the then President of the Supreme Court, Meir Shamgar, had the following to say:

Article (1) of the Immunity Law relates to the activities of the Knesset Member "in the course of performing his job" and "for the purpose of performing his job". In order to interpret article (1) one may try to determine what is included in the expression "the job of the Knesset Member". *Inter alia*, it would be possible, within this context, to ask whether the job of the Knesset Member consists of a uniform list of activities, such as voting, giving speeches, submitting Motions for the Agenda and Questions, activity in the Committees, participation in

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<sup>32</sup> Wikipedia, "Immunité parlementaire en France", p. 2.  
[www.fr.wikipedia.org/wiki/Immunit%C3%A9\\_parlementaire\\_en\\_France](http://www.fr.wikipedia.org/wiki/Immunit%C3%A9_parlementaire_en_France)

<sup>33</sup> Le Conseil constitutionnel (1989)

<sup>34</sup> All the laws connected with the Knesset and MKs, may be viewed (in Hebrew) on the Knesset website at: [http://www.knesset.gov.il/laws/special/heb/knesset\\_laws.pdf](http://www.knesset.gov.il/laws/special/heb/knesset_laws.pdf)

delegations on behalf of the Knesset, and similar activities, that are an integral part of the activities of the Knesset, or whether the job of the Knesset Member is broader, and includes his being a party member, or a personality that performs public and political functions – in other words, whether the general political activity of the Knesset member outside the Knesset is part of the job of the representative as a Member of the Knesset. *Inter alia*, there is a need for an answer to the question whether the public activity of a Knesset Member towards being reelected to the Knesset is an activity that takes place for the fulfillment of the job as Knesset Member. The question may also arise whether the job of the Knesset Member is determined by the platform of his party – in other words, whether it is a job that is defined subjectively, or whether the definition is objective and uniform for all the Knesset Members. These questions and others are worthy of reflection and deliberation in order to come up with a comprehensive definition of the term "the job of the Knesset Member".

In my opinion, we (the HCJ) are not required here to decide on all the above mentioned questions that have to do with the definition of the job of the Knesset Member, and some of them may be set aside as 'requiring reflection' (*tsarich iyun*).<sup>35</sup>

Nevertheless, over the years the HCJ, and other courts, have dealt in its rulings, both in cases directly connected with the question of immunity, and cases relating to MKs' rights, with the question of what the job of MKs includes, and what it excludes on specific issues. Thus, *inter alia*, there are rulings on when an act, which is in breach of the penal code, may nevertheless be considered as falling within the performance of the job, resulting in the MK being entitled to claim immunity,<sup>36</sup> or that running for reelection is not part of the job, and therefore does not entitle an MK to reimbursement of legal expenses.<sup>37</sup>

### **A job description in connection with determining MPs' salaries**

It is parliament itself, which usually has the last word with regards to the salaries of its members, even though many countries have external bodies that make recommendations regarding salary levels, and in most countries the salaries of MPs are simply linked to the salaries of senior civil servants.<sup>38</sup>

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<sup>35</sup> High Court of Justice (1987).

<sup>36</sup> High Court of Justice (1995)

<sup>37</sup> High Court of Justice (2006).

<sup>38</sup> Based on the answers of member and observer parliaments in the European Centre for Parliamentary Research and Documentation (ECPRD) to questionnaire No. 1003, distributed by the Bundestag on June 18, 2008. It should be noted that the ECPRD website is open only to the correspondents and deputy correspondents of the parliaments that are members or observers of the organization.

However, it was in Britain that such an external body first decided that salaries of MPs ought to be based on what MPs actually do. In 1996 and again in 2001 the SSRB, which dealt with the salaries of the MPs until 2010, included a 'generic job description' that focused on the MPs' responsibilities, rather than their work load, as a background to its recommendations regarding salaries, expenses and pension rights of MPs.<sup>39</sup> This generic job description was not prepared by parliament itself, nor by academics, but by a global management consulting firm called Hay Management Consultants Ltd., which based its report on interviews with MPs in accordance with a business management model.

