



The Knesset
Research & Information Center

Background Document on:
Parliamentary Immunity -
Members of Parliament Inviolability
- Comparative View -

Presented to the Chairman of the House Committee

May 19, 2003

Written by: Ms. Yehudit Galili - Researcher Assistant

Mr. Dan Lahav- Head of Law & Administration Research Desk

Approved by: Dr. Jacob Warshavsky - Director of the RIC

Translated into English by: Dr. Susan Hattis Rolef

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Introduction

This document, which was prepared at the request of the Chairman of the House Committee as background information for parliamentary deliberations on the issue, presents the practices regarding parliamentary inviolability in several states in the world. In addition, the document presents a set of considerations that the legislature should take into account when it formulates legislation on this issue.

The document is divided into three parts:

The **first** part presents a comparative charting of the intensity of immunity in Israel,¹ and in a selection of states in the world.

In the **second** part, alternatives for legislative considerations on the issue are presented, alongside references to countries in which such alternatives exist.

In the **third** part, parliamentary inviolability arrangements in France, Spain, Italy, Germany, United Kingdom, the United States, the Netherlands, Canada and Turkey, are presented. These states represent both Continental law and Anglo-American law.

A summarizing **comparative table**, prepared by the jurist Dr. Suzie Navot for the *Report of the Public Committee for the Reexamination of the Issue of Parliamentary Immunity of Knesset Members, 1997* (hereinafter: "**Nissim Committee**"), is attached at the end and marked as Appendix A.

It should be noted that within the framework of a comparative examination of the legal arrangements, one should pay heed not only to the legal procedures and their scope, but also to the institutional structure and political culture in each of the surveyed countries. After all, a state in which the practice is that parliamentary immunity is easily lifted (**Germany**) or even voluntarily lifted (**Britain**), is not the same as a state in which the members of parliament frequently reject requests to lift immunity (**Italy** and **Greece**), or parliaments in which the number of requests to lift immunity is extremely small (**France, Denmark, Finland** and **Sweden**).

¹ It should be emphasized that this survey was performed in comparison with foreign legal systems, as elaborated in the document itself, and it does not include a legal or other analysis of the Israeli law regarding immunity. For legal interpretation, opinion or other reference to the Israeli law on the matter, one should consult the Knesset Legal Department. The charting of the Israeli parliamentary immunity intensity is made for the purposes of impression only, and it is based, mainly, on the opinions presented in the Report of the Public Committee for the Reexamination of the Issue of the Immunity of Knesset Members of 1997 (the Nissim Committee).

An analysis of cases in which requests to waive immunity in various parliaments were rejected, reveals three main arguments that are frequently used to base decisions to reject requests for immunity lifting:

- (1) The existence of clear signs which indicate that the intention of the proceedings is the unjust persecution of a member of parliament, and/or a threat to his independence and the degree of freedom given to him in the fulfillment of his official duties;
- (2) The political nature of the facts on which the accusation is based;
- (3) The absence of solid factual grounds for the accusation of the member of parliament.

