



Non-liable? Inviolable? Untouchable?

THE CHALLENGE
OF PARLIAMENTARY
IMMUNITIES

An Overview

**OFFICE FOR
PROMOTION OF
PARLIAMENTARY
DEMOCRACY**





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An OPPD publication
on topical parliamentary affairs

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Preface

This paper represents one in a series of publications on issues in parliamentary practice from the Office for Promotion of Parliamentary Democracy (OPPD).

The European Union (EU) is founded on the principles of liberty, democracy, respect for human rights, fundamental freedoms and the rule of law. The European Parliament (EP) has always been a staunch defender of these principles. Through its standing committees, inter-parliamentary delegations, plenary resolutions, debates on human rights and involvement in monitoring elections, the Parliament has actively sought to give high priority to democratisation in all its external actions.

In 2008 the European Parliament set up the Office for Promotion of Parliamentary Democracy to directly support new and emerging democracies (NED) beyond the borders of the European Union. The OPPD assists in the establishment and reform of parliaments and aims at strengthening their capacity to implement the chief functions of lawmaking, oversight and representation.

Members and civil servants of NED parliaments can benefit from tailored training and counselling provided by the OPPD as well as networking with members and relevant services of the European Parliament.

The OPPD seeks to establish a continuing dialogue and partnership with NED parliaments worldwide and to support their participation

as fully fledged members in the democratic community. It facilitates sharing of experiences and best practices of parliamentary methods, and fosters research and study of these practices.

Parliamentary immunity derives its legitimacy from the fundamental right of individuals to govern themselves with its main objective being to secure independence and freedom of expression. This form of immunity guarantees the principle of the separation of powers. Immunity makes it possible for parliamentarians to express minority opinions without being penalised for it and this in turn contributes to a pluralist democracy. While political and legal aspects have received considerable attention over the years, ethical aspects have only more recently come to the fore. There is now a widespread recognition that where parliamentarians enjoy immunity, their integrity becomes all the more important.

This brochure builds on a previous study entitled *'Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union'*, published in 2001 by the European Centre for Parliamentary Research and Documentation (ECPRD) and aims to provide an overview of some of the core questions relating to parliamentary immunity and the way they are addressed in the European Union and by the European Parliament.

Introduction

In ancient Rome, the tribunes of the people enjoyed special protection in order that they should freely exercise their functions. Anyone who infringed that prohibition was liable to punishment or even execution.

“The idea of a written statement of the rights of the individual *vis-à-vis* those in power is of Anglo-Saxon origin”.¹ No parliamentary prerogative, it was felt, would need to be created. It sufficed to make a reference to *common law*, i.e. to the traditional rights and freedoms of individuals against the abuse of royal power. Therefore, there was no need to establish any specific protection for parliamentarians since common law was sufficient. Such an approach was clearly only possible if a fundamental agreement on basic political values existed in the country.

The origins of parliamentary immunity date back to a session of the English Parliament in 1397, when the House of Commons passed a bill denouncing the scandalous financial behaviour of King Richard II of England. Thomas Haxey, the member who was behind this direct act against the King and his court, was put on trial and sentenced to death for treason. Following pressure from the Commons, however, the sentence was not carried out, and Haxey received a royal pardon.

This event prompted the House of Commons to review the right of members of parliament to

discuss and debate in complete autonomy and freedom, without interference from the Crown. Freedom of speech, introduced into the House of Commons at the beginning of the sixteenth century was confirmed in the 1689 Bill of Rights, which expressly protected discussions and acts of Members of Parliament from any form of interference or objection from outside Parliament.

A totally different situation arose in France where the 1789 Declaration of the Rights of Man and Citizens did not confirm a series of basic and accepted rights but proclaimed a new universal aspiration that ‘was to prevail by virtue of the triumph of pure reason’.² The Declaration was the outcome of a revolution and not based on a broad agreement. As a result, special measures were necessary to safeguard the representatives of the people and protect them from abuse. Thus, the French National Assembly declared the person of each deputy to be inviolable.³ Non-liability was enshrined in law by the Decree of 23 June 1789, approved on a proposal by Mirabeau (1749-1791), a well known protagonist of the French Revolution. This was followed by the proclamation, in a Decree dated 26 June 1790, of the privilege whereby Members of the Assembly would not be indicted without the Assembly’s authorisation.

Charles de Montesquieu (1689-1755), having been inspired by English parliamentary law,

1 Van der Hulst, M., *The Parliamentary Mandate*, 2000, p. 63.

2 *Ibid.*, p. 64.

3 *Ibid.* p. 65.

contributed to the implementation of parliamentary immunity in France. According to him, separation of powers is the basis of immunity law. If an MP is arrested, his arrest is considered to be in breach of the principle of separation of powers.⁴

The relatively wider scope of parliamentary privileges in France – MPs could not be arrested without permission from the Assembly since 1970⁵ – parts of which were taken from the English model, is closely connected with the position of superiority over the other State bodies which the National Assembly and its Members acquired within the context of the Revolution.

Belgium was one of the first European states to establish a parliamentary regime. Consequently, its Constitution of 1831 had a decisive impact on the constitutions of other European states during the nineteenth century.⁶

Since then, parliamentary immunity has been enshrined in the constitutions of other countries of continental Europe where the French model, with its dual aspects of non-liability/inviolability, has exerted a predominant influence. The English model has generally been adopted by those countries which were colonised by the British.⁷

However, more recently, parliamentary immunity has been called by some anachronistic, obsolete or even contrary to the fundamental principles of modern constitutional law. Yet, others have countered that the reasons which originally lay behind the introduction of parliamentary immunity into the modern constitution still exist.

This debate is ongoing. Meanwhile, it has prompted some countries into reforming their legal procedures and some parliaments into modifying their practices. Generally, these changes amount to restricting the scope of the inviolability component of parliamentary immunity.

So, why are parliamentarians granted immunity? Why should elected representatives of the people be treated any differently today from their constituents? Does immunity not fuel suspicion of politicians at a time when public trust in political institutions is already undermined? These are legitimate questions which deserve to receive the best possible answers.

Parliamentary immunity“(…) derives its legitimacy from the fundamental right of individuals to govern themselves.”⁸ Immunity secures independence and freedom of expression for parliament and its


4 Berner, A., *Die Untersuchungsbefugnisse des Europäischen Amtes für Betrugsbekämpfung (OLAF) gegenüber dem Europäischen Parlament*, 2004, p. 170.

5 Except for cases of “*in flagrante delicto*”, that is to say caught in the very act of wrongdoing.

6 *Ibid.*, p.172.

7 Wigley, S., ‘Parliamentary Immunity in Democratizing Countries: The Case of Turkey’, *Human Rights Quarterly*, Vol. 31, Number 3, 2009, p. 569.

8 *Ibid.*, p. 568.



members vis-à-vis the executive and guarantees the principle of separation of powers between the legislature and the judiciary and therefore prevents arbitrariness of the executive and the judiciary. Immunity makes it possible for parliamentarians to express minority opinions without being penalised for it. Parliamentary immunity thus contributes to a pluralist democracy.⁹

At the same time, this fundamental purpose of parliamentary immunity – shielding parliamentarians from undue pressures preventing them from fulfilling their function properly – is not always apparent to the public, due to the technicalities and changes over time which tend to obscure what parliamentary immunity is about.

Parliamentary immunity raises political, legal and, last but not least, ethical issues. While political and legal aspects have received much attention over the years, the ethical aspects have only come to the fore more recently. There is now a widespread recognition that where parliamentarians enjoy immunity, their integrity becomes all the more important. So much so that the reputation of the whole parliamentary institution, its legitimacy, can be at stake.

Parliamentary immunity becomes an ethical issue where it is abused. Their immunity might tempt a parliamentarian to take advantage of their position to seek personal advantage. Another well-

known form of abuse is to use immunity as a tool to target political opponents. Such unethical behaviour on the part of politicians unfortunately can be witnessed regularly. In response, parliaments have introduced codes of conduct for their members and/or have otherwise tightened their house rules. But are such initiatives sufficient to tackle unethical behaviour and, more specifically, to promote a proper use of parliamentary immunities?

Invoking parliamentary immunity is no longer the easy reflex which it once may have been: nowadays, such a step will often be subjected to critical scrutiny and will not necessarily be upheld by the house. Facing a court may become a very real prospect for those parliamentarians whose immunity claim fails to meet today's stricter requirements.

The scope of parliamentary immunity should always be analysed in four different aspects: the protection for whom – the protection period – the protection venue – and the acts to be protected.

Apart from legal regulations and jurisprudence, other factors of an institutional, political and cultural nature may be decisive and must be taken into consideration. This makes it difficult to present a coherent view which would be applicable to all parliaments at all times. What seems to be certain though is that the regime of parliamentary immunity needs to be further explained to the wider

⁹ Council of Europe, European Commission for Democracy through Law (Venice Commission), *Report on the regime of parliamentary immunity*, CDL-INF(96) 7, Strasbourg, June 1996, p. 4. [http://www.venice.coe.int/docs/1996/CDL-INF\(1996\)007-e.pdf](http://www.venice.coe.int/docs/1996/CDL-INF(1996)007-e.pdf)

public in order to promote better understanding. If there is a trend to be detected, it is that the principle of inviolability is increasingly questioned whereas the principle of non-liability remains uncontested. This would primarily seem to be the case in democracies as (...) "democratising countries should use other means besides narrowing parliamentary immunity to counter problems such as political corruption, rights violations and subversive advocacy."¹⁰

The immunity regime in the European Parliament has changed with cases such as that of Aldo Patriciello in which the European Court of Justice set out clear criteria for granting immunity. This positive development has mitigated, but not resolved the problem that immunities remain the last aspect of MEPs' status where nationality-based differences in the treatment of individual MEPs manifestly exist. Removing that anomaly should enable the development of a uniform immunity regime for MEPs,

which should be substantive enough to protect MEPs and ethically sensitive enough to accommodate today's greater sensitivities among the public.

This brochure seeks to provide an introduction to the current arrangements across the European Union concerning parliamentary immunity. In doing so, it will first (Part I) assess the concept of parliamentary immunity over time: what has changed and what has remained constant? What are the main issues under debate? Part II outlines how immunity is regulated and brought into practice in the parliaments of the EU Member States. Finally, Part III looks at the way in which the European Parliament is dealing with immunity.

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¹⁰ Wigley, S., 2009, p. 569

PART I: THE CONCEPT OF IMMUNITY

Most national legal systems provide for dual protection of members of parliament: non-liability or non-accountability for votes cast and opinions expressed in the performance of their duties and, as regards all other acts, inviolability, prohibiting detention or legal proceedings without the authorisation of the chamber of which they are members.

Different countries use different names to refer to these two aspects. Non-liability, for example, is called 'inviolabilidad' in Spain, 'irresponsabilité' in France and Belgium, 'irresponsabilidade' in Portugal, 'insindacabilità' in Italy, 'Indemnität' or 'Verantwortungsfreiheit' (non-liability), or 'Abstimmungs- und Redefreiheit' (freedom of voting and expression) in the Federal Republic of Germany, 'berufliche Immunität' (professional immunity) in Austria, and 'privilege' or 'freedom of speech' in the United Kingdom.

The second aspect of immunity is referred to in Spain as 'inmunidad', in France and Belgium as 'inviolabilité', in Portugal as 'inviolabilidade', in Italy either as 'inviolabilità' or as 'improcedibilità', in the Federal Republic of Germany as 'Immunität' or 'Unverletzlichkeit' (inviolability), or 'Unverfolgbarkeit' (exemption from legal proceedings), or

even, as in Austria, 'außerberufliche Immunität'¹¹ (extra-professional immunity), and in the United Kingdom as 'freedom from arrest'.