It is beyond the scope of this paper to go into the details of the generic job description, which was never officially adopted by Parliament, but has frequently been quoted in parliamentary documents of various sorts. By 2007, the SSRB had decided to concentrate on MPs' skills and competencies, rather than on a job description, based on a business management model called "Monks Job Evaluation" which was applied by the global consultancy firm PwC (PricewaterhouseCoopers), again on the basis of interview with MPs.<sup>40</sup>

When IPSA took over the task of determining MP's remuneration in 2010, following the 2009 expenses scandal, the business management approach was dropped, while the term 'job' was replaced with the more conventional term 'role', which was dealt with in Chapter 4 of IPSA's first report on MPs' Pay and Pensions, published on December 2013. While various attempts to define this role (the term 'define' was used!) were presented, including, *inter alia*, the SSRB's generic job description, IPSA itself made due with the statement that "It is not for IPSA to say what the role of an MP should be: **that is for MPs and, ultimately, Parliament** (my emphasis). But it is important that the debate on pay and pensions is informed by an understanding of what MPs do".<sup>41</sup>

In Israel the link between MKs' salaries, and a description of their job was also made by a public committee - the Rosen-Zvi Committee - appointed in 1993 to deal with the salary, pension and accompanying terms of employment of MKs that would apply after an amendment to the Immunity Law, disallowing any additional paid employment for MKs, would go into force (as it did in 1996). The Committee had the following to say on the MK's job definition, which later on in the report was linked to the question of the appropriate salary:

The Knesset Member must devote all his time to work for the public, and to its service. In many respects he is in a state of constant preparedness. There are no limits to the hours of his work or the content of his work, except for the limitations laid down in our constitutional structure ... and the provisions of the law. Almost any act that he performs is considered part of the framework of his job. The duties conferred upon him as a representative of the public

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<sup>39</sup> Senior Salaries Review Body (1996) and Senior Salaries Review Body (2001). One may find the generic job description in House of Commons Commission Report (June 2007).

<sup>40</sup> Senior Salaries Review Board, (2007), pp. 14-15.

<sup>41</sup> Independent Parliamentary Standards Authority (December 2013) p. 25.

constitute a permanent burden of continuous and constant occupation: presence in the Knesset Plenum and Committees, legislative initiatives, the raising of Motions for the Agenda, Questions (to Ministers), preparation for the work of the Committees, speeches in the Knesset, lectures to the public, presence in various meetings, party activity, public activity in various bodies, participation in state, public and private events all over the country, oral and written responses to approaches from the public, media contact with the public, and daily contact with the voters.<sup>42</sup>

Clearly, in a system where the job of an MP is defined as a full time job, with no additional paid employment allowed, it is more important to define the job, and delimit it than in a system where MPs are allowed second jobs.

### **The greater emphasis of MPs on constituency work**

In states where the electoral system is based on constituencies or electoral districts, those elected in a particular district are considered the representative of its voters in parliament, and they are expected by these voters to represent the interests of the district as a whole, and to assist individual constituents resolve personal problems - especially problems *vis-à-vis* the authorities, but not only.<sup>43</sup> The latter is known as casework or "service responsiveness". The main interest of MPs in fulfilling these tasks is reelection.<sup>44</sup>

Constituency work is invariably included among the roles, or as part of the job description of an MP. In recent decades the emphasis placed by MPs in many countries on their constituency work, compared with their parliamentary work, has been on the rise, to the point that it is starting to be considered a problem, and both academics and former MPs have actually raised the question whether the casework part of this activity - in other words, the MP acting as an amateur social worker or ombudsman - should actually be considered part of their job, and if the answer to this question is in the affirmative, whether it should be delimited.<sup>45</sup>

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<sup>42</sup> Rosen-Zvi Committee (1995).

<sup>43</sup> It was pointed out by Prof. Colleen Lewis that MPs in Australia have been approached with requests to help provide husbands for daughters, get people out of prison, cure alcoholism, or even prevent a person from being gay. [Catherine Norwood (2012) p. 1.

<sup>44</sup> Reelection is considered one of the primary motives of MPs, and in countries in which MPs are elected in constituencies, casework is considered a means for enhancing the chances for reelection. There is a vast literature on reelection, of which the first major work is David R. Mayhew (1974). The Hansard Society (2007). See also Sven T. Siefken & Olivier Costa (2014) for the phenomenon in France and Germany.

<sup>45</sup> See for example, Greg Power (1998). On page 3 Greg argued that due to the exaggerated expansion of constituency work there was need to re-evaluate the role of the MP, and clarify the job of the MP in the constituency and in the House. "Both MPs and constituents would benefit from a clearer definition of the job of the Parliamentarian. In short, we need to establish what MPs are for". I am most grateful to Power for sending me an electronic copy of this earth breaking publication.