A. Immunity Intensity - Comparative Chart

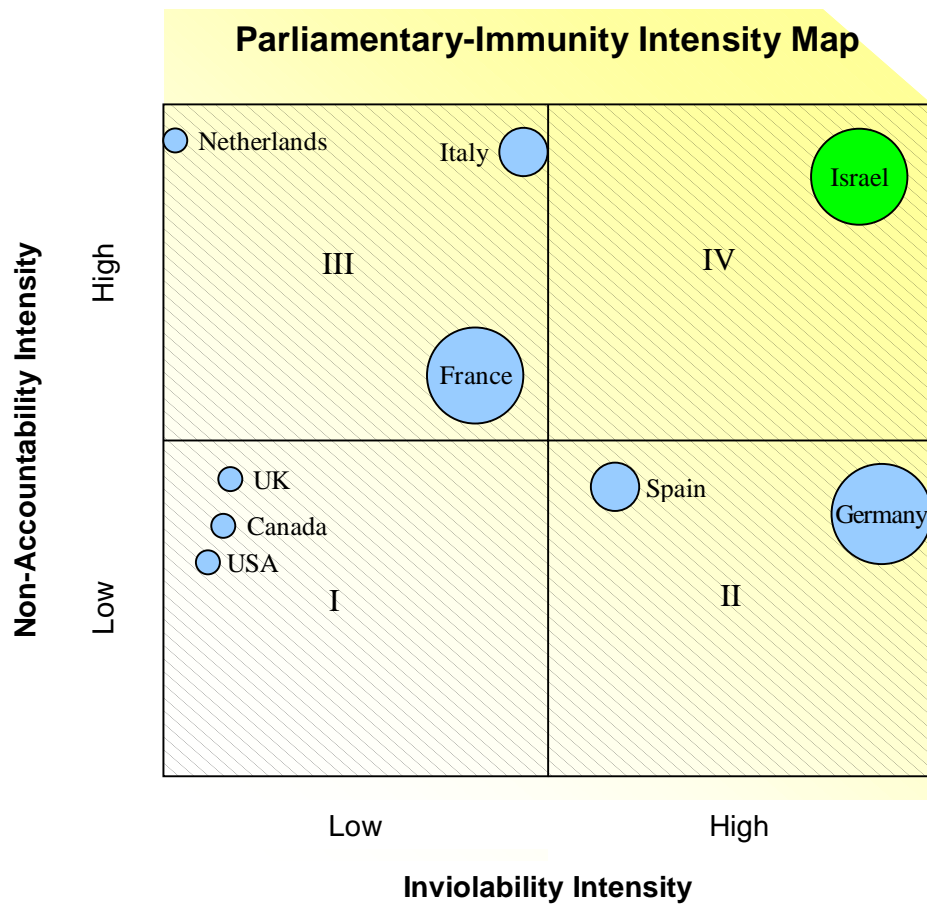
For the purpose of getting a comparative impression of the intensity of the protection provided to members of parliament by their parliamentary immunity, a schematic chart ("index") is hereby presented. The chart presents the intensity of the immunity along three axes:

1. The scope of non-accountability;
2. The scope of inviolability;
3. The scope of procedural protection (the complexity of the lifting procedure).

It should be emphasized that the formulation of the chart involves subjective judgment regarding the intensity of the various forms of protection, so that we are therefore speaking of an evaluation only, and not with an accurate quantitative index. Nevertheless, the trend of the intensity is clear, and the likelihood that a state placed in a certain quadrant of protection should have been placed in another, is small.

In order to ensure as objective a weighting of the data as possible, we evaluated, *inter alia*, the considerations enumerated below:

- Applicability in criminal procedures;
- Applicability in civil procedures;
- The scope of the offences included in the protection;
- Protection from search and/or from investigation;
- Protection from detention and/or from opening court procedures;
- Retroactive application;
- Physical application of immunity (i.e. applicability in the buildings of the parliament only, in the buildings and on the way to parliament; anywhere, etc.);
- The requirement of a two-fold approval for lifting the immunity (i.e. the requirement for both a committee and a plenary voting in favor of lifting the immunity);
- A fixed time-limit for the completion of the lifting procedure;
- The scope of the legitimate discretion and the existence of limitations on the scope of considerations that may be taken by those who decide whether the immunity should be lifted (i.e., should they consider only the good-faith of the request for lifting or may they consider other factors as well);
- The requirement of a minimal majority;
- The mandate to request a lifting of immunity.



Legend:

The scope of the integrated protection provided by parliamentary **non-accountability and inviolability**, is indicated by the position of the state in the various quadrants of the graph, with quadrant I indicating a low level of immunity, compared to quadrant IV that indicates a high level of immunity.

The degree of the **complexity of the lifting procedure** is indicated by the size of the circle denoting the state, therefore a wider circle denotes greater complexity. Greater procedural complexity ensures a higher level of protection to members of parliament.

Findings:

As one can see from the chart, in the **continental countries** there is a tradeoff between the two forms of protection, i.e. some countries forego a wide scope of protection provided by parliamentary inviolability, in favor of protection provided by non-accountability (quadrant III), while other countries forego a high level of non-accountability, at the expense of inviolability (quadrant II). In the **Anglo-American** countries both the non-accountability and the inviolability are relatively low, therefore presenting a low intensity of immunity, whereas in **Israel** both types of immunity as well as the procedural complexity are high.

B. Formulating Parliamentary Inviolability Arrangements - Legislative Considerations

The scope of immunity protection provided to members of parliament is derived from two aspects of the immunity arrangement: the scope of applicability and the complexity of the lifting procedure. The broader the scope of applicability, and the more complex the process of lifting the immunity, the greater the degree of the immunity. Similarly, if the scope of applicability is wide, but the process of lifting is simple, the frame of protection is not as wide in practice as it may be presumed from reviewing the scope applicability only. Thus, in practice, one can influence the scope of protection of the members' immunity either by changing the lifting procedure, or by changing the scope of applicability.