For the sake of simplicity, this paper uses the term 'non-liability' when referring to the first privilege, and 'inviolability' when referring to the second.

It should be noted that this duality of concepts is comparatively unimportant in three EU member states: the Netherlands, the United Kingdom and Ireland. In the Netherlands, members of parliament do not enjoy any inviolability, and British members of parliament and Irish members of the Dáil are given scant protection in this regard.

Main principles

While the following section does not deal with particular immunity provisions of particular parliaments, it is generally based on an examination of the immunity regimes in force within the parliaments of the EU Member States. How the immunity regimes of the EU Member States compare to one another will be shown in Part II of this brochure and the Annex.

¹¹ The extra-professional immunity will probably be abolished in the near future. Austrian Parliament 2009: http://www.parlament.gv.at/PAKT/VHG/XXIV/A/A_00459/index.shtml

Non-liability

The scope of non-liability normally covers protection against all kinds of public penalties for acts committed in the performance of members' duties or, more popularly formulated, deals with members' freedom of speech. In general, parliamentarians are not liable in civil or criminal terms for the acts encompassed within this form of immunity. Non-liability is also referred to as "substantive immunity", "absolute immunity", or "parliamentary immunity".¹²

Non-liability is composed of a liberty-right, a claim-right and an immunity-right: "The representative has a liberty-right because she does not have the duty to refrain from performing a range of actions. In addition, she has a claim-right because others have a duty not to prevent her from performing these actions. This is coupled with a further claim-right that the state uses coercive force to prevent others from interfering in the performance of those actions."¹³

The protection against public penalties afforded by non-liability does not, however, exclude parliamentarians from *disciplinary liability within the scope of Parliament* or, in principle, from the application of measures of a political nature which may go to the point of exclusion.

With regard to the acts covered by non-liability, these include votes cast and opinions expressed. "Substantive immunity extends to all the forms

which parliamentary activity may take, whether in writing parliamentary documents, or in speeches and votes in all their forms, in parliamentary assemblies and committees."¹⁴

The scope of the protection afforded as regards 'opinions' stated is one of the most controversial aspects of non-liability. The majority of constitutional texts make use of the concept of opinions expressed 'in the exercise of duties'. This permits a somewhat broad interpretation, so that it makes the protection applicable to certain statements made outside Parliament. Some constitutions refer specifically to votes cast and opinions expressed on the floor of the house or at parliamentary committee meetings.

Despite the reasonably broad nature of constitutional texts, legal theory and parliamentary practice tend, in most systems, to reject the extension of non-liability to opinions expressed, for example, in newspaper articles, public debates or election declarations. And they are unanimous in recognising that statements made in the ordinary fulfilment of civic duties or duties of a purely private nature are not covered by this aspect of immunity.

Unlike inviolability, non-liability has an absolute quality, in that the protection afforded is maintained even after the parliamentarian's mandate has come to an end.

¹² Court of Justice of the European Union, Opinion of the Advocate General, Case C-163/10, *Aldo Patriciello* [2011]

¹³ Wigley, S., 2009, p. 570.

¹⁴ Case C-163/10 [2011]

Some parliaments are not empowered to waive the non-liability applying to their members, this situation being recognised to derive from the absolute nature of the form of immunity in question. In other parliaments, however, non-liability may be waived by a decision of the house.

In most parliaments, non-liability is considered to belong to the public sphere, and a member of parliament cannot, therefore, relinquish it of their own free will.

Inviolability

In general, this form of immunity is such that, unless parliament gives its authorisation, members may not be arrested or prosecuted for acts not carried out as part of their parliamentary functions.

The scope of inviolability varies according to the degree of protection afforded to parliamentarians. It may thus be the case that, unless the house concerned has given its prior authorisation, parliamentarians are protected only from arrest or, in addition, from enforcement of particular measures such as searches or, more widely still, from a court summons or indeed any form of criminal proceedings.

During the 1990s some parliaments restricted the scope of inviolability to the extent that the authorisation of the house is no longer required in order to institute criminal proceedings. Authorisation is necessary only when it is proposed to take certain steps against a member such as arrest or other specific measures.

The only acts covered are, in principle, those likely to be the subject of criminal prosecution. Some legal systems exclude from the sphere of inviolability certain categories of offence considered as more serious.

Derogations from the principle of inviolability are sometimes laid down for minor offences. Such is the case with simple misdemeanours since it is felt that, given the relative non-seriousness of the offence, the function, independence and reputation of the parliamentary institution and its members would not be called into question. Moreover, it is felt that it would not be compatible with the principle of equality for a member of parliament to avoid such penalties just because of their position.

However, most parliaments consider that, in the case of *in flagrante delicto*, inviolability must be waived. The term *in flagrante delicto* refers to cases where a person is caught in the very act of wrongdoing. Generally, it is for judges to determine whether an offence falls under the heading of *in flagrante delicto*. Still, according to some constitutions, in order to remove immunity without delay, it is not sufficient that *in flagrante delicto* be verified, the offence in question must also be a serious one.

As regards the duration of the inviolability, it can be seen that, while in some parliaments it has effect throughout the duration of the parliamentary term, in others it refers only to the periods during which parliament is in session.

Some national constitutions contain specific provisions permitting the maintenance of immu-

nity during the period between the dissolution of the chamber and the formation of a new chamber, in the case of re-elected members of parliament.

Unlike non-liability, inviolability is effective only during the period of the parliamentary mandate and ceases to have effect after this has expired. Legal action is thus only postponed and not permanently prevented.

Waiving parliamentary immunity

The procedure for waiving parliamentary immunity – where it exists – is normally regulated by parliamentary rules of procedure.

In most states, requests to waive immunity are drawn up by the prosecution services. In some countries, however, requests may be drawn up by other authorities (the courts having jurisdiction, for example). Requests are sent to the speaker of the house concerned either directly or, in some cases, via another authority such as the minister of justice or the prime minister.

The request, once received, is forwarded to the competent committee. This may be a committee specially formed to assess each specific case or a permanent committee. The latter is more common.

The decision of the chamber concerned is usually based on the recommendations of the competent committee.

In some parliaments there are specific rules imposing certain limitations on debates, particularly as regards the speakers who are allowed to take part. Thus, the parliamentarian under investigation will not be able to participate in the substantive debate. In other parliaments, debates on questions of immunity take place 'behind closed doors'. Parliamentary decisions on requests concerning the lifting of immunity can be taken by secret ballot.

One of the most important variations connected with the procedures for waiving parliamentary immunity stems from the fact that, in some systems, a time-limit is established within which the chamber concerned must grant or refuse the authorisation requested, with specific consequences arising from the non-observance of that time-limit.

From this brief review of some main parliamentary practices, we can see that there is a great diversity of – at times contradictory and, at any rate, unsystematically applied – criteria and interpretations used in shaping immunity regimes. In some cases, the absence of fixed criteria is even presented as a demonstration of parliamentary sovereignty, whereby parliament is entitled to look at each specific case on a discretionary basis, unfettered by predetermined, rigid principles.

The synoptic table below offers a general comparison between the concepts of non-liability and inviolability. It should be noted that, while it provides a broad indication of the differences between both concepts, it does not cover all regimes currently in force within the parliaments of the EU Member States.

Synoptic Box: Comparing non-liability and inviolability of members of parliament

	Non-liability	Inviolability
Scope	Non-liability protects members from most kinds of public penalties (criminal, civil and administrative) for acts committed in the performance of members' duties, such as opinions expressed in parliament and votes cast.	The scope of inviolability varies considerably between parliaments, although it generally confers protection from criminal, civil and administrative proceedings and arrest, except where the member is apprehended <i>in flagrante delicto</i> .
Persons covered	Members of parliament and, in some cases, participants in official parliamentary meetings.	Members of parliament.
Duration	Non-liability has an absolute quality, reflected in the indefinite duration of its effects: the protection is maintained after the member's mandate has ended.	Unlike non-liability, inviolability generally only lasts for the duration of a member's democratic mandate.
Can immunity be lifted?	Most chambers cannot force the lifting of non-liability from members. However, a handful of parliaments can do so.	Inviolability can always be withdrawn, usually requiring the consent of the chamber.
Procedure for lifting immunity	There are no procedures for parliaments that cannot lift non-liability, but in those that do, the procedure usually involves an initial proposal from an individual or competent official, followed by a vote for approval by the chamber.	In most cases, the initial proposal for lifting immunity is composed and presented by the relevant competent officials (the public prosecutor, the courts, etc.) to the speaker of the relevant chamber, who then passes it on for examination by the relevant parliamentary committee. Afterwards, the proposal is taken to the chamber for approval or rejection.

“Parliamentary ethics”: implication for parliamentary immunities:¹⁵

Democracy being built on the trust which voters put in them, democratically elected politicians must seek to earn that trust as they perform their legislative and oversight roles. Accordingly, breaches of that trust tend to be profoundly detrimental to the standing of politicians – personally and as a group – the parliamentary institution, and democracy as such. In many Western democracies, such breaches unfortunately have been on the rise, thus undermining the legitimacy of the democratic political process in the public eye. Recent years have seen systematic attempts, on the part of parliaments, to counter this worrying trend, through the introduction of additional transparency requirements, the establishment of ethics committees and monitoring bodies, and the adoption of codes of conduct. Taken together, these various initiatives – often referred to as ‘parliamentary ethics’ – aim to raise the responsiveness and accountability of the public sector to an increasingly critical public.


Clearly, there is a conflict between the drive towards stronger parliamentary ethics on the one hand, and the existing parliamentary immunity regimes on the other. As voters are becoming more critical of their elected representatives, they are also becoming less willing to grant these same representatives a wide scope of perceived ‘untouchability’. Where parliamentary immunity may shield a politician from being prosecuted,

a code of conduct may call that same politician to account over, for instance, a perceived or real conflict of interest. Thus, the ‘ethical factor’ is now weighing in as an important consideration in the context of discussions on reconfiguring parliamentary immunity. Leaving immunity less open to the – to be expected – accusation that some manifestly are ‘more equal than others’ has in fact become one of the core objectives of a modernised parliamentary immunity regime. By de-emphasising the inviolability aspect and subjecting the immunity aspect to functional trimming down, such a modernised regime would secure the preservation of the essential function of immunity – allowing parliamentarians to fulfil their mandate without fear of being subjected to undue pressures – while heeding the call to observe the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. A modernised immunity regime along those lines would still need to be explained to the public in order for it to gain sufficient acceptance.

Parliamentary immunity and ethics in emerging democracies

Raising the ethical component of parliamentary immunity so far has been mainly a Western pre-occupation, essentially affecting the parliaments of Europe and North America, although recently parliaments in Latin America and Africa have faced similar challenges. But there is of course no *a priori*

¹⁵ For further reading, see: European Parliament, Office for Promotion of Parliamentary Democracy, *Parliamentary Ethics, A question of trust*, October 2011: http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf



reason why it should not be a concern of parliaments in new and emerging democracies (NED) as well.

Certainly in NEDs, parliamentary immunity can work both ways: it can foster democracy or undermine it. Thus, immunity's protective role can make a very real, tangible difference, as it will protect parliamentarians against intimidation; however, other branches of government often will have not set themselves (wholly) free of an authoritarian past. Their immunity will also stimulate parliamentarians to commit themselves to the protection of human

rights and fundamental freedoms in their country and constituencies.