There is an extensive literature on the subject, especially in the UK,<sup>46</sup> and in the years 2006-7 the Select Committee on Modernisation of the House of Commons dealt with the role of backbenchers in the chamber and in committees, to a large extent against the background of the inclination of many MPs to prefer constituency work to parliamentary work - a fact to which many of those who gave evidence to the Committee referred, and to which the Committee devoted quite a bit of attention in its first report.<sup>47</sup> The following is an example:

16. Martin Salter, Member for Reading West, said that today Members were faced with a 'tidal wave' of constituency work. Sir Patrick Cormack, Member for South Staffordshire, felt the balance of the back bench Member's life has been tilted too far towards the constituency role, and away from Westminster duties. Professor Philip Cowley, University of Nottingham, said, 'There must now be a real concern that MPs are so focused on the parochial they have no time for the national, let alone the international, picture'. He thought the problem with constituency work was out of control and getting worse. Public expectations have changed and the level of work from constituents is unlikely to diminish. But we are concerned that the greater pressure that Members face from constituency work has the potential to divert attention away from other important aspects of their work. The House is likely to suffer unless we can find ways of bringing the attention of Members and the public back to the work of the Chamber.<sup>48</sup>

There are countries where the problem of MP's concentrating on local or regional issues at the expense of national issues manifests itself in a different manner than that found in the U.K., even though casework is prevalent everywhere. This concerns the phenomenon of dual or multiple mandates (what in France is known as *cumul des mandats*), whereby in addition to membership in the national parliament, MPs are also members in regional assemblies, municipalities or local councils, and consequently inclined to concentrate on local rather than national or international issues.

In Israel this phenomenon was stopped in 1996, when all additional employment was forbidden for MKs, including that of serving as heads of local councils or mayors, of which there were quite a few until then.<sup>49</sup>

In Ireland the 2001 Local Government Act prohibited membership of Members of the Oireachtas in local or municipal councils, *inter alia* because it was believed that such dual mandates resulted in Members neglecting national issues, causing a decline in public trust in the Oireachtas. In fact, in the 1997 Irish national elections around 70% (!) of the elected members were also members of local or municipal councils.

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<sup>46</sup> See, for example Philip Norton (1994), Greg Power (1998), Oonagh Gay (2005), and Michael Rush & Philip Giddings (2007).

<sup>47</sup> Select Committee on Modernisation of the House of Commons (2007). It should be noted, however, that the Committee also heard evidence from MPs to the effect that their constituency work was frequently directly related to their parliamentary work. (See pp. 9-10)

<sup>48</sup> *Ibid.* p. 11

Susan Hattis Rolef (2014), p 595.

In France there is a similar problem.<sup>50</sup> Even though in 2000 legislation was introduced that limits the the *cumul des mandats*, in 2012 82 percent of the members of the National Assembly and 77 percent of the Senators (!) still held dual or multiple mandates (usually at the communal or departmental level). French President François Hollande had committed himself to pass legislation that would totally prohibit this practice, and two laws to this effect were actually passed on February 14, 2014.<sup>51</sup>

Though in all the examples mentioned above no one spoke in terms of redefining the job of the national MPs, this is precisely what is involved *de facto*.

### **A need to define the job for purposes of new MPs' induction programs?**

Another context within which the need for a definition, or at least a description of the job of the MP, has come up, is in connection with discussions on the induction of new MPs - a subject which has gained some attention from academics and the Inter-Parliamentary Union (IPU) in recent years.

A group of Australian academics carried out, in association with the IPU, comparative research on the subject. Their approach was from the field of human capital and manpower management.<sup>52</sup>

The main motivation for this study was to examine how the functioning of parliament may be improved, where the basic assumption was that the work of parliament is performed by MPs, which led to the conclusion that in order to improve the functioning of parliament one must improve the functioning of the MPs.

The researchers decided that the basis for the study must be an analysis of the roles of parliament, from which the roles of MPs derive, even though there isn't complete overlap between the two.<sup>53</sup> Their conclusion was that at least part of the induction programs must focus on the roles of parliament and of the MPs, and that one cannot avoid defining these roles.