It should be noted that when the legal arrangement does not define the lifting procedure, it is customary to interpret this as providing the parliament with more extensive freedom of action regarding the considerations, that may be taken into account within the framework of lifting the immunity. Therefore, the absence of criteria to guide the discretion in the lifting procedure is interpreted as strengthening the sovereignty of the parliament, i.e. entitling it to examine every case on its own merits, without being subject to rigid limitations that are predetermined.

Below we shall present six central considerations in the formulation of parliamentary inviolability arrangement: the purpose of the immunity, the scope of applicability, the period of applicability, the physical boundaries of the immunity, the lifting default, and the lifting procedures.

1. The Purpose of the Immunity

In most cases, the purpose of inviolability is defined as a barrier against political persecution, or other legal harassment of members of the legislative branch by the executive branch, the intention of which is to deter the members of parliament from fulfilling their duties.² Within this framework, decisions regarding the existence and scope of inviolability in Israel, should start by examining whether the structure of the government system in Israel, raises concerns regarding legal harassment of the Knesset members by the administration.

² See comparative study "Rules on Parliamentary Immunity in the European Parliament, and the Member States of the European Union", Spring 2001, published by the European Centre for Parliamentary Research & Documentation (ECPRD) on its website: <http://www.ecprd.org>.

2. The Scope of Applicability

The scope of applicability, which derives from the purpose of the immunity, is handled in different ways by the surveyed countries:

- * The immunity is applied to civil actions only (**UK, Canada**), to criminal actions only (**France, Belgium**), or to both civil and criminal actions (**Spain** - regarding breaches of privacy and reputation only, **Sweden**).
- * The immunity prohibits detention and/or imprisonment only (**US, France, Finland**), or investigation and opening of procedures as well (**Spain, Belgium, Denmark**).
- * Prohibition of searches on the MPs' premises, and prohibition of summoning MPs to testify in a court or other tribunal.
- * Exceptions to immunity:
 - In certain countries the immunity does not apply in the case of apprehension at the time of the act being committed (*flagrante delicto*) (**France, Spain, Belgium, Finland³, Denmark, Sweden**); In other countries, the *flagrante delicto* exemption applies only if there is "a vital need" for detention (**Italy, Finland**);
 - The immunity does not apply to "minor offences" (**Germany**);
 - The immunity does not apply to "serious crimes" (**US** - treason, a crime or a disturbance of the peace (public order); **France** - criminal offences; **Sweden** - two years of imprisonment, **Ireland** - treason; **Portugal**);
 - The immunity does not apply to a final verdict (**France**);
 - The immunity does not apply if a member of parliament pleads guilty (**Sweden**).

3. The Period of Protection Provided by the Immunity

- Does the immunity apply only to procedures opened after the person was elected / entered into office (**France**), or does it apply also to acts and procedures opened before the elections/ entry into office (**Spain**)?
- Does the immunity apply only while the parliament is in session (**US, Belgium, Luxembourg**), or does it apply both in the course of a session and during recess (**France, Denmark, Spain, Greece, Italy, Germany, Portugal**)?

³ For offences the punishment for which is at least six months of imprisonment.

4. The Physical Applicability of the Immunity

Does the immunity apply only to acts taking place inside or on the way to the parliament buildings (US), or does it apply to acts occurring anywhere?

5. The Default of Immunity

A. Does the immunity apply automatically unless it is lifted, or does it apply only at the request of the member, and subject to the parliament's approval? (**France** - the immunity from detention and imprisonment applies as long as it has not been lifted, while the immunity from interrogation must be invoked).

B. In the absence of a decision on a request to lift the immunity, does one consider the immunity to have been lifted - or as being in force (**Greece**)?

6. Procedures for Lifting Immunity

Within the framework of laying down the mechanism for lifting immunity, one should consider the following components:

- * **Mandate to lift immunity:** the presidium (**France** in lifting procedures); the plenum (**France** in delaying procedures, **Spain**); a court (**Cyprus** - the Supreme Court, **Columbia** - the High Court of Justice, **Chile** - any court).
- * **The scope of discretion:** the scope of legitimate discretion given to the body that has the mandate to lift the immunity. Does this involve only an examination of the good faith of the body requesting the lifting (**France, Germany, Spain**), or might the decision take into consideration any information that the deciding body considers appropriate?
- * **Two-fold procedure:** the need to carry out a prior investigation and deliberations in a committee, and the force of the committee's decision. In several countries the committee's resolution has the force of a recommendation (**France, Germany, Spain**), while in other countries the committee decision has the force of a final resolution. In addition, there are cases in which committee members are entitled to present the parliament with a minority opinion as well (**Italy**).