But immunity may just as easily work to reinforce already existing tendencies towards corruption, as parliamentarians may feel less deterred from engaging in self-serving practices. Also, under the cover of immunity parliamentarians can feel free to indulge in speeches and acts which manifestly undermine the often fragile democratic texture of NEDs (subversive advocacy, such as encouraging illiberal and anti-democratic legislation or inciting a majority to curtail individual rights).¹⁶

¹⁶ Wigley, S., 2009, p. 575.

PART II: IMMUNITY ACROSS EU MEMBER STATES

Part II offers a comparative, but necessarily general, discussion of parliamentary immunity arrangements in the EU Member States. This discussion is organised around five analytical issues:

- The legal basis of parliamentary immunity;
- The duration of parliamentary immunity;
- The scope of parliamentary immunity (protection of whom; acts to be protected; protected venue(s));
- The procedure for waiving parliamentary immunity;
- Parliamentary practice.

A more detailed comparative overview of national immunity regimes is found in the synoptic tables contained in the Annex.

The legal basis of parliamentary immunity

The legal basis is primarily the written constitution of the EU Member States. Almost all EU Member States have such a constitution, in which the essen-

tial elements of their respective parliamentary immunity regimes – non-liability, inviolability – are enshrined.¹⁷ The relevant constitutional provisions are generally complemented by laws, parliamentary rules of procedure, and standing orders. Generally speaking, procedures for handling requests to waive parliamentary immunity will be governed by parliamentary rules of procedure.

In the **United Kingdom** – where there is no written constitution – the legal basis is to be found partly in customary law and partly in statute form (the 1689 Bill of Rights guaranteeing absolute freedom of speech in Parliament and preventing the courts from subjecting any parliamentary proceedings to judicial examination).

The duration of parliamentary immunity

Non-liability

In some 21 Member States, parliamentarians enjoy truly unlimited, non-liability: it continues after the end of their term in office, without any time limit. In the remaining Member States, non-liability will

¹⁷ **Austria** (Art. 57 (1), (2) and (3) of the Constitution); **Belgium** (Art. 58, 59 and 120); **Bulgaria** (Art. 69 and 70); **Cyprus** (Art. 83); **Czech Republic** (Art. 27 and 28); **Denmark** (Art. 57); **Estonia** (Article 76); **Finland** (Section 30); **France** (Art. 26); **Germany** (Art. 46); **Greece** (Art. 61 und 62); **Hungary** (Art. 20 (3) and (6)); **Ireland** (Art. 15.10, 15.12 and 15.13); **Italy** (Art. 68); **Latvia** (Art. 28-34); **Lithuania** (Art. 62); **Luxembourg** (Art. 68 and 69); **Malta** (Article 65); **Netherlands** (Art. 71); **Poland** (Art. 105); **Portugal** (Art. 157 and 196); **Romania** (Art. 72); **Slovakia** (Art. 78); **Slovenia** (Art. 83); **Spain** (Art. 71); **Sweden** (Art. 12)

be restricted to the duration of the parliamentarian's mandate.

Inviolability

Inviolability is dependent on actual membership of the parliament: parliamentarians usually start enjoying inviolability from the day of their election until the end of their term. This is the case in Denmark, Germany, Greece, Italy, Portugal and Spain. In Belgium and Luxembourg, protection is provided only during sessions, whereas in the UK protection is provided from 40 days before the session starts until 40 days after one of its Houses has been prorogued or dissolved. In some Member States (Bulgaria, Denmark and Portugal), inviolability extends to judicial proceedings instituted against parliamentarians before their election. In Portugal, inviolability is even provided during recesses or suspension of the legislative session and during the period of dissolution of the Assembly.

The scope of parliamentary immunity

Protection of whom

Non-liability

In some Member States, non-liability extends to all persons taking part in parliamentary debates, such as ministers. This is primarily the case in countries with a British parliamentary tradition (such as in the Netherlands). Article 71 of the Constitution of the Netherlands stipulates that Members of the Parliament, Ministers, State Secretaries, and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for any-

thing they say during the sittings of the Parliament or of its committees or for anything they submit to them in writing. In Ireland, officials, experts and certain witnesses are also covered within parliamentary committees. In Member States following the French model, non-accountability applies, in principle, to parliamentarians only.

Inviolability

Mostly, inviolability applies to parliamentarians only. In Belgium, ministers and members of community and regional councils are also covered. In the Netherlands, parliamentarians do not enjoy inviolability; ordinary law is considered to be sufficient to protect all members of society, including parliamentarians. British MPs are also subject to ordinary criminal law.

Acts to be protected

Non-liability

Common to most Member States is the protection of opinions expressed and votes cast which are directly related to a parliamentarian's performance of their duties. However, variations on this general rule do exist, thus making protection applicable to certain statements made outside parliament. French case law, on the other hand, is much more restrictive, excluding statements made by parliamentarians in televised or radio interviews and debates.

In a number of Member States, some utterances are denied protection: defamation and libel (Hungary and Estonia) and insult, offence and slander (Poland and Bulgaria). Greek parliamentarians may, by virtue of their non-liability, refuse to testify on information obtained or passed on in the

performance of their duties, or against the persons who have supplied it, or those to whom they themselves have given such information.

Inviolability

While Member States tend to limit inviolability to criminal proceedings, some (Belgium, Germany, France, Italy, Latvia and Spain) will extend inviolability to administrative and/or civil and/or disciplinary proceedings as well. In Ireland, offences such as treason, felony and violations of public order are excluded from protection. Similarly, Portugal excludes premeditated offences punishable by imprisonment of more than three years. Sweden excludes criminal offences punishable by imprisonment of not less than two years. In Austria, offences clearly unrelated to the political activities of a parliamentarian are excluded from the scope of inviolability – meaning that offences committed in connection with the political activities of a parliamentarian are explicitly covered.

The requirement of prior authorisation of the house before instituting criminal proceedings has been qualified, or dropped altogether, in various Member States. Thus, in Belgium and France questioning, searches and seizures are not subject to prior authorisation. Also, inviolability is suspended in cases of *in flagrante delicto* in all Member States, except Estonia, Ireland, Netherlands and United Kingdom.

Protection venue

In various Member States (Cyprus, Denmark, Estonia, Finland, Germany, Ireland, Netherlands, United Kingdom), the protection afforded by non-liability is restricted to parliamentary duties per-

formed **on the floor of the parliament and/or at parliamentary committee meetings.**

Interestingly enough, Irish parliamentarians are also protected against arrest on the way to, or in the vicinity of parliament. Furthermore, their non-liability extends to statements made outside the *Houses of the Oireachtas* inasmuch as these appear to be identical to statements made within the Houses. In Greece, for opinions expressed outside the House to be covered by immunity, they must be directly linked with statements made and/or votes cast on the floor of the House. Austrian and Bulgarian parliamentarians, on the other hand, enjoy immunity within and outside parliamentary premises.

The procedure for waiving parliamentary immunity

Non-liability

Evidently, in those Member States (16) where non-liability cannot be lifted, there will be no procedure for waiving immunity/non-liability. In the other Member States, procedures do exist, with varying degrees of prescriptiveness. In Germany, France, Italy, Luxembourg and Spain, the parliamentary rules of procedure are comprehensive and precise on the subject. In Germany, the provisions of the rules of procedure of the *Bundestag* are complemented by a set of principles which help guide decision-making. By contrast, the relevant rules of procedure of the Belgian and Danish parliaments appear to be rather succinct, while those of the British and Irish parliaments remain utterly silent.

Concerning the essentials of the procedure for waiving parliamentary immunity/non-liability, most Member State parliaments follow the arrangements outlined on page 14. Some distinctive provisions stand out, however. In the *Bundestag*, the incriminated parliamentarian is not allowed to take part in the substantive debate concerning a request to lift their immunity. In Luxembourg and Spain, parliament will debate behind closed doors. In Greece, Italy, Portugal and Spain, parliament will decide by secret ballot on the lifting of immunity. In Greece, the constitution stipulates that if parliament does not decide within three months on a request for the lifting of immunity, that request will be considered as rejected.

Inviolability

Only Ireland and the United Kingdom prohibit the lifting of immunity for arrest and detention in civil cases and therefore have no procedure. The other Member States do have arrangements for lifting parliamentary immunity/inviolability. Usually, parliament is responsible for lifting parliamentary immunity, except in Cyprus where it is the Supreme Court with authority to do so. The request to lift immunity emanates from the public prosecutor in Germany, Hungary and Sweden, from the president of the Supreme Court in Spain, or the minister of justice in Romania. Only in Poland can inviolability be waived at the request of an individual parliamentarian.

Requests for lifting immunity will be examined by a special committee of parliament (Italy), a standing committee with legal jurisdiction (Belgium), or the

bureau of parliament (France). In most parliaments, the examining body will meet in closed session and will make a recommendation to the plenary. Generally, the plenary will decide by a simple majority. However, in Poland, a lifting of immunity needs to be adopted by an absolute majority vote and in Sweden by a majority of five-sixths of those voting.¹⁸

Lifting immunity in practice

The relevant rules illustrate only the formal side of the process of waiving parliamentary immunity in the various Member States. This process varies from one Member State to another, resulting in more or less restrictive national approaches to the waiving of immunity.

In the Czech Republic, Slovak Republic and Lithuania, the number of granted requests to waive immunity tends to approach the number of introduced requests. In Portugal and Slovenia, the number of granted requests is lower than the number of introduced requests, which suggests a more restrictive approach to lifting immunity. Greece would seem to stand out as most restrictive, with only 31 requests for the waiver of immunity being granted out of a total of 220 introduced requests, 179 of which were actually debated upon by parliament (period 2000 – September 2011). In Spain, the numbers suggest the reverse tendency, namely a fairly liberal granting of requests.

There are also differences in the overall volume of requests to be handled. The Cypriot and Roma-

18 Van der Hulst, M., 2000, p. 63. For more information: European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs. Legal and Parliamentary Affairs, *Handbook on the incompatibilities and immunity of the Members of the European Parliament*, 2009.

nian parliaments do not deal with many requests. In other Member States, however, parliaments have had to cope with significant increases in requests on account of various offences, ranging from the petty (traffic offences in Latvia, Poland) to the more serious (corruption in the Czech Republic, Slovak Republic; intelligence scandals in the Slovak Republic).

How do Member State parliaments arrive at their decisions to grant or reject requests to waive parliamentary immunity? Among the guiding principles on which parliaments appear to base their decisions, we find in particular the following:

- Verify the facts: a proper investigation may reveal the true purpose of the intended incrimination, namely to persecute unfairly the parliamentarian and to threaten their freedom and independence in carrying out their mandate;
- Ascertain whether allegations made refer to criminal offences or appear to be of a more political nature;
- Determine whether the alleged grounds for the accusation should be taken seriously or whether these are frivolous.

Where parliaments have indeed agreed to waive immunity, they have based their decisions on, among other considerations, the 'serious, sincere and loyal' nature of the request submitted and on the particular gravity or nature of the criminal offences imputed – involving, for instance, an ostensible public scandal, the reputation of the parliamentary institution itself, or the basic rights of third parties. Another recurrent motive for lifting immunity has been to enable all necessary investigative measures to be taken, on the understanding that the judicial proceedings must be conducted in such a way that they will not interfere with the discharge of the parliamentary office.