The empirical examination revealed that even though there are differences between the way the information is passed on to new MPs in different countries, in all of them the main subjects dealt with have to do with the employment and work condition of the MPs and their rights, and to a lesser extent with the essence of the parliamentary work. The main conclusion of the study was that the issue of induction should be dealt with much more seriously than in the past.<sup>54</sup>

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<sup>50</sup> Costa O., Schnatterer T., Brouard S. & Kerrouche E. (2011).

<sup>51</sup> See for example Sophie Huet (2014). For the organic law, which prohibits French MPs to hold several representational positions see Loi Organique No 2014-124.

<sup>52</sup> Ken Coghill et al. (October 2011), p. 2.

<sup>53</sup> Ibid. p. 6

<sup>54</sup> Kenn Coghill, Colleen Lewis & Katrin Steinack (2012).

One of the participants in the research, Colleen Lewis, stated in an interview upon the publication of the study's conclusions, that research in Canada and Australia had clearly demonstrated that many new MPs haven't got a clear notion of what their job involves, and what is expected of them, especially if they had offered themselves as candidates, without thinking too seriously about what they were letting themselves into.<sup>55</sup>

### **Promotion of legislative institutions in new democracies**

There is a growing body of literature dealing with the proper functioning of parliaments. This literature, which has an educational purpose, is meant primarily for legislatures in relatively new states and emerging democracies. Much of this literature has originated in such institutions as the IPU, the United Nations Development Program (UNDP), and the World Bank.

Not surprisingly the subject of the job and/or roles of MPs is dealt with in this literature, either in separate chapters, or in scattered form, as an important element in the proper functioning of parliaments.<sup>56</sup> It goes without saying that without a clear notion of what MPs' job actually consists of, it is quite impossible to propagate the subject.

It should be noted that some of this literature and the discussion around it include in the roles of MPs in new democracies such tasks as the mobilization of constituents to help in the promotion and implementation of development programs in all spheres,<sup>57</sup> and more generally, the promotion of democracy, the promotion of peace,<sup>58</sup> fighting corruption,<sup>59</sup> fighting poverty, acting for the eradication of various epidemics, etc.

Whether all these should really be included among the roles of MPs and their job definition, or should be viewed as proposals for mobilizing MPs in new democracies and developing states to hitch on to the agenda of the U.N. and other international organizations and institutions, is certainly a topic worthy of serious study and deliberation.

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<sup>55</sup> Caterine Norwood (2012).

<sup>56</sup> See for example, Greg Power et. al. (2012), and David Beetham (2007).

<sup>57</sup> See, for example, "MP Roles", the website of the Parliament of Uganda, [www.parliament.go.ug/new/images/stories/mp\\_roles.pdf](http://www.parliament.go.ug/new/images/stories/mp_roles.pdf)

<sup>58</sup> See for example, Mitchel O'Brien (2005)

<sup>59</sup> See for example, Rick Stapenhurst, Niall Johnston, & Ricardo Pelizzo eds. (2006)



### **The importance of defining the job in face of declining public trust in MPs, and efforts to monitor MPs' activities**

The problem of declining public trust in parliament in general and MPs in particular is one that has been explored extensively in the literature.<sup>60</sup> There are many causes for the phenomenon, one of which is the fact that most of the public is not really familiar with what parliament and the MPs are supposed to be doing, and that at least in the case of the MPs there is no job definition against which one can measure the latter's activities and achievements.

This point was raised in the UK by the Speaker's Conference on Parliamentary Representation in 2009, and dealt with in its final report, which had the following to say about it:

85. There is no formally accepted job description for the work of an MP, although there have been various attempts to define the range of tasks an MP carries out. We have been told, and we recognise, that the lack of transparency about what an MP does is not helpful to the public's understanding of Parliament. It is also a barrier to the aspirations of those who have not participated extensively in electoral politics. It can lead to misunderstanding and unrealistic expectations on the part of voters in the constituency and members of political parties [...]