- * **The right to request a lifting of immunity:** the determination of who can present a lifting request. There are countries that restrict the right to request a lifting of immunity, while other countries give such a right to many people. (**France** - the Attorney General; **Germany** - various people).
- * **Right of representation:** May the member of parliament be represented before the Committee/House by an attorney, another member, or anyone else? Can such a member plead for himself? (for example, in **Germany** a member of the Bundestag may not be given leave to speak on the merits of the case).
- * **The timeframe:** determining the timeframe for taking a decision (in **Austria**, if a decision is not taken within eight months, the request for lifting the immunity is considered to have been approved; in **Spain**, if a decision is not taken within 60 days, the request is considered to have been cancelled; in **Greece**, if a decision is not taken within three months, the request is considered to have been rejected).
- * **Publicity of the deliberation and decision:** (**France** - the deliberation is secret, the decision is public; **Spain** - *in camera*).
- * **Type of vote:** secret (**Spain, Greece, Italy**) or open.
- * **The majority required:** a demand for a specific majority (**Poland, Uruguay, Argentina, Bolivia, Paraguay** and **Brazil** - 2/3, **Sweden** - 5/6 of those present).

C. Survey of the Existing Legal Practice in Several Countries

Below we shall present the arrangements regarding parliamentary inviolability in several countries in the world. It should be noted that since Israel has a unitary parliamentary system, i.e. there is no upper house, in all the countries presented below, the described arrangements refer to the lower house.

1. France⁴

1.1. Purpose of the immunity

Protecting Members of the National Assembly from unjust persecution, i.e. situations in which members of the National Assembly are incapable of fulfilling their official tasks due to criminal procedures taking place against them.

1.2. Scope of protection provided by the immunity

The French Constitution lays down that while the parliament is on session, a Member of the National Assembly may not be detained or imprisoned for a criminal offence, without the approval of the Assembly. While the parliament is in recess, no Member of the Assembly may be arrested without the authority of the Bureau of the Assembly. These limitations do not apply to apprehension at the time of the act (*flagrante delicto*), crimes (as opposed to felonies or misdemeanors), or if the Member of the Assembly has already been convicted in a final verdict.⁵

It should be noted that the immunity does not prevent searches in the home of a Member of the Assembly and does not prevent summoning a Member of the Assembly to testify in court.⁶ In addition, the immunity does not apply to

⁴ Main sources: Dr. Suzie Navot, "Report No. 1: The Immunity of Members of Parliament - Trends of Development", appendix No. 5 of The Report of the Public Committee for the Reexamination of the Issue of the Parliamentary Immunity of Knesset Members, 1997 (the Nissim Committee) (Hebrew); the website of the French National Assembly - <http://www.assemblee-nat.fr>; Parline in the IPU website - <http://www.ipu.org>; a comparative study published by the ECPRD "The Rules on Parliamentary Immunity in the European Parliament and member States of the European Union", Spring 2001, on the ECPRD website <http://www.ecprd.org>.

⁵ It is unclear whether the term "final sentence" refers to situations in which there is no possibility of appeal whatsoever, or whether this term refers to the final legal act at the tribunal in which the trial originally took place. Additionally, it is unclear what the power of the immunity is in cases where the member of the Assembly was found guilty before the immunity applied, but where the sentence was delivered only after the immunity already applied.

⁶ In this context, being summoned to give evidence before a judge or a tribunal.

investigation procedures,⁷ yet a Member of the Assembly may request that the Assembly suspend an investigation that is taking place against him for the duration of the session (see details below).⁸

1.3. Immunity Lifting

Mandate to apply for immunity lifting: the Public Prosecutor

Mandate to lift immunity: the Bureau (Presidium) of the Assembly;

Lifting procedure:

The Public Prosecutor approaches the relevant court, and the court refers the request to the Minister of Justice. The Minister of Justice refers the request to the Bureau of the National Assembly, and the latter refers it to a subcommittee of the Bureau. The scope of the subcommittee's authority is delimited to the expression of an opinion on whether the request is genuine, truthful and made in good faith. The position of the subcommittee is referred to the Bureau of the House,⁹ which deliberates the lifting. It should be emphasized that:

- (1) The proceedings are secret, but the decision is public;
- (2) The member of the Assembly whose immunity is being deliberated, has the right to present his case before the subcommittee;
- (3) The subcommittee's recommendation is referred to the Bureau, irrespective of whether the subcommittee supports or rejects the lifting of the immunity. The subcommittee cannot block the lifting of the immunity;

⁷ In 1995 an amendment to the French Constitution limited the scope of inviolability protection by removing the protection from investigations, and keeping its power only to imprisonment and detention.