PART III: IMMUNITY IN THE EUROPEAN PARLIAMENT

The European Parliament's immunity regime is bound up with the distinctive nature of that parliament as a multinational assembly, the directly elected members of which in various respects remain rooted in their respective countries of origin. Until 2009, the absence of a uniform statute governing the rights and obligations of MEPs led to divergent treatment of MEPs concerning, among other things, salaries, allowances and immunities. With the introduction of the Statute for MEPs in July 2009, the same rules for salaries and allowances now apply to all Members. When adopting the Statute, the EP agreed to deal with immunities and privileges separately, asking the EU Member States to update the 1965 Protocol on the privileges and immunities of the European Communities (PPI). Despite successive reminders by the EP, the EU Member States have so far refrained from taking action on this issue. Inevitably, this piece of 'unfinished business' has had consequences for the EP's approach to immunities, as will be shown below.

Legal basis of parliamentary immunity

Article 343 of the Treaty on the functioning of the European Union lays down that the Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the

performance of their tasks, under the conditions laid down in the protocol annexed to that treaty.

Articles 8 and 9 of this protocol – the above mentioned PPI – reiterate the provisions concerning non-liability and inviolability of Members of the European Parliament.

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;*
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings. Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.*

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall

not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

In a resolution adopted on 15 September 1983, Parliament committed itself to proposing a revision of the PPI with a view to adapting it to the new mode of composition of Parliament and to drawing up a uniform statute for all its Members, prompted by the various disparities in dealing with parliamentary immunity across Member States. In the course of 1984, Parliament sent a proposal to that effect to the European Commission. In its resolution of 10 March 1987, Parliament declared itself in favour of convening a diplomatic conference of the EU Member States for the purpose of amending the relevant provisions of the PPI as proposed by Parliament. However, the immunity of MEPs to date is still not governed by uniform provisions, despite repeated calls by Parliament to the Council.¹⁹

Duration of parliamentary immunity

The exemption of MEPs from liability for the opinions expressed and votes cast by them in the performance of their duties (as specified in Article 8 of the PPI) protects them for the entire duration of their term of office and, indeed beyond, given that the privilege is indefinite.

Inviolability provided for in Article 9 of the PPI is effective 'during the sessions of the European

Parliament'. Given the specific purpose of parliamentary immunity and Parliament's practice of concluding its annual session on the day preceding the first day of the following session, it is clear that immunity is effective throughout a member's five-year term of office.

Exceptions apply where a member's term of office ends prematurely upon death, resignation or incompatibility. The date on which the term of office is deemed to have ended, and on which, consequently, the protection conferred by parliamentary immunity ceases to apply, is determined on the basis of the interpretative criteria adopted by Parliament and set out in Rule 4 of its Rules of Procedure.

It should be added that, in view of the silence of the PPI on the matter and the absence of any other rule thereon, Parliament has adopted the criterion whereby immunity under Article 9 of the PPI applies not only to actions during a member's term of office but also retrospectively (immunity thus does not apply to actions after expiry of the term of office). This criterion is based on the premise that the primary purpose of immunity is to protect the normal functioning of the parliamentary institution, a principle which might otherwise be jeopardised by actions occurring both before and after the start of a member's term of office.

¹⁹ Thus, in its resolution of 4 April 2009 the EP reiterated the need for a uniform Statute for MEPs and recalled, in this context, the commitment made by Member States in 2005 to examine the EP's request.

Scope and purpose of parliamentary immunity

According to Article 343 of the Treaty on the functioning of the European Union, the privileges and immunities set out in the PPI are established with the purpose of enabling the Union to carry out its mission. Article 4 of the EEC Treaty, Articles 3, 6 and 7 of the ECSC Treaty and Article 3 of the Euratom Treaty made it clear that the Communities are bound to act through their respective institutions, including the European Parliament.²⁰ It has, accordingly, been the traditional view that the immunity defined in Articles 8 and 9 of the PPI is intended to ensure the protection of Parliament as a Community/Union institution rather than the protection of its Members as individuals.

Article 8 of the PPI (non-liability)

(a) Opinions and votes

Under Article 8 of the PPI, MEPs are exempted from liability for the opinions expressed and votes cast by them in the performance of their duties. This privilege is intended to safeguard Members' freedom in the performance of their duties, leaving their actions to be subject only to the rules governing procedure and the conventions of parliamentary etiquette.

The wording 'opinions expressed or votes cast by them in the performance of their duties' is in conformity with legal tradition, as evidenced by com-

parable provisions in the Member States. At the same time, the scope of this privilege is not identical to that prevailing under the various national systems. The European Parliament has therefore endeavoured to define the precise scope of the provision concerned, proposing that the existing text of Article 8 of the PPI be replaced by the following wording:

'Members of Parliament shall not be subject to any form of inquiry, detention or legal proceedings, in connection with civil, criminal or administrative proceedings, in respect of opinions expressed or votes cast during debates in Parliament, in bodies created by or functioning within the latter or on which they sit as Members of Parliament.'

According to legal opinion, and following the interpretation of the parliamentary committee responsible, this wording should be taken to mean opinions expressed and votes cast not only during the part-sessions of Parliament but also during the meetings of parliamentary bodies such as committees or political groups. However, Article 8 of the PPI is deemed not to cover opinions expressed by members at party conferences, during election campaigns or in books or articles that they publish. Acts of physical violence do not fall within the scope of non-liability according to Article 8.²¹

(b) Defamatory Intent

In contrast to German and Greek parliamentary immunity arrangements, the PPI does not exclude

²⁰ European Parliament was referred to as "Common Assembly"/"Assembly".

²¹ Offermann, K., *Parliamentary immunity in the European Parliament*, 2005 (updated 2007), p. 9: www.pedz.uni-mannheim.de/daten/edz-ma/ep/07/pe360.487-en.pdf

actions committed with defamatory intent from the scope of non-liability. Furthermore, non-liability as defined in Article 8 of the PPI is absolute: no exclusion is permitted on the part of any entity, not even Parliament itself.

(c) Testimony in Court

An amendment to the PPI in 1987 entitles MEPs to refuse to testify in court,²² insofar as their testimony relates to their activities as Members of the European Parliament. The effect of this proposal is to give official recognition to a privilege which exists in various Member States but which is not referred to in the PPI. Rule 7, paragraph 5 of the EP Rules of Procedure concerns MEPs giving testimony in court and stipulates that MEPs appearing as witnesses do not need a waiver of immunity:

Where Members are required to appear as witnesses or expert witnesses, there is no need to request a waiver of immunity, provided:

- *that they will not be obliged to appear on a date or at a time which prevents them from performing, or makes it difficult for them to perform, their parliamentary duties, or that they will be able to provide a statement in writing or in any other form which does not make it difficult for them to fulfil their parliamentary duties.*
- *that they are not obliged to testify concerning information obtained confidentially in the exercise of their mandate which they do not see fit to disclose.*

Article 9 of the PPI (inviolability)

Inviolability refers to actions by MEPs not covered by Article 8 of the PPI, i.e.:

- opinions expressed and votes cast outside debates in the European Parliament, in the bodies set up by Parliament or functioning under its auspices, or in bodies where the Members concerned meet or are present in their capacity as Members of the European Parliament;
- actions which cannot be classified as opinions or votes, whether carried out within or outside Parliament.

Article 9 of the PPI draws a distinction between two types of situation arising 'during the sessions of the European Parliament', according to whether the Member concerned is physically present or not *in the territory of his own Member State or in the territory of any other Member State.*

(a) The MEP is present in his own Member State

In this case, the article refers the matter to the national law of the Member State, stating that MEPs are entitled to the immunities accorded to Members of their respective national parliament. However, this arrangement results in an inequality of treatment between Members, given existing divergences between the different national provisions on the matter.

²² Court of Justice of the European Union: <http://curia.europa.eu/en/actu/communiqués/cp02/aff/cp0217en.htm>

This situation also results in adverse consequences for the EP's own work, since it obliges the EP, in each individual case of a request for waiver of immunity, to review the relevant national legislation concerning immunity and the related procedures. This may lead not only to delays in decision-making, but also to errors in interpretation and even misapplication of the rules concerned.

(b) The MEP is present on the territory of another Member State than his own

In that case, the MEP will be exempt from 'any measure of detention and from legal proceedings'. This is also called a 'Community immunity'.

(c) Travelling to and from an EP meeting

Article 9 of the PPI additionally confers immunity on MEPs '*while they are travelling to and from the place of meeting of the European Parliament.*' This, too, should be regarded as a 'Community immunity', irrespective of the protection accorded by national legislation.

(d) In flagrante delicto

Article 9, last paragraph, sets out an exception to the privilege of parliamentary immunity, insofar as it states that immunity '*cannot be claimed where a Member is found in the act of committing an offence.*'

Current interpretation of articles 8 and 9

In view of the important decisions taken by the European Court of Justice in three immunity cases involving MEPs²³ greater clarity exists in how to interpret some of the questions raised earlier. The Court of Justice has made it quite clear that the forms of protection as described in articles 8 and 9 are quite different in legal terms.

The Court has declared that the scope of article 8 must be established on the basis of EU law alone; in fact article 8 makes no reference at all to national rights. This form of protection must be considered as an **absolute immunity** and the EP does not itself have the power to determine whether or not the conditions for applying article 8 have been met. Such an assessment is within the **exclusive jurisdiction of the national courts**. If those national courts are in doubt, they may of course always refer the question to the Court of Justice for a preliminary ruling.

The Court also explained in the Patriciello case that article 8 can even apply to opinions expressed by an MEP outside of Parliament. Although article 8 is in essence intended to apply to statements made by MEPs within the very precincts of the EP, statements beyond its confines may also be protected because, whether or not it is a protected opinion depends not on the place where the statement was made, but rather on its "**character and content**".

If the opinion has been expressed by the MEP "**in the performance of (their) duties**" and thus

23 Mara 21.10.2008; Gollnisch 19.3.2010; Patriciello 6.9.2011

entails a **direct and obvious link** between the opinion expressed and the parliamentary duties, the opinion will enjoy immunity.

Article 9 referring to immunity against judicial proceedings with reference to the law pertaining in the territory of their own State, should be read as meaning that the extent and scope of this immunity is determined by the various national laws to which it refers.

In the case (Gollnisch) to what extent the EP can freely decide not to defend the privileges and immunities of an MEP, the Court of Justice ruling showed that these decisions can potentially have far reaching legal consequences. The exact extent will depend, in each individual case, on the applicable provisions of national law in force at the relevant time. In other words, in some cases, the European parliament may actually adopt a decision with binding legal effects or just may see its “decision” being qualified as merely an opinion.

Thus, an MEP cannot claim to benefit, under article 9, from national rules and procedures on freedom of expression as this is exclusively covered by article 8.

However, where an MEP does submit a request for defence of immunity expressly involving article 9, then the Parliament must reply to that request on the basis of that article. In doing so, the European Parliament does have a “broad discretion” but has to take a formal decision.

Procedure for waiving parliamentary immunity

Article 9 of the PPI confers on the EP the right to waive the immunity of individual MEPs. It emphasises the institutional purpose of this prerogative, which seeks to safeguard the independence and normal functioning of the parliamentary institution.

The procedure for waiving the immunity of an MEP referred to in the third paragraph of Article 9 of the PPI must be based on Union law. Since Union law contains no specific provision concerning the waiving of immunity, it is up to the EP to determine the nature of the procedure. Rule 7 of the Rules of Procedure is the only procedural provision existing on the subject. The EP’s practice over the years has led to the establishment of a series of basic guidelines applying to the procedure for waiving an MEP’s immunity.