87. **A description of the main functions of a Member of Parliament should be drawn up, agreed between the parties** (my emphasis) and published. The description should not remove the scope for MPs to approach the job of representing their constituency in various ways; it should contain general principles and main objectives and tasks, rather than highly detailed prescriptions. Greater transparency about the terms and conditions under which MPs work has been achieved since the mid-1990s but the process has not been completed; nor has it been matched by a clearer explanation of the role of Members. More is needed. This information should be consolidated, published (on the internet and in hard copy) and made widely available to the general public.<sup>61</sup>

In Germany, Professor Werner Patzelt, who has done a good deal of research into a description of what Members of both the Bunderstag (the lower House of the Federal legislature) and the Landtage (the legislatures of the Länder - States) do, does not think that the job of German MPs should be defined, since in accordance with the Basic Law of the German Republic they have a free mandate.<sup>62</sup> However, he has commented that most Germans believe that their representatives, both in the Budestag and the Landtags "do too little, usually the wrong things, and for too much pay",

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<sup>60</sup> See for example Susan Hattis Rolef (2006).

<sup>61</sup> Speaker's Conference (2010).

<sup>62</sup> Interview with the writer, held in Dresden on March 24, 2013.

adding that they cannot possibly be expected to know what the representatives really do, if nobody bothers to tell them.<sup>63</sup>

In Israel an in depth study prepared by the Knesset Research and Information Center, in cooperation with the Dahaf polling institute in 2001 on how the public perceived of the Knesset and the MKs, revealed that on the one hand the public rated the MKs in terms of task performance and personal conduct lowly, and on the other it demonstrated ignorance with regards to what MKs do or are supposed to be doing.<sup>64</sup>

One of the consequences of diminishing public trust and growing public skepticism of parliaments and MPs has been the development of Parliamentary Monitoring Organizations,<sup>65</sup> which *inter alia* engage in monitoring the activities of MPs in and outside of parliament, and evaluating their performance.<sup>66</sup>

The problem is that these organizations have to decide what data to collect, and in the absence of a definition of what MPs do, or are supposed to be doing, the picture they portray is not necessarily a fair or objective one, and in the final reckoning is liable to confuse the public and increase its bias against MPs rather than diminish it.

I discovered this problem while following the activities of various PMOs in Israel, and in a discussion group run by one of these organizations, back in April 2012, I observed that its members were aware of the dilemma they faced. One of the participants in the discussion stated:

I should like to do something that is called "job analysis" with regards to the job of the parliamentarian... This must boil down to a short list of five to ten features that one wishes to measure, and then for each feature an index must be found (an existing one or a new one). This is how one constructs an evaluation system of capabilities and qualifications... I think that the central problem of existing efforts to measure the activity of the MKs, is that there isn't a theoretical rationale behind them. There is no clear definition of what MKs are expected to do.<sup>67</sup>

In short, what emerges is that there is an absence of a authoritative definition regarding the job of the MK, on the basis of which one can seriously evaluate the functioning of MKs.

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<sup>63</sup> Werner Patzelt (1996), pp. 25-6.

<sup>64</sup> Knesset Research and Information Center & the Dahaf Research Institute (2001).

<sup>65</sup> Andrew G. Mandelbaum (2001).

<sup>66</sup> Ibid. p. 28

<sup>67</sup> <https://groups.google.com/forum/#!msg/open-knesset/tcUS5Xb0ZUY/kXZyvhawyQgJ> (in Hebrew)

### **Parliamentary scandals and their relation to defining the MPs' job**

The deteriorating public trust in Parliament is undoubtedly affected by the scandals that burst out from time to time in relation to the conduct of MPs. There are no parliaments, even in the most enlightened of democracies, in which MPs - individually or collectively - have not been involved in such scandals. Invariably these have to do with problematic conduct, involving unethical behavior at best, and criminal behavior in the worst case.

The reaction to these scandals has usually been to try and strengthen the rules applicable to MPs concerning conduct and ethics and the disciplinary measures that can be taken against them, and by increased transparency. Invariably questions relating to the job of MPs came up.

Examples of such scandals are the cash-for-questions scandal in 1994,<sup>68</sup> and the expenses scandal of 2009 in the UK;<sup>69</sup> the Lobbyists scandal in the US in 2005-2006;<sup>70</sup> and the scandal around the *réserve parlementaire* in France in 2012.<sup>71</sup> In all these cases the scandals have also raised questions regarding the proper performance by MPs, Congressmen, or Members of the French National Assembly and Senate, of their job.