⁸ Translated literally, the law stipulates that the parliament will "request" that the procedure be suspended, but it would appear that "the request" is binding.

⁹ The Bureau of the Assembly is made up of 22 members, including the President of the House, his six Deputies, three Questors and 12 Secretaries. The make-up of the Committee is supposed to reflect the political balance of forces in the Assembly.

- (4) According to the website of the French National Assembly, an analysis of Assembly resolutions since 1995 (when the last amendment concerning immunity was introduced) indicates that the Bureau is entitled to intervene in the content of the request for lifting. Consequently, the Assembly's role is not limited to approving or rejecting the request as presented, through the scope of the intervention may not include setting conditions for the lifting.¹⁰

1.4. The procedure for suspending an investigation

Mandate to request a suspension: a Member of the Assembly;

Mandate to suspend investigations: the Plenum of the Assembly;

Procedure for the suspension of an investigation:

At least one Member of the Assembly,¹¹ may request to suspend an investigation for the duration of the Assembly' session. The request is presented to the President of the Assembly, and is deliberated in a special committee.¹² The special committee holds a hearing in which the Member of the Assembly, on whose behalf the request for suspension has been presented, or another member representing this Member, can present the arguments upon which the request is based. The procedure includes what is referred to as a "limited deliberation",¹³ and at its end a report is referred to the Plenum¹⁴, which then delivers its resolution.

It should be noted that from the moment that the request for a suspension of the investigation is presented, and up until the decision in the Plenum of the Assembly is made, no investigation procedures may be pursued.

¹⁰ The addendum is from IPU information.

¹¹ From our source it is not clear whether the member of the Assembly against whom the investigation is taking place, can himself request a suspension, or whether the request must be made by other members of the Assembly.

¹² The make-up of the special committee reflects the balance of political forces in the Assembly.

¹³ It is not clear from the source what is unique about a "limited deliberation", compared to any other procedure.

¹⁴ Upon the referral of the report, the plenum is instructed to set a debate without any delay.

2. Spain

2.1. Purpose of the immunity

Protecting Deputies from infringement of their privacy, and from political manipulations that might impede their attending Congress sittings and from fulfilling their official duties.¹⁵ The immunity is also intended to prevent a disturbance to the proper running of Congress.

2.2. Scope of protection provided by the immunity

Regarding criminal law, the immunity limits both detention and the opening of criminal proceedings. The immunity applies to all criminal offences, but does not apply in cases in which the member of Congress is caught in the time of the act (*flagrante delicto*), does not prevent a search being held in his residence, or summoning a deputy to testify.¹⁶ Members of Congress also enjoy immunity from civil proceedings in connection with infringement of privacy or the reputation of a person.¹⁷

The immunity is in force from the moment a person is declared to have been elected, to the last date of his office. The immunity applies also to proceedings that were opened against a Member of Congress before he was elected to his post.

2.3. Immunity Lifting

Mandate to apply for immunity lifting: apparently the Court that is dealing with the case of the Member of Congress;¹⁸

Mandate to lift immunity: The plenum of the Congress;

Lifting procedure:

The request is presented to the President of the Congress, who, subject to prior agreement of the Bureau, must refer it within five days to the Committee on the

¹⁵ According to a ruling of the Spanish Constitutional court on this matter, SFC 90/1985. See Suzie Navot, in the Nissim Committee Report.

¹⁶ Testify, Both before a judge in a court of law and any before any other judicial forum.

¹⁷ The protection from civil proceedings was adopted in 1985, following approaches made by Members of Congress who were sued for infringement of privacy or the reputation of a person. See Navoth, the Nissim Committee Report.

¹⁸ In the sources that we checked the identity of the body that is entitled to lift the immunity was not mentioned. However, in view of the referral of the decision to the President of the Supreme Court, it may be assumed that the request is made within the framework of the main procedure in the court that has the material authority.

Statute for Members¹⁹ (in the Lower House), or to the "competent committee"²⁰ in the Senate. Within 30 days, the Committee must deliver its position regarding the lifting of immunity. This position is then debated in the plenum at the nearest date on which the House has an ordinary sitting, and the President of the Congress refers the plenum's decision to the President of the Supreme Court. Both the debate and the vote are conducted *in camera*. Should the plenum fail to adopt a decision on the subject within 60 calendar days, the request is considered to have lapsed.²¹ The plenum may not condition the lifting of the immunity.