A request to waive immunity submitted to the EP is valid where drawn up and forwarded by the authorities which, under the relevant national legislation, are entitled to submit and forward a similar request to the parliament of the Member State concerned. Authorities of a Member State other than that of which an MEP has nationality can make a request for waiver of parliamentary immunity.²⁴

Provided that the independence of the EP and its Members is not adversely affected, the precise moment at which, in the context of the preparation of legal proceedings, a request for waiver of

²⁴ Ibid., p. 18.

immunity is to be drawn up prior to initiation of the judicial action, is to be determined by the national law of the Member State.

In February 2003, a revision of the procedure to waive immunity was introduced, making it possible for MEPs to request a defence of immunity.²⁵

(a) Dual mandates

In the case of MEPs holding a dual mandate, the EP acts in accordance with a decision adopted by the committee responsible at the beginning of the parliamentary term following the first direct elections and has traditionally waited for the decision of the national parliament concerned. Although the procedures in question are independent of each other, it has been considered desirable, for both political and practical reasons, to await the national parliament's position on a request before considering it. This practice accounts for the delay which sometimes characterises the EP's decisions.

(b) Right of a parliamentary committee to obtain detailed information

The introduction in May 1992 and in February 2003 of further provisions revising the Rules of Procedure, now enable a committee to ask the authority concerned for information not set out in the original request for waiver of immunity and the member concerned to submit such information: Rule 7, paragraph 3, states: "*The committee may ask the authority concerned to provide any information or explanation*

which the committee deems necessary in order for it to form an opinion on whether immunity should be waived or defended. The Member concerned shall be given an opportunity to be heard, may present any documents or other written evidence deemed by that Member to be relevant and may be represented by another Member."²⁶ These provisions reinforce the legitimacy of the parliamentary committee's right to obtain detailed information concerning each case examined and, for this purpose, to have at its disposal all the information which it deems necessary for it to reach a decision.

On several occasions, the EP has based its refusal to waive an MEP's immunity on the grounds that the national authorities in question had failed in their duty to cooperate under Article 4 of the Treaty on European Union and had not provided certain information which had been requested as being indispensable for the consideration of the requests concerned.

(c) Confidentiality

The committee responsible has so far considered requests for waiver of immunity at meetings held in camera. The purpose of this practice is to ensure confidentiality in the interests of both the MEP concerned and of the committee and its members, in such a way as to ensure a free and unbiased debate, with particular regard to cases of this nature.

(d) Obligation not to pronounce guilt or innocence
Rule 7, paragraph 7, enshrines the principle whereby

²⁵ Offermann, K., 2007, p. 21: www.pedz.uni-mannheim.de/daten/edz-ma/ep/07/pe360.487-en.pdf, cf. case law of the Court of Justice on defence of immunity. The first cases on defence of immunity appeared in 2003.

²⁶ *Ibid.*, p. 19.

the committee is not empowered to pronounce on the guilt or innocence of the MEP concerned, since this is a matter for the judicial bodies.

(e) The precise action to be taken by committee

The procedure for considering action is detailed in Rule 7, paragraph 8, of the Rules of Procedure:

The committee's report shall be placed at the head of the agenda of the first sitting following the day on which it was tabled. No amendments may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for or against each proposal to waive or uphold immunity.

Without prejudice to Rule 151, the Member whose privileges or immunities are under consideration shall not speak in the debate.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the matter, a separate vote shall be taken on each of the proposals contained in the report. If a proposal is rejected, the contrary decision shall be deemed adopted.

(f) Notification of authorities

The procedure concludes with the immediate notification of the decision to the national authorities concerned. However, in cases where the decision taken involves the waiving of immunity, the President of the EP must ask to be kept informed of the progress of the legal proceedings in question.

Parliamentary practice

Since 1981, the number of requests to waive immunity has risen in step with successive enlargements of the EP and the reduction in the number of dual mandates. During that same period, parliamentary practice has been developing and consolidating a set of principles and criteria intended to serve as guidelines for the committee responsible.

These principles are based in part on the case law of the European Court of Justice and they are summarised below.

(a) Purpose of parliamentary immunity

Parliamentary immunity is not to be seen as a privilege benefiting individual MEPs. It is designed to guarantee the independence of Parliament and its Members vis-à-vis other bodies. This implies, among other things, that the timing of alleged offences – prior or subsequent to the election of the MEP – is only of secondary importance. What is paramount is the protection of the parliamentary institution through that of its Members.

(b) Renunciation of immunity

In keeping with the focus on the parliamentary institution and not the individual MEP, the renunciation of parliamentary immunity by an individual MEP will have no legal effect.

(c) No time-limit on immunity

Parliamentary immunity is "(...) effective throughout a Member's term of office (the protection begins with the publication of the results of the elections), irrespective of whether the immunity relates to the

initiation of legal proceedings, investigations, the enforcement of judgements already handed down or appeals to lower or higher courts.”²⁷

(d) Autonomous nature of immunity in the EP and in Member State parliaments

The EP Committee on the Rules of Procedure remains of the opinion that the ground must be prepared for a genuine EP immunity, one which is in principle autonomous, while retaining the references to national parliaments set out in the Protocol on privileges and immunities. If that were not the case, the disparities between Members of one and the same parliament would be accentuated on the grounds of their nationality.

(e) Extent of the immunity afforded by EU law to MEPs for opinions expressed and votes cast in the performance of their duties

A recent case²⁸ of the European Court of Justice represented a milestone in the development of the EP’s regime of parliamentary immunities. In its judgement, the Court clarified the extent of the immunity afforded by EU law to MEPs for opinions expressed and votes cast in the performance of their duties. It stated that “(...) immunity may be granted only if the connection between the opinion expressed and parliamentary duties is direct and obvious.”²⁹

The Court also ruled that if the EP decides to defend the immunity of an MEP, it will be considered as an opinion which does not bind national courts. EU law does not provide any obligation for the national courts to clarify their reasons for not having adopted the view of the EP.

²⁷ Ibid., p. 23.

²⁸ Case of Aldo Patriciello (C-163/10). Mr. Patriciello had been accused of making false accusations against a public official in the performance of her duties. In 2009 the European Parliament took the decision to defend Mr. Patriciello’s immunity.

²⁹ Ibid.

Summary of immunity procedures under articles 8 and 9 of the Protocol

	Article 8	Article 9 (point (a) of first paragraph)
	Immunity in respect of “opinions expressed or votes cast” by MEPs “in the performance of their duties”	Immunities in the territory of the Member State of MEPs, “accorded to members of their parliament” – other than in the field of opinions expressed or votes cast
“Waiver” of immunity requested by a national authority under Rule 6(2) of the Parliament’s Rules of Procedure.	<i>Not applicable</i> <i>(Immunity under art 8 is absolute and cannot be waived by Parliament)</i>	<ul style="list-style-type: none"> - extent of immunity is determined by applicable rules of national law - if immunity does exist (with reference to national law), then Parliament can decide to waive immunity, in the exercise of its own discretion
“Defence of immunity” submitted by a Member under Rule 6(3) of the Parliament’s Rules of Procedure.	<ul style="list-style-type: none"> - extent of immunity is determined by EU alone - Parliament’s decision is merely an opinion with no binding legal effects on national courts. EP’s own procedure on defence of immunity is not at all the same as certain national procedures on defence of immunity - Immunity is in essence intended to apply to statements made by MEPs in Parliament. Immunity can though apply, even if statement is made outside of Parliament, where, on the basis of a character and content of the statement, there is shown to be a direct and obvious link between the opinion expressed and parliamentary duties. 	<ul style="list-style-type: none"> - extent of immunity is determined by applicable rules of national law - depending on the applicable provisions of national law, the powers of the European Parliament can vary from decisions with binding legal effects to mere opinions with no legal effects.

Some trends, facts and figures

Taken together, the principles outlined above reveal a consistent element in Parliament's decisions, one that in fact has become a fundamental criterion for determining the EP's position in response to individual requests to waive immunity. In all cases where the charges against an MEP are related to the exercise of a political activity, immunity is not to be waived. Where there is a presumption that the request for waiver of immunity should prevent the MEP from continuing their political activity (*fumus persecutionis*), immunity is not waived.³⁰ It is not always easy to determine to what extent a request to waive immunity amounts to an attempt to undermine an MEP's career. However, if the charges relate to what may be considered 'particularly serious' activities, immunity will be waived.

Between 1979 – when direct elections to the EP were held for the first time – and the 2009 elections, 157 immunity cases were discussed in the plenary. In 45 out of these 157 cases, immunity was waived or an MEP's immunity not defended. The number of cases in which immunity has been waived appears to be rising in recent years.³¹ From

the 2009 elections to the end of 2010, five cases have been discussed in the plenary and in the EU Member States concerned. In all five cases, the EP decided not to uphold parliamentary immunity.

As far as the geographical distribution of immunity cases is concerned, some trends are apparent. Among the cases discussed in plenary in 2009, 71 cases (45%) related to Italian MEPs.³² French and German MEPs have also been involved.³³ By contrast, Dutch, Irish and Luxembourgish MEPs have never been connected to immunity requests. While no easy conclusions should be drawn from these trends, they do tend to raise legal issues for the European Parliament. Consequently, due to the legal problems arising from the Italian cases, the European Parliament had to adopt a special resolution in 2002.³⁴ Similarly, in 2009, the European Parliament had to adopt a resolution in response to complications connected with the immunity of Polish MEPs.³⁵ In the absence of a uniform 'European' immunity regime and confronted with divergent national provisions, the European Parliament may continue to find it necessary to adopt such special resolutions when a request for waiver of immunity is referred to it.

30 Offermann, K., 2007, p. 25. Some examples are: anonymity of the complaint, delayed submission of the request by comparison with the date of the alleged act. The Committee on the Rules of Procedure "also took the view that the presumption of '*fumus persecutionis*' must stem from the existence of a precise, direct and reasonable link between the circumstances surrounding the action of the national authorities and the conclusion that the case in question involves an attempt to undermine the independence or the dignity of the Member concerned and/or of Parliament."

31 In 2004-2009, the number of immunity waivers was higher than in 1999-2004. It must be pointed out, however, that this increase can be explained by the fact that in 2004-2009 most cases were discussed in plenary – see Corbett et al., *The European Parliament*, 2011, p.72.

32 According to Italian law, parliamentary immunity also covers statements made outside of Parliament, cf. Kloth 2010, p. 193.

33 Sixteen and nineteen requests respectively.

34 The EP's resolution of 11 June 2002 deals with a legal problem arising from the fact that in Italy it is the Courts that are responsible for deciding whether an opinion expressed by an MP is covered by immunity, while the Chamber of which the MP is a member can defend the MP's immunity – in which case the court must follow the Chamber's decision, unless it chooses to challenge the decision before the Italian Constitutional Court. The Italian authorities' practices led to a number of cases in which Italian MEPs were asking the EP to defend their immunity in order to stop proceedings against them in Italy – a course of action which the EP's immunity regime in principle does not foresee.