In the cases mentioned above the questions which emerged were whether paid advocacy can be considered part of an MP's job, or whether it is a second job that is in conflict with the MP's parliamentary job and discharge of his duties, or at least the ethical performance of this job (the answer given to this question was in the negative); which of the expenses incurred by MPs may be considered to be relevant to the performance of their job and discharge of their duties, and thus eligible for reimbursement; what the limits are regarding the proper relations between Congressmen and lobbyists within the framework of Congressmen performing their job; and to what extent distributing development funds (known as earmarks in the U.S.) by Members of the National Assembly and Senators in their constituencies in France, are a legitimate part of their job, and under what circumstances (it was decided that while development funds are legitimate, there must be absolute transparency regarding the sums involved, and the identity of the recipients).

All the scandals have also raised doubts on whether MPs can be trusted to determine the content and limits of their own job, and thoughts as to whether self-regulation is justifiable under the circumstances.

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<sup>68</sup> See the First Report of the Committee on Standards in Public Life (1995).

<sup>69</sup> On the expenses scandal see House of Commons Committee on Members' Expenses (2011).

<sup>70</sup> On the lobbying scandal see Scott Harden ed. (2009), pp. 63-6.

<sup>71</sup> To the best of my knowledge so far there has been no serious study of this latter scandal.

## Conclusion

What my presentation has tried to achieve is to demonstrate that there are numerous issues relating to the status of MPs and their activities, that beg for a definition of the job.

I suspect that both the parliaments as such, which are touchy about their sovereignty, and the MPs themselves, who are extremely zealous about their freedom do decide about their own activities, and their privileges, will resist any attempt to define the job formally, or even describe it in a manner which might appear to be mandatory in any way.

I came across this phenomenon in Israel, when deliberations were held in a public committee appointed in 2003 to prepare new rules of ethics for Members of the Knesset, following a scandal in the Knesset involving double voting (using the electronic system) by two MKs in May 2003.<sup>72</sup> In addition to experts in the field of constitutional law and ethics, the Committee included the Chairman of the Knesset House Committee, and two highly respected former MKs, and after the Committee completed its work in December 2006, the Knesset House Committee debated watered down versions of the Committee's recommendations in the course of the 17th, 18th and 19th Knesset (2007-2014).<sup>73</sup> To date, except for a few articles, the Committee's recommendations have not been adopted by the Knesset. All along there was great resistance to the new rules, which went to great lengths to constrain the conduct and activities of MKs, beyond the existing constraints.

To anyone attending the deliberations (as I did) it was clear that the majority of MKs involved in the process, irrespective of party, were opposed to additional constraints, involving a *de facto* delimitation of many of their activities.

The British House of Commons debates on the issue of limiting the second jobs of MPs, which took place on July 7, 2013, and February 25, 2015, demonstrate that British MPs are also not inclined to have their activities delimited, though in this particular case the debates were held on the basis of resolutions tabled by the Labor Party, which sought to limit types of second jobs that are allegedly more common among Conservative MPs than among Labor ones, so that the impression one received was that the issue is a partisan one - which it is not.

It is fair to assume that opposition to an attempt to define or delimit the job of MPs would also come from those, who oppose any additional formalization of the political process.<sup>74</sup>

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<sup>72</sup> The Zamir Committee, chaired by former Supreme Court Justice Yitzhak Zamir. The Committee published its lengthy report (in Hebrew), and a proposal for new rules of ethics, to replace those issued in 1983, in December 2006. (the Committee for the Preparation of rules of Ethics for Members of the Knesset, 2006). An English translation of the proposed new rules of ethics may be found at [http://knesset.gov.il/committees/eng/public/ethics\\_final\\_report\\_eng.pdf](http://knesset.gov.il/committees/eng/public/ethics_final_report_eng.pdf).

<sup>73</sup> A summary of the meetings of the Zamir Committee can be found on the Knesset website, as well as the full minutes of the House Committee minutes in the 17th, 18th and 19th Knessets.

<sup>74</sup> At its most extreme this phenomenon manifests itself in political constitutionalism. See for example Richard Bellamy (2007).

However, I believe that the arguments presented above do deserve serious and systematic attention, and that this should be done on an inter-disciplinary basis. To use the terminology of the Israeli H.C.J. - they *require reflection*. The theoretical discussion should involve political scientists engaged in legislative studies, constitutional lawyers, and experts on human capital and manpower management, while any attempt to actually describe or define the job of MPs should involve the political parties, the parliamentary groups , and the MPs themselves.

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