The Spanish Supreme Court has ruled that since the immunity is designed to prevent political threats or conspiracy, the scope of the discretion in the procedures for lifting the immunity is limited to examining whether such threats or conspiracy actually exist.

It worth mentioning that the Constitutional Court of Spain declared that it holds the power to review and examine the constitutionality of the procedure of immunity lifting²².

2.4. Miscellaneous

In the years 1979-1999 the Spanish Senate dealt with 38 requests for the lifting of immunity, sixteen of which were rejected and 22 approved. In the same period 29 requests were dealt with by the lower House, of which 11 were rejected and 16 approved.

¹⁹ In the ECPRD document, it is pointed out that this referral is subject to the consent of the Presidium of the House, but from the context, and in view of the time limitation, it would appear that this is merely a formal procedure.

²⁰ This is the wording in the ECPRD document. The identity of the "competent committee" is unclear.

²¹ The time is measured from the date on which the request was received by the Committee.

²² Dr. Suzie Navot, "Report No. 1: The Immunity of Members of Parliament - Trends of Development", appendix No. 5 of The Report of the Public Committee for the Reexamination of the Issue of the Parliamentary Immunity of Knesset Members, 1997 (the Nissim Committee) (Hebrew).

3. Italy

3.1. Scope of protection provided by the immunity

Parliamentary inviolability in Italy applies both to criminal and civil procedures. The immunity focuses on the prevention of imprisonment, detention or any other limitation of the freedom of a member of the Chamber of Deputies. The immunity does not prevent interrogation or the opening of proceedings against a Member of the Chamber of Deputies, but it limits the tools of investigation, for it forbids searches on the body and of the possessions of the Member, tapping his phone, and seizure of his mail.²³

It should be noted that the immunity, as presented above, is relatively limited in comparison to that practiced in Italy in the past. The limitation was made following several cases in which members abused the immunity provided to them.²⁴ In addition, the immunity does not apply in cases where a Member of the Chamber of Deputies is caught in an act that necessitates detention, and in cases of implementation of a final verdict. The immunity does not prevent summoning a Member of the Chamber to testify.

3.2. Immunity Lifting

Mandate to apply for immunity lifting: The Public Prosecutor

Mandate to lift immunity: The plenum of the Chamber of Deputies

Lifting procedure:

The Public Prosecutor presents a request for the lifting of the immunity to the President of the House in which the Member serves. The President refers the request to the relevant committee, which has 30 days to examine the request,²⁵ and present a recommendation as to whether the immunity should be lifted. The Committee's recommendation is referred to the plenum. The vote in the plenum is made by secret ballot.

²³ "Seizure of mail" refers both to mail sent and mail received.

²⁴ In the years 1992-93 more than 200 requests were made to lift immunity. Cases are known in which the refusal of the House to lift the inviolability enabled members to escape the country. It is for this reason that the content of the immunity was changed.

²⁵ Should the Committee fail to fulfill the time limit, it is entitled to receive a prolongation to the said 30 days.

The procedure for lifting the immunity is subject to judicial review. The judge, before whom the main case for which the lifting request was made, is entitled to refer to the Constitutional Court a decision by the House rejecting such a request to lift the immunity. The Constitutional Court is entitled to cancel the decision of the Chamber of Deputies or the Senate.

It should be noted that even though it is possible to lift the immunity from phone tapping, searches and the seizure of mail, it is inevitable that in the process of lifting the immunity, the Member will become aware of the use of such means, which will make them useless.

4. Germany

4.1. Purpose of the immunity

The immunity is designed to prevent intervention in the work of the Bundestag by other authorities, and is therefore regarded as a right of the Bundestag as an institution, rather than as a personal privilege of Members of the Bundestag.

4.2. Scope of the protection provided by the immunity

Parliamentary inviolability applies to criminal and disciplinary procedures. It includes protection from investigation, searches, detention and prosecution. However, as of 1969, the Bundestag adopts a resolution every time a new Bundestag convenes, in which it grants permission for preliminary investigation procedures, and for the removal of the immunity for traffic offences and other offences deemed to be minor offences. Thus, the Bundestag enables certain proceedings, yet forbids detention, prosecution, or any procedure that might limit the Member's freedom.