Immunity cases treated in EP plenary³⁶

Legislature	Cases treated in plenary	Decision to waive or not to uphold Member's immunity	Decision not to waive or to uphold Member's immunity	No recommendation
1979-84	8	1	7	-
1984-89	36	9	27	-
1989-94	33	5	28	-
1994-99	9	2	7	-
1999-2004	27	4	20	3
2004-2009	44	24	20	-

Case law of the European Court of Human Rights

The European Court of Human Rights did pronounce itself on the subject of parliamentary immunity. The Court confirmed that (1) parliamentary immunity was conducive to free speech and the separation of powers; (2) exceptions to absolute immunity would undermine the purpose of immunity; and (3) absolute immunity aimed to protect parliament as a whole. In relation to the immunity regime in the United Kingdom, the Court found "(...) that no immunity attaches

to statements made outside of Parliament, or to an MP's press releases, even if their content repeats statements made during the parliamentary debate itself"³⁷

Last but not least, the Court established that parliamentary immunity reflected generally recognised rules within the Member States of the Council of Europe and the European Union and was not imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

³⁵ The EP's resolution of 4 April 2009 essentially deals with two complications. The first one concerns the compatibility of requests for waiver of immunity by private persons - as provided by Polish law at the time - with the EP's Rules of Procedure which stipulate that such requests must emanate from a competent authority of a Member State. Polish law has been amended since: it now provides that the competent authority to request a waiver of immunity is, in all cases, the prosecutor-general, thereby excluding private persons. The second complication refers to a manifest inequality in treatment between Polish MPs and MEPs when it comes to loss of eligibility as a result of a conviction after a waiver of immunity: convicted MEPs lose their seat in the EP, while no analogous provision exists for convicted Polish MPs as regards their seat in the Polish parliament. The EP drew upon these issues to reiterate, in the same resolution, the need for a uniform statute for MEPs - see footnote 34.

³⁶ Ibid.

³⁷ Voorhoof, D, *European Court of Human Rights, Case of A. v. United Kingdom*, 2003

Parliamentary immunity and ethics in the European Parliament

The call for stronger parliamentary ethics has also been very much in evidence within the European Parliament. Scandals involving MEPs have led, over the past decade, to a substantial strengthening of the existing rules. Standards of behaviour have been codified, objectionable practices have been banned, employment conditions for parliamentary assistants have been clarified, disclosure requirements on MEPs have been introduced, and rules for lobbyists have been tightened. Along with the other European institutions, the European Parliament is subject to scrutiny of the European Anti-Fraud Office (OLAF), which the European Commission established in 1999.

The question whether OLAF, in the course of its investigations involving MEPs, should have direct and unlimited access to MEPs' offices and documents stored in these offices, became an issue during the 2011 cash-for-influence scandal. Until then, OLAF had always sought the consent of MEPs before searching their offices. The issue revolved around the principle of whether access could be allowed unless and until the MEP's immunity had been lifted. In the relevant OLAF regulations,³⁸ as amended in 2012, no special clause on MEPs' immunity has been foreseen.

The provisional culminating point of this evolution to link immunity with ethical behaviour was the adoption of a Code of Conduct by the European

Parliament for its Members in December 2011. The principles enshrined in this code include: integrity; openness; accountability; respect for the EP's reputation; the public interest as sole motivating factor; refraining from seeking or obtaining financial benefits or other rewards. Underlying the Code of Conduct and its attendant regulations is the fundamental realisation that the *density* of the European Parliament's ethics regulation must keep pace with the substantially increased powers of that same Parliament – at least if the European Parliament is to position itself successfully as the linchpin of European democratic values.

As is the case at the level of national parliaments, the co-existence of a parliamentary immunity regime influenced by tradition on the one hand and, on the other, an assertive parliamentary ethics regime seeking to reconnect politicians and their constituents, is causing a certain uneasiness at the European level as well.

Formally speaking, both regimes do not interfere with one another: the former seeks to create the conditions necessary for MEPs to exercise their functions freely, while the latter seeks to safeguard the ethical quality of MEPs. Immunity's focus is outward – seeking to shield an MEP from criminal proceedings instituted by outsiders. A code of conduct has an inward focus – seeking to imbue individual MEPs with the ethics of the House. Also, the fact that an MEP will benefit from immunity does not necessarily protect them from whatever internal sanctions the EP may wish to subject them

38 N° 1073/1999, establishing the European Anti-Fraud Office (OLAF)

to for having breached the Code of Conduct. Still, the combination of immunity rights and a code of conduct which is implemented on a peer-basis may create an impression of 'untouchability' which, however unjustified, may undermine the public standing of MEPs.

The cumulative effect of the factors alluded to above would seem to argue in favour of some kind of downward revision of parliamentary immunity. In the case of the European Parliament, such an operation would have to be preceded by amendment of Articles 9 and 10 of the PPI which, to this day, cause substantial, nationality-based disparities in the way immunities are applied to individual MEPs. Repealing these two Articles would open the way for the introduction of an uniform regime in which immunities would be brought back to their functional core in line with recent jurisprudence on the matter – the best way to preserve the essence of parliamentary immunity in the face of indiscriminate calls for the abolition of parliamentary immunity altogether. This uniform regime would constitute the last building block of the uniform statute for MEPs.

ANNEX: Comparative overview of parliamentary immunity across EU Member States³⁹

SYNOPTIC TABLES

Non-liability

Country	Persons covered ⁴⁰	Scope
Austria	MPs. Not including the <i>Bundesrat</i> (Upper House)	MPs are not accountable for votes and written or oral opinions in the exercise of their parliamentary mandate. This immunity covers all votes cast and oral and written statements made by Members of the National Council during the proceedings of the plenary and the committee meetings, during parliamentary inquiries and in written statements recorded in parliamentary documents.
Belgium	MPs, Ministers, and Members of Regional and Communities' Parliaments	Member is exempt from criminal, disciplinary and civil prosecution, and investigation/examination (i.e preliminary investigation, searches) for opinions expressed and votes cast directly related to the performance of parliamentary duties.
Bulgaria	MPs	Parliamentary non-accountability applies to words spoken and written by MPs both within and outside Parliament while performing their duties as Members of Parliament. MPs are therefore exempt from any criminal liability. Derogations: offence or insult.
Cyprus	MPs	Representatives shall not be liable to civil or criminal proceedings in respect of any statement made or vote by them in the House of Representatives. Therefore the non-liability is limited to votes and statements performed in the House itself.

³⁹ Data submitted by ECPRD correspondents

⁴⁰ Includes members of both the upper house/senate and lower house, unless otherwise stated (also applies to Inviolability table)

Duration	Can immunity be waived?	Procedure for waiving immunity
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non- liability cannot be waived.

Country	Persons covered ⁴⁰	Scope
Czech Republic	MPs	<p>No Deputy or Senator may be disciplined for his or her voting in the Chamber of Deputies or in the Senate, or in their bodies.</p> <p>No Deputy or Senator may be criminally prosecuted for statements made in the Chamber of Deputies or in the Senate, or in their bodies and, in this case, a Deputy or Senator shall be subject only to the disciplinary jurisdiction of the chamber of which he or she is a member.</p> <p>In other cases, no Deputy or Senator may be criminally prosecuted without the consent of the chamber of which he or she is a member. If the respective chamber denies its consent, criminal prosecution shall be excluded forever.</p> <p>A Deputy or a Senator who has committed a transgression shall be subject only to the disciplinary jurisdiction of the chamber of which he or she is a member, if he or she requests so.</p> <p>A proposal to limit the scope of parliamentary immunity is at present being considered by the Chamber of Deputies.</p>
Denmark	MPs	<p>A Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties, made not only on the floor of the <i>Folketing</i> but also elsewhere – for instance in standing committees of the <i>Folketing</i> or while away on business with such committees. The deciding factor is whether the opinions expressed are directly related to the performance of parliamentary duties.</p>
Estonia	MPs	<p>Member will not bear legal liability for votes cast or political statements made by them in the <i>Riigikogu</i> or in any of its bodies.</p>
Finland	MPs	<p>Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution, arrest, detention and investigation/examination, for opinions expressed, behaviour/ conduct, and votes cast directly related to the performance of parliamentary duties, made on the floor of the House.</p>

Duration	Can immunity be waived?	Procedure for waiving immunity
Unlimited	No	<p>None, since non- liability cannot be waived.</p> <p>However, in the specific cases referred to under Scope, paragraph 3, a decision of the relevant chamber is required to lift immunity.</p>
Limited to the length of the mandate, also for offences committed during the mandate	Yes	<p>A proposal to lift immunity is made by the private individual who wishes to institute proceedings, and a vote is taken by the House. As a result, the Parliament has to give its consent. In practice, such consent is never given: therefore, there is a total non-liability for any opinion or vote cast by Members of the <i>Folketing</i> in the exercise of their functions.</p>
Member will not bear legal liability for votes cast or political statements made in parliament after expiration of their term in office	No	None, since non-liability cannot be waived.
Unlimited	Yes	<p>A proposal to lift immunity is made by the competent official (i.e. police officer, Prosecutor) who wishes to institute proceedings. A majority of 5/6 of votes cast is necessary for lifting immunity.</p>

Country	Persons covered ⁴⁰	Scope
France	MPs	Member is not liable for opinions expressed and votes cast in the performance of their parliamentary duties: they will not be subjected to prosecution, search, arrest, detention or trial. At the same time, jurisprudence has established that some actions which cannot be equated with opinions expressed or votes cast in the exercise of their parliamentary office do not fall under the heading of non-liability (e.g. remarks during a radio conference or in an interview).
Germany	MPs. The <i>Bundesrat</i> (Upper House) is not included; the <i>Bundesversammlung</i> (Federal Assembly) is included.	At no time may a Member incur legal or disciplinary proceedings for votes cast and/or opinions expressed on the floor of the House or in one of its bodies, nor held accountable outside the House. This does not apply to defamatory insults, which can, however, be dealt with through parliamentary disciplining.
Greece	MPs	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution, and investigation/examination. Non-liability of MPs is operative concerning criminal and civil proceedings and disciplinary measures for opinions expressed and votes cast directly related to the performance of parliamentary duties inside as well as outside the Chamber (as far as there is a direct link of the expression of opinion or vote to the exercise of the mandate). Derogations: defamation
Hungary	MPs	Member is only liable to disciplinary measures by the Speaker/ Chamber (i.e. call to order, censure) and is exempt from criminal prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties. Active or former Members cannot be held accountable before court, or by any other authority for their votes cast, or facts and opinions stated in the course of the duration of their mandate. This immunity shall not be applicable in case of violation of state secrets, of defamation or libel, and in connection with the accountability of MPs under civil law.

Duration	Can immunity be waived?	Procedure for waiving immunity
Unlimited	No	None, since non-liability cannot be waived, unless there is no link to the performance of parliamentary duties.
Unlimited	No (in case of defamatory insults criminal prosecution can be initiated, if the <i>Bundestag</i> lifts immunity).	
Unlimited	Yes	Only in case of defamation, and with the consent of the Chamber.
Unlimited	Yes	Immunity shall not be applicable in case of violation of state secrets, or defamation or libel and in connection with the accountability of MPs under civil law. The Parliament shall decide in such matters.

Country	Persons covered ⁴⁰	Scope
Ireland	MPs. Participants in official proceedings (officials, experts and certain witnesses)	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution, and investigation/examination. Immunity protects members of parliament against any legal action likely to reduce their freedom of speech and action. It covers opinions expressed and votes cast/utterances directly related to the performance of parliamentary duties, made on the floor of one of the two Houses and while going to and returning from Parliament. Derogations: treason, felony and breach of peace. Immunity covers all official reports and publications of the Houses. Immunity extends to statements made outside the Houses of the Oireachtas where these are identical to statements made within the Houses. Officials, experts and certain witnesses are also covered within parliamentary committees.
Italy	MPs	Member is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties. MPs may not be required to give account of any opinions expressed or votes cast in the exercise of their functions. Deputies and Senators are therefore exempt from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities.
Latvia	MPs	Member is not liable to disciplinary measures and is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties. They also have the right to refuse to give evidence in specific cases. Members may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. But court proceedings can be brought against a member if they, albeit in the course of performing parliamentary duties, disseminate defamatory statements which they know to be false, or defamatory statements about private or family life. They also have the right to refuse to give evidence in specific cases regarding other non-liable Members (Example: concerning persons who have entrusted to them, as representatives of the people, certain facts or information).