The immunity further applies to civil procedures, should these involve limitation of the freedom of the Member of the Bundestag. The immunity does not apply to a Member of the Bundestag who has been caught in the act, or on the morrow of the day on which the offence was carried out.

The validity of the parliamentary inviolability is limited to the tenure of office of the Member of the Bundestag, but it applies also to proceedings that were opened against a Member of the Bundestag before he was elected.

Without derogating from the aforementioned, it should be noted that the Bundestag is authorized to suspend proceedings that are already taking place against one of its members.

The guiding line within the framework of the deliberations on the lifting of the immunity (see details on the procedure below) is to create as much equality as possible, between the criminal responsibility of the citizens and that of a Member of the Bundestag. Therefore, the Bundestag enables proceedings against Members to take place even if they are expected to prejudice the reputation of the Member. The jurist Suzie Navot as pointed out that the Bundestag treats immunity as a procedural barrier only, and there are no known cases in which immunity was abused, or cases in which there was an improper refusal to waive immunity.

4.3. Immunity Lifting

Mandate to apply for immunity lifting: The Public Prosecutor; a court; professional disciplinary courts under public law; professional associations exercising supervision by virtue of law; the Committee for Scrutiny of Elections, Immunity and the Rules of Procedure; the creditor in executory proceedings.

Mandate to lift immunity: The plenum of the Bundestag

Lifting procedure:

The prosecuting authorities refer a request to lift the immunity to "the Committee for Scrutiny of Elections, Immunity and the Rules of Procedure".²⁶ The Committee presents its recommendation to the plenum of the Bundestag, which adopts a resolution regarding the lifting of immunity. Within the framework of examining a request to lift immunity, the Bundestag may not consider or evaluate the evidence; it is only expected to examine the comprehensibility of the accusations. In other words, the Bundestag discretion in the process of reviewing requests to lift immunity focuses on prevention of situations in which a request for lifting is made prematurely, merely as means to ease the procedure for future potential indictment.

It should be emphasized that in matters relating to immunity, the Bundestag Rules of Procedure lay down that the Member of the Bundestag concerned should not be given leave to speak on the merits of the case, and requests made by such a Member to lift his own immunity shall not be considered.²⁷ However, a Member may appeal to the Federal Constitutional Court on issues related to a decision to lift his immunity.

²⁶ Reference is made through official channels, i.e. the request is communicated to the Federal Minister of Justice who submits the request to the President of the Bundestag. The creditor may address requests directly to the Bundestag. The make-up of the Committee reflects the party make-up of the House

²⁷ According to the IPU.

5. United Kingdom

Parliamentary inviolability in Britain is quite limited - it applies to civil procedures only, and protects only from detention and imprisonment.²⁸ Furthermore, the protection from detention and imprisonment does not apply to an indictment for contempt of court. Since imprisonment in a civil procedure is extremely rare, in practice this sort of immunity has little significance. Members of Parliament do not enjoy immunity from criminal justice, and therefore there is no term or procedure dealing with the lifting of immunity in such cases.

It is, indeed, possible to call upon Members of Parliament to testify in a court of law, yet Members may avoid giving such testimony, provided that the Speaker of the House notifies the court that the presence of such Members in the House is required.

It should be noted that the common practice in the British Parliament demonstrates a preference for an intra-parliamentary procedure to outer-parliamentary procedures. The alternative sanctions that may be imposed upon a Member within the framework of an intra-parliamentary process are extensive. The alternatives include termination of membership and even imprisonment, but the use of these sanctions is extremely rare.²⁹ It is suggested that the rareness of such procedures being necessary, results from the fact that Members of Parliament under threat of such sanctions being imposed, prefer resignation to waiting for a the decision of the House. When one considers the described practice, it should pay attention to the British tradition regarding judicial review of internal matters of the House. According to this tradition, the House is fully autonomous, implying that the judicial branch may not interfere in matters related to internal procedures in the Parliament, including procedures on matters of immunity.

²⁸ Parliamentary Privilege Act of 1770.

²⁹ The last time that Parliament decided upon the imprisonment of a Member of Parliament was about 100 years ago, and the last time that the membership of a Member was terminated was in the 1950s.

6. United States

Parliamentary inviolability in the United States prevents detention only, and is valid only during physical presence in Congress or on the way to it. The immunity does not apply to crimes or "breach of the peace". Since almost any offence is liable to be considered a "breach of the peace", the importance of the immunity is marginal, and its practical value is limited to a protection from detention in civil procedures only.

7. The Netherlands

There is no parliamentary inviolability in the Netherlands. The law that applies to a Member of the States General is the same as that which applies to every other citizen. It should be noted that the Netherlands is the only State of those reviewed in this document, and in the Nissim Committee Report, that has no parliamentary inviolability.

8. Canada

Parliamentary inviolability applies in Canada to civil procedures only, and prevents detention or imprisonment only. The immunity does not prevent searches in the residence of a Member of Parliament, but it does require an approval of the Speaker of the House for searches in a member's office in Parliament. The immunity prevents the summoning a Member of Parliament to testify in a court of law if he is a party to a law suit, and in cases in which the evidence is required in the course of a session of the Parliament.

The plenum is entitled to lift the civil immunity of the Member of Parliament.

9. Turkey

Immunity in Turkey applies in civil and criminal procedures, and applies to searches, detention, imprisonment and prosecution. The immunity does not apply if the Member of the Turkish Grand National Assembly is caught in the act of performing a serious offence. A Member of the Assembly can be called upon to testify in a court of law.

The authority to lift the immunity of a member of the Assembly is in the hands of the plenum of the House.

Appendix A - Comparative Table Regarding Parliamentary Inviolability and Non-Accountability in Various Countries in 1997

State	Parliamentary Inviolability			Parliamentary Non-Accountability				
	For freedom of expression and voting	For act	Applicability	Immunity from detention	Exceptions to immunity from detention	Immunity from prosecution	Immunity from search	Lifting of immunity
Argentina	Yes	No	In fulfillment of mandate	Yes	There are	There is - in criminal cases	None	With House approval
Australia	Yes	No	Procedure in parliament	Civil	None	None	None	None
Belgium	Yes	No	In fulfillment of duty	Yes	There are	There is - in criminal cases	None	With House approval
Bolivia	Yes	No	In fulfillment of duty	Yes	None	There is	None	With House approval
Brazil	Yes	No		Yes	There are	There is - in criminal cases	None	With House approval
Bulgaria	Yes	No	In the plenum	Yes	There are	There is - in criminal cases	None	With House approval
Canada	Yes	No	In plenum and committees	Civil	None	None	None	None
Chile	Yes	No	In fulfillment of duty	Yes	There are	There is	None	With court approval
Columbia	Yes	No	In fulfillment of duty	Yes	There are	None	None	With approval of High Court of Justice
Cyprus	Yes	No	In the plenum	Yes	There are	None	None	With approval of Supreme Court
Denmark	Yes (inviolability)	No		Yes	There are	There is	None	All with House approval
Finland	Yes (inviolability)	No	In the Riksdagen	Yes	There are	None	None	All with House approval
France	Yes	No	In fulfillment of duty	Yes	There are	None	None	Presidium of House
Germany	Yes	No	In the Bundestag	Yes	There are	There is - in criminal cases	None	With House approval
Greece	Yes	No	In fulfillment of duty	Yes	There are	There is - in criminal cases	None	With House approval
Israel	Yes	Yes	In fulfillment of duty (exceptions exists)	Yes	There are	Yes	There is	House approval (dual process = committee recommendation needed)
Italy	Yes	No	In fulfillment of duty	Yes	There are	None	There is	With House approval
Netherlands	Yes	No	In the plenum	No	None	None	None	None
Paraguay	Yes	No	In the role of legislator	Yes	There are	None	None	With House approval
Peru	Yes	No	In fulfillment of duty	Yes	There are	There is	None	With House approval
Poland	Yes	Yes	In fulfillment of mandate	Yes	None	There is - in criminal cases	None	With House approval
Slovenia	Yes	No	In the plenum	Yes	There are	There is - in criminal cases	None	With House approval
South Africa	Yes	No	In plenum and committees	Yes (non-accountability)				
Spain	Yes	No	In fulfillment of duty	Yes	There are	There is - in criminal cases	None	With House approval
Sweden	Yes (inviolability)	Yes	In fulfillment of mandate	Yes	There are	There is	None	All with House approval
United Kingdom	Yes	No	Procedure in Parliament	Civil	None	None	None	None
United States	Yes	No	Legislative function	Civil	Criminal Offences	None	None	None
Uruguay	Yes	No	In fulfillment of duty	Yes	There are	There is - in criminal cases	There is	With House approval

Source: Suzie Navot, *Report of the Public Committee for the Reexamination of the Issue of the Immunity of Knesset members*, 1997 (excluding Israel, which was added by this paper writers).

Information regarding states marked in gray is presented in this study.