Duration	Can immunity be waived?	Procedure for waiving immunity
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.
Limited to length of mandate.	Yes	Non-liability can be waived in the case of defamatory statements which Members know to be false or about private or family life. Upon request of the Mandate, Ethics and Submissions Committee, the Saeima shall rule whether it agrees that administrative charges be brought against a relevant Member, that they be forcefully brought to court, their property be searched or documents seized.

Country	Persons covered ⁴⁰	Scope
Lithuania	MPs	No civil or criminal action may be brought against an MP for the opinions expressed and votes cast in the exercise of his parliamentary duties. Member is only liable for personal insult or slander and is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties, made on the floor of the <i>Seimas</i> .
Luxembourg	MPs	Parliamentary non-accountability applies to words spoken and written by MPs both within and outside Parliament provided MPs said or wrote them in the exercise of their functions. Derogations: insult of Parliament or its President.
Malta	MPs	No civil or criminal proceedings may be instituted against any Member of the House or a committee thereof or by reason of any matter or thing brought by them therein by petition, bill, resolution, motion or otherwise. This non-liability does not seem to concern activities of the Member performed outside the House.
Netherlands	MPs, Members of the States General, Ministers, Secretaries of State, and participants in official proceedings	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties, made on the floor of the House. The non-liability principle covers all procedures (civil, criminal, administrative and disciplinary) but is strictly limited to positions (oral and writing) taken in deliberations (during parliamentary sessions).
Poland	MPs. Does not fully apply to Senators.	Member is exempt from criminal and civil prosecution, disciplinary accountability and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties, e.g. made on the floor of the parliament or its bodies. In case of infringement of the rights of third parties (e.g. offence/defamation and slander), a Member may only be proceeded against before a court upon consent of the <i>Sejm</i> . The following activities fall within the scope of the non-liability principle: tabling proposals, speeches and votes during sessions of parliament and other parliamentary meetings as well as other acts related to the performance of parliamentary duties.

Duration	Can immunity be waived?	Procedure for waiving immunity
<p>Limited to length of mandate, apart from votes and speeches in the Parliament specifically unlimited.</p>	<p>Yes</p>	<p>Non-liability can be waived in the case of personal slander or insult.</p>
<p>Unlimited</p>	<p>No</p>	<p>None, since non- liability cannot be waived.</p>
<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
<p>Unlimited</p>	<p>Yes</p>	<p>Since 1848, Parliament has had no part in the process of reviewing proposals to lift non-liability. If offences are committed in connection with the performance of an MP's duties, it is up to the Supreme Court to adjudicate.</p>
<p>Limited to the length of the mandate. However, after completion of his mandate, a Deputy cannot be freely held accountable for actions covered by immunity and performed during the mandate.</p>	<p>Yes</p>	<p>Requests for waiving the parliamentary immunity of a Deputy must be submitted to the Marshal of the Sejm, who forwards them to the Rules and Deputies' Affairs Committee. After examination by this Committee, the Chamber can waive the immunity by means of a resolution adopted by an absolute majority vote.</p>

Country	Persons covered ⁴⁰	Scope
Portugal	MPs	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties, made on the floor of the House.
Romania	MPs	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution, as well as investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties, made on the floor of the House.
Slovakia	MPs	<p>Constitution of the Slovak Republic, article 78.</p> <p>No Member of Parliament shall be prosecuted for his voting in the National Council of the Slovak Republic or in its committees, not even after expiration of his or her mandate.</p> <p>No Member of Parliament shall be prosecuted for statements presented in duration of the post in the National NC SR or in its body, not even after expiration of his or her mandate. The MP is subject to disciplinary powers of the NC SR.</p> <p>Member is only liable to disciplinary measures by the Speaker-Chamber (i.e. call to order, censure) and is exempt from criminal liability because of his voting and statements in the National Council of the Slovak Republic or its bodies. Furthermore, he cannot be subject to investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties without the consent of the NC SR, made on the floor of the NC SR or its bodies.</p>
Slovenia	MPs, Members of the National Council	Member is not criminally liable for opinions expressed or votes cast at sessions of the National Assembly/National Council or its working bodies

Duration	Can immunity be waived?	Procedure for waiving immunity
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.

Country	Persons covered ⁴⁰	Scope
Spain	MPs	Member may not be required to give account of any opinions expressed or votes cast directly related to the performance of parliamentary duties, in the exercise of their functions. Deputies and Senators are therefore exempt from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities.
Sweden	MPs	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties.
United Kingdom	MPs, participants in official proceedings (for example: experts, civil servants)	Member is only liable to disciplinary measures by the Speaker/Chamber (i.e. call to order, censure) and is exempt from criminal and civil prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties, made on the floor of the House or at parliamentary committee meetings. Immunity does not cover statements made outside of Parliament and the Member's press statements published prior to parliamentary debates, even if their contents are repeated subsequently in the debate itself.

Duration	Can immunity be waived?	Procedure for waiving immunity
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	No	None, since non-liability cannot be waived.
Unlimited	Only in limited cases under the Defamation Act 1996 by Members or witnesses before Committees.	By individual in courts.

Inviolability

Country	Persons covered	Scope
Austria	MPs. Not including the <i>Bundesrat</i> (Upper House)	Immunity covers acts punishable by a court of law, acts governed by administrative criminal law and acts amenable to prosecution under disciplinary law provided that they have been committed in connection with the political activities of the Member concerned. It does not afford any protection against civil proceedings in a court of law. Derogations: in cases of <i>flagrante delicto</i> , MPs can be arrested. Legal action can be taken if the case is manifestly not connected with the political activity of the MP.
Belgium	MPs, Ministers, and Members of community and regional councils	Member may not be committed for trial or summoned directly before a court or tribunal, or arrested without prior authorisation of the House, except in <i>flagrante delicto</i> . Other investigative acts (e.g. questioning, searches and seizures, etc.) do not require prior authorisation. There are, however, additional procedural guarantees (e.g. presence of (a representative of) the Speaker of an assembly when a search takes place).
Bulgaria	MPs	It applies only to criminal proceedings, covers all offences and protects MPs from arrest and from being held in preventive custody, from the opening of judicial proceedings against them and from their homes being searched. The permission of the National Assembly is needed in order to subject the Member to detention or rather criminal prosecution. Derogations: in cases of grave crimes committed in <i>flagrante delicto</i> or if the MP gives their consent, MPs can be arrested. However, Parliament or, between sessions, its President, shall be notified.
Cyprus	MPs	Immunity, applied to both criminal and civil proceedings, protects Members from arrest, from being held in preventive custody (imprisonment), from the opening of judicial proceedings against them and from their homes being searched, without leave from the Supreme Court. In cases where the Member is apprehended in the act of committing an offence punishable with imprisonment of five years or more, the MP can be arrested without leave by the Supreme Court.

Duration	Can immunity be waived?	Procedure for waiving immunity
Limited to the length of mandate	Yes	Immunity can be waived, according to the Constitution and the rules of procedure of the National Council: a request will be submitted by the competent court/ authority/disciplinary board to the Federal Ministry of Justice, which will forward the request to the National Council. In deciding whether or not to waive immunity, the National Council will seek to establish whether there is a connection between the alleged offence and the political activity of the MP concerned.
While the Parliament is in session.	Yes	A request for the lifting of immunity is put forward to the Speaker of the relevant Chamber. After examination by a special committee, or the Justice Committee (Senate), the Chamber proceeds to a plenary vote.
Limited to the length of mandate. (It also covers judicial proceedings instituted against MPs before their election).	Yes	Parliamentary immunity can be lifted in cases of commission of grave crimes.
Limited to the length of mandate.	Yes	The Attorney General asks for the granting of leave by the Supreme Court.

Country	Persons covered	Scope
Czech Republic	MPs	Member enjoys protection from criminal proceedings, except where they are apprehended in the act of committing a criminal offence (<i>flagrante delicto</i>) or immediately thereafter. In this case, the competent agency shall immediately report the detention to the chairman of the Chamber of which the detainee is a Member. If the chairman does not give his consent within 24 hours of the detention to the surrender of the detainee to a court, the competent agency shall release the detainee.
Denmark	MPs	Member enjoys protection from prosecution or imprisonment of any kind without the consent of the Parliament, except where the Member is apprehended in <i>flagrante delicto</i> . This immunity covers only public criminal prosecution and applies neither to investigation, interrogation and fines, nor to civil or criminal cases resulting from private prosecutions.
Estonia	MPs	Member may be detained as a suspect, preventive measures may be applied and searches, seizure of property, inspections and physical examinations may be conducted, only if the <i>Riigikogu</i> has granted consent to the preparation of a statement of charges with regard to such person. A Member may be detained as a suspect without the consent of the <i>Riigikogu</i> if the person was apprehended in the act of commission of a criminal offence in the first degree. In such cases, the person and any premises associated with them may be searched and the person subjected to inspections and physical examinations without the consent of the <i>Riigikogu</i> , as appropriate. Criminal charges can be brought against a Member if the majority of the membership of the Parliament consents.
Finland	MPs	Member is provided with protection from arrest or detention before the commencement of a trial, except where the Member is, for substantial reasons, suspected of having committed a crime for which the minimum punishment is imprisonment for at least six months.
France	MPs	Member is inviolable in criminal and administrative proceedings and will therefore not be arrested or subjected to restrictions on their freedom of movement (preliminary investigations and searches excepted) without prior authorisation by the Bureau of the National Assembly. Such authorisation is not required in case of certain routine law enforcement inquiries and serious crimes or other major offences committed in <i>flagrante delicto</i>

Duration	Can immunity be waived?	Procedure for waiving immunity
Limited to the length of mandate. (If the Chamber has not been requested or has not refused to give its consent, the MP can be prosecuted after the expiry of the mandate.)	Yes	A request for waiving immunity is made to the chairman or president of the Chamber concerned. After examination by the Mandate and Immunity Committee, the Chamber will pass a resolution on each such request and will send its decision to the relevant prosecuting body.
Limited to the length of mandate.	Yes	A request for waiving immunity is sent by the public prosecutor to the Ministry of Justice, which transmits it to the Chamber. After examination by the Committee on the Rules of Procedure, the Chamber votes.
Limited to the length of mandate.	Yes	Criminal charges can be brought against a member of the Parliament only at the proposal of the Chancellor of Justice and with the consent of the simple majority of the Parliament.
Limited to the length of mandate.	Yes	A request for waiving immunity is made by the competent official (i.e. police officer, prosecutor) who wishes to institute proceedings. A simple majority of votes cast is necessary for lifting immunity.
Limited to the length of mandate.	Yes	A request for waiving immunity will be made by the prosecutor-general to the competent court of appeal and transmitted by the Ministry of Justice to the president of the National Assembly. The request will then be examined first by a Bureau delegation and later by the whole Bureau in the strictest confidence. Only the decision of the Bureau will be published.

Country	Persons covered	Scope
Germany	MPs. The <i>Bundesrat</i> (Upper House) is not included; the <i>Bundesversammlung</i> (Federal Assembly) is included.	Only upon prior authorisation of the <i>Bundestag</i> may a Member be held accountable or detained for acts punishable by a court of law, except in <i>flagrante delicto</i> or when apprehended in the course of the next day. Prior authorisation of the <i>Bundestag</i> is also required for any other restrictions of a Member's personal freedom or for the initiation of legal proceedings against a Member.
Greece	MPs	Member enjoys protection from criminal and administrative proceedings (though not against preliminary investigation or searches) and arrest, except where the Member is apprehended in <i>flagrante delicto</i> (in this case no authorisation by the Parliament is required).
Hungary	MPs. Persons registered as candidates running for parliamentary seats during parliamentary elections.	Member enjoys protection from criminal and civil proceedings (including preliminary investigation or searches) and arrest, except where the Member is apprehended in <i>flagrante delicto</i> . MPs can only be arrested in case of <i>flagrante delicto</i> . Criminal procedures or legal procedures for petty offences against MPs can only be started and pursued with prior permission given by Parliament. Prior permission by Parliament is also required for law enforcement against MPs in criminal procedures.
Ireland	MPs	Any measures that might restrict the personal freedom of Members when they go to the Parliament, are sitting or are returning from there are prohibited.
Italy	MPs. Not Senators.	Member enjoys protection from arrest, detention, searches, investigations, surveillance and interception of communications, except in cases of <i>flagrante delicto</i> , when an arrest warrant is compulsory. Following an amendment to the Constitution in 1993 no previous authorisation of the competent Chamber is necessary in order to subject a Member of the Parliament to criminal proceedings.

Duration	Can immunity be waived?	Procedure for waiving immunity
Limited to the length of mandate.	Yes	<p>At the beginning of each electoral period, the <i>Bundestag</i> will authorise the initiation of preliminary proceedings against Members of the <i>Bundestag</i> for criminal acts, except for political insults. The State Prosecutor must inform the <i>Bundestag</i> of its intentions and must wait 48 hours before actually initiating preliminary proceedings.</p> <p>Prior authorisation of the <i>Bundestag</i> is required to indict or to carry out searches. The State Prosecutor must submit a request to the president of the <i>Bundestag</i>, who will forward the request for advice to the committee on immunities of the <i>Bundestag</i>. A plenary vote will be taken upon recommendation of the committee.</p>
Limited to the length of mandate.	Yes	The Public Prosecutor submits a request to the Speaker who transfers it to the Committee on Parliamentary Deontology. A vote takes place in the Chamber after a debate.
Limited to the length of mandate	Yes	The Chief Public Prosecutor submits a request to the Speaker who forwards it to the Committee on Immunity, Incompatibility and Verification of Mandate. After examination by this committee the Parliament can waive the immunity by means of a resolution adopted by a two-thirds majority vote. In addition, the National Assembly may suspend the immunity of one of its Members with the votes of the Members present.
Limited to the length of mandate.	No	None, since inviolability cannot be waived.
Limited to the length of mandate.	Yes	The Public Prosecutor submits a request to the Speaker who transfers it to the relevant Chamber or Senate committee. Within a limited time the request is put to a secret ballot in the relevant chamber. The Committee on Waiver of Immunity shall report to the House within thirty days giving proposals to grant or deny the waiver. The House will deliberate on requests for waiver.

Country	Persons covered	Scope
Latvia	MPs	Immunity applies only to criminal and administrative proceedings, covers all offences and protects MPs from arrest and from being held in preventive custody, from the opening of judicial proceedings against them, from their homes being searched, and from administrative fines being levied. Members may not be arrested or their premises searched or their personal liberty be restricted in any way without the consent of the <i>Saeima</i> . They may be arrested if apprehended in <i>flagrante delicto</i> .
Lithuania	MPs	Criminal proceedings may not be instituted against a <i>Seimas</i> Member; they may not be arrested and may not be subjected to any other restrictions of personal freedom without the consent of the <i>Seimas</i> , except in cases when caught in <i>flagrante delicto</i> .
Luxembourg	MPs	Immunity applies to criminal and civil proceedings, covers all offences and protects MPs from arrest and from being held in preventive custody and from the opening of judicial proceedings against them without authorisation of the Chamber. As for their homes being searched, there is no jurisprudence in Luxembourg. Derogations: in cases involving <i>flagrante delicto</i> , inviolability does not apply.
Malta	MPs	For the duration of any session Members of the House of Representatives enjoy the immunity from arrest for any civil debt "provided that it is not fraudulent or otherwise in contravention of the Criminal Code."
Netherlands	N/A	Since 1884, MPs have had the same status as ordinary citizens as regards proceedings and enforcement of a sentence for offences under ordinary law.

Duration	Can immunity be waived?	Procedure for waiving immunity
Limited to length of mandate.	Yes	A request emanating from the judicial branch of government will be made to the Mandate, Ethics and Submissions Committee of the <i>Saeima</i> , which in turn will request the <i>Saeima</i> as a whole to rule on waiving immunity with a view to initiating criminal proceedings.
Limited to length of mandate	Yes	Upon request of the Prosecutor General the Parliament must give its consent with absolute majority.
Protection is provided only during sessions. It does not cover judicial proceedings instituted against MPs before their election. However, such proceedings may be suspended by the Chamber for the duration of the session.	Yes	A special committee is established for each request for arrest of an MP. The committee informs the MP and hears their explanations. The committee then presents a report to the <i>Chambre des Députés</i> which examines it in a non-public sitting. The vote will be a secret ballot and the decision to grant or refuse the arrest of an MP will be announced at the next public sitting.
Protection is provided only during sessions.	Yes	Upon request of the Court of Magistrates of Malta
N/A	N/A	N/A

Country	Persons covered	Scope
Poland	MPs. Does not fully apply to Senators.	Criminal proceedings (“criminal accountability” being interpreted broadly, also covering petty crimes) instituted against a person before the day of their election as Deputy shall be suspended at the request of the <i>Sejm</i> until the time of expiry of the mandate. A Deputy shall not be subjected to criminal accountability without consent of the <i>Sejm</i> . They shall neither be detained nor arrested without the consent of the <i>Sejm</i> , except when apprehended in <i>flagrante delicto</i> and when detention is required for securing the proper course of the proceedings. Any such detention shall be communicated immediately to the Marshal of the <i>Sejm</i> , who may order an immediate release of the Deputy.
Portugal	MPs	Member enjoys protection from criminal and administrative proceedings (though not against preliminary investigation or searches) and arrest, except where the Member is apprehended in <i>flagrante delicto</i> , or if the alleged offence is punishable by more than three years’ imprisonment.
Romania	MPs	The Deputies and Senators may be subject to criminal investigation, or criminally prosecuted for acts that are not connected with their votes or their political opinions expressed in the exercise of their office, but shall not be searched, detained or arrested without the consent of the Chamber they belong to, after being heard, and may be apprehended in <i>flagrante delicto</i> . The investigation or prosecution shall only be carried out by the Public Prosecutor’s Office attached to the High Court of Cassation and Justice.
Slovakia	MPs	After a revision of the Constitution in July 2012, the following provisions are now in force: Article 78 No Member of Parliament shall be held in pre-trial detention without approval of the National Council of the Slovak Republic.

Duration	Can immunity be waived?	Procedure for waiving immunity
<p>From the day of announcement of the results of the elections until the end of the mandate</p>	<p>Yes</p>	<p>Requests for waiving the parliamentary immunity of a Deputy must be submitted to the Marshal of the <i>Sejm</i>, who forwards them to the Rules and Deputies Affairs Committee. After examination by this committee, the Chamber can waive the immunity by means of a resolution adopted by an absolute majority vote.</p>
<p>Limited to length of mandate</p>	<p>Yes</p>	<p>The competent authorities will submit a request to the Speaker, who transfers it to a special committee for examination. The request will be put to the Chamber.</p>
<p>Limited to length of mandate.</p>	<p>Yes</p>	<p>The Minister of Justice submits the requests for detaining, arrest or search to the President of the Chamber of Deputies who, after informing the Deputies, refers it to the Legal, Discipline and Immunities Committee. This is then forwarded to the Deputy's Parliamentary Group to give their viewpoint. The Chamber of Deputies finally needs to approve the measure to be taken, with the majority vote of the present MPs. This procedure applies <i>mutatis mutandis</i> to Senators.</p>
<p>While in detention, the Member's mandate is suspended.</p> <p>A Deputy has the right to refuse to testify in matters about which they became aware while in office, even after they cease to be a Deputy (article 79).</p>	<p>Yes</p>	<p>If a Member of Parliament has been detained while committing a criminal offence, the competent body shall be obliged to notify the Speaker of the National Council of the Slovak Republic and the chairman of the Mandate and Immunity Committee of the NC SR immediately. If the Mandate and Immunity Committee of the NC SR does not approve the arrest consequently, the Member of Parliament must be released immediately.</p>

Country	Persons covered	Scope
Slovenia	MPs. Not including the National Council	No Deputy may be detained nor, where such Deputy claims immunity, may criminal proceedings be initiated against them without the permission of the National Assembly, except where such Deputy has been apprehended in <i>flagrante delicto</i> , committing a criminal offence for which carries a prison sentence of over five years. National Assembly may still grant immunity in the aftermath.
Spain	MPs	Member enjoys protection from criminal and administrative proceedings and arrest, except where the Member is apprehended in <i>flagrante delicto</i> . The authorisation of the Chamber to which the Member belongs is needed in order to subject the Member to judicial measures.
Sweden	MPs	Member is provided with protection from criminal and administrative proceedings and arrest, except where the Member is apprehended in <i>flagrante delicto</i> , if the minimum penalty for the alleged offence is imprisonment for at least two years, or if the Member pleads guilty.
United Kingdom	MPs	Immunity from arrest and detention for all civil actions. But this has almost no practical effect, since there are very few civil causes on which a person can be detained.

Duration	Can immunity be waived?	Procedure for waiving immunity
Limited to length of mandate.	Yes	The state prosecutor's office/competent court will request permission from the President of the National Assembly to detain an MP or initiate criminal proceedings against them. The President forwards the request to the Commission for Public Office and Elections for examination. The Commission or a group of MPs will submit a proposal to the National Assembly, which will rule on whether or not to waive immunity. Generally, waiving immunity will require the assent of both the Commission and the National Assembly as a whole.
Limited to the length of mandate.	Yes	The President of the Supreme Court submits a request to the Speaker who transfers it to the relevant Chamber or Senate committee. Within a time limit, the request will be put to a secret ballot in the relevant Chamber. If the request has not been ruled upon within 60 days, it is deemed to have been rejected.
Limited to the length of mandate. While the Parliament is in session.	Yes	The Public Prosecutor or any person wishing to institute proceedings submits a request to the Chamber. A decision to lift immunity requires a majority of five-sixths of those voting.
For 40 days after every prorogation and dissolution.	No	No, since inviolability cannot be waived.

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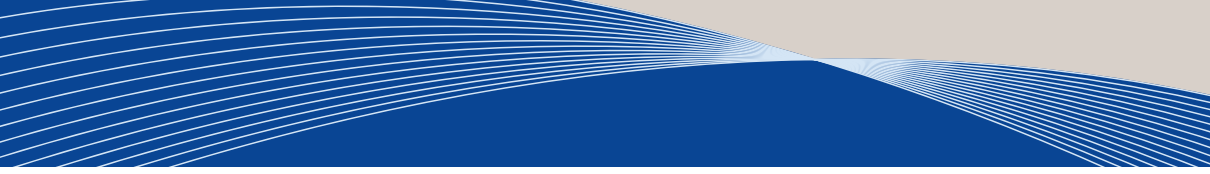
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<http://www.ecprd.org>

European Court of Human Rights
<http://www.echr.coe.int/echr/>

Inter-Parliamentary Union (IPU)
<http://www.ipu.org>

Venice Commission
<http://www.venice.coe.int>



Notes

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